



C.R.P.(MD).No.2399 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 25.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2399 of 2018

and

C.M.P(MD) No.10729 of 2018

Ameenal Beevi

... Petitioner/1st Defendant

-VS-

Haji V.T.S.A.Abdul Hameed

... Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 17.09.2018 passed in I.A.No.171 of 2017 in O.S.No.72 of 2017 on the file of the III Additional District Judge, Tirunelveli.

For Petitioner : Mr.V.Meenakshisundaram

For Respondent : Mr.K.Esakki



C.R.P.(MD).No.2399 of 2018

ORDER

WEB COPY

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and decreetal order dated 17.09.2018 passed in I.A.No.171 of 2017 in O.S.No.72 of 2017 on the file of the III Additional District Judge, Tirunelveli.

2. The revision petitioner is the defendant before the trial Court.

3. The short facts, which give rise to the instant Civil Revision Petition are that, the respondent herein has filed a suit in O.S.No.72 of 2017 for the relief of specific performance in respect of the suit property and has also sought for alternative prayer for return of advance amount and for creation of charge over the property.

4. During the pendency of the said suit, the petitioner/1st defendant has filed an application for rejection of plaint on the ground that the suit is barred by limitation and also on the ground that there is no cause of action.



C.R.P.(MD).No.2399 of 2018

WEB COPY

5. The said application was strongly contested by the plaintiff and ultimately, the learned trial Judge has rejected the application of the defendant on the ground that as per Article 54 of the limitation Act, the limitation commences for filing the suit for specific performance from the date when the same was refused.

6. Therefore, the learned trial Judge has found that since the question of limitation is a mixed question of law, concluded that the said ground cannot be decided under Order 7 Rule 11 of C.P.C. In respect of the second ground, the learned trial Judge by referring to Section 55 (6) (b) of the Transfer of Property Act, the limitation period for creation of charges is 12 years and therefore, has rejected the prayer of the defendant for rejecting the plaint.

7. I have anxiously considered the submissions made by the either side.

8. Though the learned trial judge has elaborately observed the limitation aspects, the sum and substance is that, such a defence is a mixed question of law and require evidence and document to arrive at conclusion.



C.R.P.(MD).No.2399 of 2018

WEB COPY

Therefore, the same cannot be decided under the frame work of Order 7 Rule 11 of C.P.C application.

9. Therefore, this Court could not find any merits in the Civil Revision Petition. At the same time, in the interest of justice, it is incumbent upon this Court to give a liberty to the petitioner herein to raise the above defences before the trial Court during the trial proceedings.

10. With the above said observation, this Civil Revision Petition is dismissed. It is also made clear that the observation found in the Interlocutory Application in I.A.No.171 of 2017, would in no way stand in the way of the trial Court while considering the limitation aspect during the trial. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

25.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi



C.R.P.(MD).No.2399 of 2018

To

1. The III Additional District Judge,
Tirunelveli.



WEB COPY



C.R.P.(MD).No.2399 of 2018

C.KUMARAPPAN,J.

ebsi

C.R.P(PD)(MD)No.2399 of 2018

25.07.2023