



CRP No.479 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP No.479 of 2024 and
CMP No.2272 of 2024

Paramanandam

... Petitioner

/vs/

- 1 . Pushpalatha
- 2 . S.Chandrasekaran
- 3 . Sathyanarayanamurthy
- 4 . Bhavani
- 5 . Anandi
- 6 . Sub Registrar, Velachery,
Chennai 600 042.

7. The Inspector General of Registration,
Mylapore, Chennai 600 004.

... Respondents

PRAYER : This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside and revise the dismissal order dated 01.12.2023 made in I.A.No.8/2023 in O.S.No.1178/2015, by the XVI Assistant Judge, City Civil Court, Chennai.

For Petitioner ... Mr. R.Sankarakutralingam.



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ORDER

This Civil Revision Petition has been filed to set aside the dismissal order dated 01.12.2023 made in I.A.No.8/2023 in O.S.No.1178/2015, by the learned XVI Assistant Judge, City Civil Court, Chennai.

2. The petitioner herein is the 5th defendant and the first respondent herein is the plaintiff in the above said suit, which was filed for declaration of the sale deed dated 05.06.2002 in document No.2363/2003 executed by the first defendant in favour of the fifth defendant as null and void and also mandatory injunction, directing the 5th defendant to remove the superstructure on the site and leave the suit property in the same position, as it was being at the time purchase by the plaintiff. Pending suit, the petitioner herein filed a petition to reject plaint on the ground of limitation and the same was dismissed. Challenging the same, the present civil revision petition has been filed.

3. Heard the counsel for the petitioner and I have perused the materials on record.

4 . On perusal of the records shows that the petitioner herein is the



fifth defendant in the above said suit and the first respondent herein has filed the suit, seeking prayers, as stated supra. It is the contention of the petitioner that, he had purchased the suit property on 05.06.2002 from the power of attorney of the owner of the property and subsequently, after getting planning permission from the authorities concerned, he constructed a house therein and he is in possession of the suit property. According to the petitioner, the first respondent/ plaintiff issued a legal notice in the year 2010, wherein, it was stated that, while the plaintiff visited the suit property during the year 2008, she came to know about the construction of a house by the third party in the suit site. Therefore, the limitation starts, when the plaintiff came to know about the sale deed in favour of the petitioner, however, the suit was filed only on 28.05.2014, which is barred by limitation. It is the further contention of the petitioner that, in the plaint, there is no disclosure of cause of action. The further defence made by the petitioner is that, the first respondent/plaintiff has challenged the sale deed, after a period of approximately 12 years from the date of execution of sale deed and hence, the suit is prohibited by limitation.

5. The first respondent/plaintiff in her plaint stated that she had



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purchased the suit property on 22.10.1999, vide document No.3261/1999 from M.Sathyanarayana Murthy and two others, through their power of attorney Chandrasekaran. Subsequently, she came to know that, the power of attorney had sold the same property to the fifth defendant also and hence, she issued the legal notice to the defendants to remove the superstructure and hand over the vacant possession of the suit site and thereafter, filed the suit.

6. It is to be noted that, after filing of the suit, the petitioner /fifth defendant has filed his written statement in the month of August 2016 itself. A perusal of the written statement shows that, the petitioner has not raised the ground of limitation and non disclosure of cause of action in his written statement. But, after 7 years from the date of filing the written statement, the petitioner/fifth defendant has filed the petition under Order VII Rule 11 of CPC to reject the plaint, on the ground that the suit is barred by limitation. The defence of limitation made by the petitioner has to be decided only upon the evidence, as to which date, the plaintiff came to the knowledge of the encroachment and sale infavour of the fifth defendant.



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Further, when the suit is being filed for declaration that the sale deed in favour of the fifth defendant is null and void and also delivery of vacant site, it has to be adjudicated only after letting evidence on both side and hence, for the ground of limitation alone, the plaint cannot be rejected. Apart from that, the petitioner/fifth defendant alone has filed the petition to reject the entire plaint, but the plaintiff has sought the relief as against the other defendants also. Therefore, this court is of the view that the plaint cannot be rejected at the request of the fifth defendant and hence, there is infirmity in the impugned order passed by the Trial Judge to interfere over the same. As such, this civil revision petition is liable to be dismissed, as it has no merits.

9. Accordingly, this civil revision petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet : Yes/No
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To

The XVI Assistant Judge, City Civil Court, Chennai.



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V.SIVAGNANAM ,J.

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