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C.R.P.(PD).Nos.2802 & 2803 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).Nos.2802 & 2803 of 2024 &
C.M.P.Nos.14921 & 14927 of 2024

Neerav Aggarwal
Kamakshi Aggarwal

... Petitioner in CRP.No.2802 of 2024
... Petitioner in CRP.No.2803 of 2024

-Versus-

Shivam Poddar
Rep. by his Power agent,
Mr.Vimala Kumar Poddar

... Respondent in both CRPs.

Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the order dated 11.06.2024 passed by the Subordinate Judge, Madurantakam in I.A.No.1 of 2023 in O.S.No.128 of 2018 and I.A.No.1 of 2024 in O.S.No.129 of 2018.

For Petitioner : Mr.S.Santhosh
in both CRPs.

For Respondent : Mr.Naveen Balaji
in both CRPs.

COMMON ORDER

These two civil revision petitions arise against the order passed by the learned Subordinate Court at Madurantakam in I.A.No.1 of 2023 in



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O.S.No.128 of 2018 and I.A.No.1 of 2024 in O.S.No.129 of 2018.

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2. The respondent/plaintiff has filed two suits in O.S.128 of 2018 and O.S.No.129 of 2018 seeking for specific performance of an agreement of sale, both dated 12.01.2007. In the alternate, he seeks for a charge decree over the suit schedule mentioned properties. The plaintiff and the defendants in both suits are close relatives.

3. The case of the plaintiff is that an agreement was entered into between the parties on 12.01.2007 in both the cases. On the said date, the plaintiff had paid the defendants in each of the suits a sum of Rs.1,25,000/-. In terms of the agreements, the possession of the property was handed over by the defendants to the plaintiff. The plaintiff took possession of the properties. He requested the defendants to execute the sale deeds in his favour. They did not do so. Hence, he issued a notice on 25.09.2018 calling upon the defendants in both the suits to come forward and execute sale deeds.

4. Immediately on receipt of the notice, the defendants issued replies on 09.10.2018 refusing to execute the sale deeds. As the plaintiff got information



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that the defendants in both suits are going to alienate the property, he came forward with two suits seeking for the aforesaid reliefs.

5. Summons was served on the defendants. They filed a petition under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of plaint. In O.S.No.128 of 2018, the application was numbered as I.A.No.1 of 2023 and in O.S.No.129 of 2018, it was numbered as I.A.No.1 of 2024. The ground pleaded for rejection is that the suits are barred by time.

6. The learned Trial Judge, after perusing the affidavit and counter as well as after hearing the arguments of the parties, dismissed the petitions. He held that limitation, being a mixed question of law and fact, it cannot be gone into by the court at the time of considering an application for rejection of plaint.

7. Aggrieved by the same, the defendants in both suits, are on revisions before me.



8. I have heard Mr.S.Santhosh for the civil revision petitioners and Mr.Naveen Balaji for the respondent and have gone through the records.

9. At that outset, I would have to point out that a suit can be rejected as barred by time, if on reading the plaint, it discloses that the suit is so barred.

10. A careful perusal of the plaints, points out that the plaintiff has explained the period, from the date of agreement on 12.01.2007 till the presentation of the suit on 18.11.2018 by stating that the cause of action to file the suits for specific performance arose only when his demand was refused by way of reply notices dated 09.10.2018.

11. Under Article 54 of the Limitation Act, a two fold period is granted to a plaintiff. In case, the agreement fixes a date for performance, then the suit should be presented within three years from such date. In case no such date is fixed, the limitation will commence when the plaintiff has noticed that the performance has been refused.



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12. A reading of the complaints discloses that the plaintiff is relying upon the second part of Article 54. In both the cases, he issued a notice seeking for specific performance on 25.09.2018. It was only by way of replies on 09.10.2018, the demand of the plaintiff was refused. Therefore, that date should be taken for commencement of right to sue for the plaintiff. If that be the situation, the presentation of the suits within a month, namely, on 08.11.2018 cannot be held to be barred by time.

13. In the light of the above discussion, the civil revision petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The Subordinate Judge, Madurantakam



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V.LAKSHMINARAYANAN, J.

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