



C.R.P. (PD) No.2987 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) No.2987 of 2024
and C.M.P.No.15980 of 2024

Anandan

.. Petitioner/Petitioner/Defendant

Versus

Karthikeyan

.. Respondent/Respondent/Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.3 of 2024 in O.S.No.210 of 2023 dated 20.03.2024 on the file of the Additional District and Sessions Judge, Dharmapuri District.

For the Petitioner : Mr.P.Satheesh Kumar

ORDER

This Civil Revision Petition arises against the order dated 20.03.2024 passed by the Additional District and Sessions Judge, Dharmapuri in I.A.No.3 of 2024 in O.S.No.210 of 2003.



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2. The defendant is the revision petitioner. O.S.No.210 of 2003 is a suit for recovery of money of Rs.10 lakhs together with interest at the rate of 12 % per annum, from 06.07.2015 till 30.10.2022. The relationship between the parties is not disputed. The defendant is the owner of the suit schedule mentioned property. He had entered into an agreement of sale on 06.07.2015 with the plaintiff. The defendant would state that it is not an agreement of sale, but an agreement entered into as a security for repayment of loan of Rs.10 lakhs, which the defendant had admittedly received from the plaintiff.

3. Seeking for a declaration, the sale agreement as one entered into as security and for cancellation thereof, the plaintiff has presented O.S.No.54 of 2022. It is the specific plea of the defendant, that whatever amount he had received from the plaintiff had been discharged and that nothing remains to be paid under the said agreement and therefore, the agreement has to be cancelled.

4. The defendant in O.S.No.210 of 2023, filed an application for rejection of plaint. According to him, the agreement had admittedly been entered into on 06.07.2015 and therefore, the period of limitation of recovery of



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money of the said agreement expired on 05.07.2018 and the suit having been filed on 01.11.2022 is barred by time.

5. The learned Judge received a counter from the respondent/plaintiff. According to the respondent/plaintiff, the suit is not barred by time, because on 30.01.2018, the plaintiff had been assured by the defendant that he will come over and execute a document of sale in his favour. He has specifically pleaded to that effect in paragraph No.5 of the plaint. The learned Trial Judge referred to Article 62 of the Limitation Act, 1963, in order to hold that the period of limitation for filing a suit for recovery of money for a property charged by way of security is 12 years and consequently dismissed the petition. Against which, the present Civil Revision Petition.

6. Heard, Mr.Satheesh Kumar for the Civil Revision Petitioner.

7. I have gone through the records.

8. In order to reject the plaint on the ground of limitation, a reading of the plaint itself would show that the plaint is barred. It is always open to the



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Court in terms of Section 3 of the Limitation Act, even if it is not pleaded by the defendant, to frame an issue and answer it accordingly. However, if the reading of the plaint shows that the plaintiff has explained as to why limitation will not be attracted, then the Court will have to keep the plaint on file relegating the parties to regular trial. The plea of the defendant is that the property was given as a security for a loan transaction. By virtue of Section 100 of the Transfer of Property Act, if a property is given as a security, then by virtue of an agreement, a charge is created. Apart from that, if the plaintiff is able to prove that he had done all that he had to do and it was the defendant who had been avoiding the execution of sale, then charges shall be created by virtue of Section 55 of the Transfer of Property Act.

9. For a moment, I am not rendering a finding, whether it is a charge by virtue of an agreement or a charge by virtue of operation of law. In fact, I cannot render such a finding also. This is because, I am only dealing with a *prima facie* case taking the averments made in the plaint to be true. In case, the defendant is able to prove that it was not a security given for a loan transaction as contemplated under Section 100 of the Transfer of Property Act, then



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obviously a charge by agreement of parties will not be created. Similarly, if the defendant is able to prove that it was the plaintiff, who had erred pursuant to the agreement, then the plaintiff will not be entitled to the benefit of Section 55 (6) of the Transfer of Property Act. In addition, if the plaintiff fails in proving that on 30.01.2018, there was no such agreement between the parties for extension of time, then the plea of extension, will not come to the rescue of the plaintiff.

10. I am referring to these factual position, because these are all triable issues. If it is a triable issue, then the Court would necessarily have to frame an issue on limitation and answer it, at the time of final disposal. Suffice it to say that on the basis of the reading of the plaint, I cannot come to the conclusion that the suit is barred by time. I am left with no other option than to confirm the order of the learned Additional District and Sessions Judge, Dharmapuri District in I.A.No.3 of 2024 in O.S.No.210 of 2023 dated 20.03.2024.



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11. I have to take notice that both the suits in O.S.No.54 of 2022 as well as O.S.No.210 of 2023 relate to an agreement of sale dated 06.07.2015, the parties are same, one is the suit and the other seems to be a counter suit. Therefore, in the interest of justice both the proceedings have to be tried together and disposed of by a common Judgment.

12. Mr.Satheesh Kumar, would submit that he is yet to file his written statement in O.S.No.210 of 2023. Therefore, the defendant is directed to file written statement within a period of four weeks from today. The learned Additional District Judge, Dharmapuri is requested to club the suit in O.S.No.54 of 2022 pending on his file along with O.S.No.210 of 2023 and dispose of the same by recording the evidence in common and by rendering a Judgment in common.

13. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1.The Additional District Judge, Dharmapuri.

2.The Additional District and Sessions Judge

Additional District and Sessions Court, Dharmapuri.



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V.LAKSHMINARAYANAN, J.,

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