



WEB COPY



C.R.P. No.3215 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.3215 of 2022
and C.M.P. No.17114 of 2022

M/s. Raaj Real Estates
represented by its Sole Proprietor
R. Sivaprakasam ...Petitioner / Petitioner / Defendant

Vs.

A. Mohan Kumar S/o. Arumugham Respondent / Respondent / Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 13.04.2022 passed in I.A. No.110 of 2018 in O.S. No.210 of 2016 on the file of the Additional District Munsif, Poonamallee.

For Petitioner : Mr. Elizabeth Ravi

For Respondent : Mrs. Hema Sampath, Senior Counsel
for Mr. P.S. Sivashanmuga Sundaram.

ORDER

The Civil Revision Petition has been preferred as against the order passed in I.A. No.110 of 2018 in O.S. No.210 of 2016 on the file of the Additional District Munsif Court, Poonamallee, wherein the petitioner herein



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has filed a petition before the Trial Court for rejection of Plaint under Order VII Rule 11 of Code of Civil Procedure and the same was dismissed by the Trial Court. Against which, the present Civil Revision petition has been filed by the petitioner.

2. The petitioner is the defendant in the main Suit and the respondent herein has filed the main Suit for the relief of specific performance of contract. The case of the petitioner is that the respondent has filed a Suit for the relief of specific performance of contract based on an agreement dated 18.04.2004. The sale price was fixed at Rs.50,000/- on instalment basis for a period of 35 months. The whole amount was not paid by the respondent and he has paid Rs.46,850/-. Further, the respondent / Plaintiff agreed to pay a sum of Rs.17,500/- for getting approval for survey the property and for preparing sketch etc., The respondent / Plaintiff also made payment of Rs.17,500/- and he failed to pay the remaining balance of sale consideration in time and not turned up to pay the balance and to get sale deed in his favour. Therefore, he caused a legal notice on 16.07.2007. But he never turned up for getting sale deed after paying the balance amount. Thereafter, telegram was issued by the respondent / plaintiff and the petitioner / defendant also waited till 08.08.2008. The period of agreement expires on 17.03.2007. The alleged



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outstanding amount was only Rs.3,150/- and the respondent / plaintiff ought to have paid the said amount within the stipulated period. Already the petitioner filed a Suit in O.S. No.124 of 2010 on the file of Additional District Munsif Court, Poonamallee for declaration to declare that the agreement of sale between the Plaintiff and the defendant dated 18.04.2004 stands terminated and cancelled. Besides, the Suit was dismissed on 28.07.2015. As against the decree passed in the said Suit, appeal has been preferred before the Subordinate Court, Poonamallee and the same is pending. The Suit is barred by limitation. The Plaintiff ought to have filed the Suit for specific performance on 15.04.2010 itself when the petitioner refused to execute the Sale deed. Therefore, the Suit is liable to be rejected.

3. The case of the respondent is that the petition is not maintainable. There is no any ground to reject the plaint. The question of limitation is only mixed question of facts and law. The respondent already paid the entire sale consideration. Therefore, there is no question of limitation would arise. The delay is not on the part of the respondent. On the other hand, the petitioner has prolonged the proceedings by filing O.S. No.124 of 2010. Therefore, the petition is liable to be dismissed.



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4. Before the Trial Court, no oral or documentary evidence adduced on either side. The Trial Court, after hearing both sides, dismissed the application. Against which, the present civil revision petition is filed.

5. The learned counsel appearing for the petitioner would contend that the respondent herein filed a Suit for specific performance based on the agreement dated 18.04.2004. As per the agreement, the amount of Rs.50,000/- has to be paid within 35 months on instalment basis. The respondent has not paid the entire amount and thereby, caused notice on 16.07.2007 and thereafter, the respondent has not taken any steps to get sale deed in his favour. Thereafter, the petitioner has filed a Suit in O.S. No.124 of 2010 for declaration to declare that the agreement of sale between the Plaintiff and defendant dated 18.04.2004 stands terminated and cancelled, but the said Suit was dismissed on 28.07.2015. The respondent ought to have filed the Suit for specific performance after denial of agreement by filing the Suit to cancel the agreement. On 15.04.2010 itself the limitation accrues, but they have not filed the Suit immediately within 3 years from the date of refusal ie., 15.04.2010. But the Suit was filed in the year 2016. Therefore, the Suit is barred by limitation. Hence the petitioner filed a petition before the Trial Court to reject the Complaint, but the trial Court failed to consider that



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the claim of the Plaintiff is barred by limitation and dismissed the petition.

Therefore, the order of the Trial Court is liable to be set aside.

6. The learned counsel appearing for the respondent would contend that the respondent already paid the entire sale consideration and since he was in abroad, he approached the Plaintiff only in the year 2007 and he assured to register sale deed in his favour and thereafter, he filed a Suit in O.S. No.124 of 2010 for cancellation of agreement and the same was dismissed on 28.07.2015. Therefore, the limitation accrues after dismissal of the Suit dated 28.07.2015. Therefore, the Suit is well within the period of limitation. The Trial Court also after elaborate discussion correctly dismissed the petition by holding that *the question of limitation as well known is a mixed question of facts and law and it cannot be decided at this stage and it can be decided only after full trial*. Therefore, the order passed by the Trial Court is proper and the present civil revision petition is liable to be dismissed.

7. Heard both sides'. Perused all the materials available on record.

8. It is an admitted fact that both the parties were entered into sale agreement in respect of the property on 18.04.2004 at 35 instalments. According to the petitioner, the respondent failed to pay the entire sale



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consideration as agreed by him on instalment basis. According to the respondent, he paid entire sale amount. It is also an admitted fact that the petitioner issued legal notice dated 16.07.2007, but the said notice was not produced as document along with the Plaint. It is also an admitted fact that the petitioner filed the Suit in O.S. No.124 of 2010 on the file of Additional District Munsif Court, Poonamallee to declare that the agreement of sale between the parties as cancelled. The copies of the decree and judgment were produced as document no.2 along with the Plaint. According to the petitioner, on the date of filing of the Suit in O.S. No.124 of 2010 itself, he denied and refused to execute the sale and thereby, the respondent ought to have filed the Suit within 3 years from the date of denial i.e., filing of the Plaint, but he has not filed the Suit immediately and he filed the Suit only in the year 2016 i.e., on 02.04.2016. Therefore, the Suit is barred by limitation. According to the respondent, since the petitioner filed O.S. No.124 of 2010 for declaration to declare the sale agreement as cancelled, he awaited for result of the judgment and limitation accrues after disposal of the Suit. The Suit was dismissed on 28.07.2015. Therefore, the Suit is filed within the period of limitation.

9. It is well settled law that as far as question of limitation is



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concerned, it is a mixed question of facts and law and it can be decided after full trial. Since the respondent claimed that after dismissal of the Suit filed by the petitioner in O.S. No.124 of 2010, the limitation would accrue, the same has to be decided only after full trial and not at this stage. The Trial Court also dismissed the petition on the ground that question of limitation is a mixed question of facts and law and the same can be decided after full trial. Therefore, the order passed by the Trial Court is proper and it does not warrant interference. The petitioner is at liberty to raise his defence before the Trial Court, which are all the grounds raised in this civil revision petition.

10. In view of the above discussion, this Court is of the opinion that the civil revision petition has no merits and deserves to be dismissed.

11. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
mjs

To



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The Additional District Munsif, Poonamallee.

P.DHANABAL, J.,

mjs

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