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C.R.P.(PD).No.4176 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4176 of 2024
and C.M.P.No.23153 of 2024

M.Vasuki

.. Petitioner

Versus

1. M.Maruthu
2. N.Moorthy
3. K.Venkatesh

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order, dated 27.06.2024 passed in I.A.No.1 of 2023 in O.S.No.432 of 2015 on the file of the learned IV Additional District Munsif, Salem and allow the above Civil Revision Petition.

For Petitioner : Mr.L.Ramanathan

ORDER

This Civil Revision Petition is at the instance of the petitioner/first defendant.



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2. O.S.No.432 of 2015 was presented seeking for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the respondent Nos.1 and 2/plaintiffs. The specific plea in the plaint is that the second respondent/second plaintiff was indebted to the petitioner/first defendant and the latter had threatened the respondent Nos.1 and 2/plaintiffs and had also brought about pressure on the respondent Nos.1 and 2/plaintiffs to extinguish the said loan. Being left with no other option, the first respondent/first plaintiff pleaded that he had executed a sale deed in favour of the petitioner/first defendant without any consideration. The cause of action, according to them, is that, after the defendants got the sale deed, they started interfering with the peaceful possession of the respondent Nos.1 and 2/plaintiffs.

3. This was contrary to the understanding that once the loan amount is returned, the defendants would re-transfer the property to the plaintiffs. In other words, the plea is that the sale deed is without consideration and that it had been executed under vitiating circumstances and that it was not meant to be a document reflecting transfer of title from the first respondent/first plaintiff to the petitioner/first defendant.



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4. Summons were served on the defendants and they filed a detailed and separate written statements. Before the matter was taken up for trial, the respondent Nos.1 and 2/plaintiffs took out an application for amendment in I.A.No.1 of 2023. The relief that was sought for in the said application was adding that the sale deed obtained by the petitioner/first defendant from the first respondent/first plaintiff is not a genuine one and was never meant to be acted upon as it was only a security for a loan transaction. In addition, a prayer was added seeking for cancellation of the sale deed.

5. A counter-affidavit was filed by the defendants mainly alleging that there is a delay in taking out the application. They also pleaded that the value given in the amended plaint is erroneous. After hearing arguments of both the sides, the learned IV Additional District Munsif, Salem came to a conclusion that the amendment petition deserves to be allowed and accordingly, allowed the same. Hence this Civil Revision Petition.

6. Heard Mr.L.Ramanathan, learned Counsel for the civil revision petitioner.



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7. Mr.L.Ramanathan contends that issues had been framed and the matter had been adjourned for filing of the proof-affidavit of the respondent Nos.1 and 2/plaintiffs and it was at that stage, the amendment application came to be filed. He relies upon Article 59 of the Limitation Act to plead that the amendment is barred by time as it had been presented eight years after the original suit had been filed. Therefore, he submits that the order of the learned District Munsif is erroneous and requires to be revised.

8. I have carefully considered the submissions of Mr.L.Ramanathan.

9. An amendment, by way of clarification, can be permitted to be raised at any stage of the proceeding. The plea that the sale deed is not supported by consideration, was raised even on the date of presentation of the plaint. In addition, as pointed out above, it is pleaded that the sale deed was not meant to be a document evidencing transfer of title, but, had been executed by the first respondent/first plaintiff in favour of the petitioner/first defendant only as a measure of security for an amount of Rs.5,00,000/- received by the first respondent/first plaintiff from the petitioner/first



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defendant. The amendment which has been granted merely clarifies and expands this plea that was already raised by the respondent Nos.1 and 2/plaintiffs at the time of presentation of the plaint. This is clear from the paragraph Nos.6 and 7 of the plaint.

10. With respect to the plea of limitation, it is a mixed question of law and fact. In case, the defendants feel that the prayer is barred by time, nothing prevents them from raising the said plea in the written statement. I am sure that if such a plea is raised, the learned District Munsif or the learned Judge who is going to try the suit, will frame an issue and answer the same. This amendment, merely prevents multiplication of proceedings as the issue that had been presented even when the suit had been brought forth before the Court, was that the sale deed is only a measure of security and not a document transferring title. In addition, the amendment is a pre-trial one. Therefore, the bar under Order VI Rule 17 proviso of the Code of Civil Procedure would not operate as against the plaintiffs.

11. Leaving it open to the defendants to raise all the defences, including the plea of limitation in the additional written statement, this Civil



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Revision Petition is dismissed. The learned Judge, who will deal with the suit is requested to take note of the fact that the suit has been pending for the past eight years. Once the pleadings and additional issues are complete, the Court shall expedite and hold all necessary hearings, for a suit pending for more than eight years and dispose it of at the earliest possible time. No costs. Consequently, connected miscellaneous petition is closed.

22.10.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The IV Additional District Munsif,
Salem.



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V.LAKSHMINARAYANAN, J.

grs

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