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C.R.P.(PD).No.4685 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4685 of 2024

and

C.M.P.No.26185 of 2024

Wilson

... Petitioner

..Vs..

Zion Pentacostal Church,
Vellore, rep. by Pastor,
Immanuel Paul,
S/o. Paul, New Bye Pass Road,
Vellore.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order, dated 19.01.2024 passed in I.A.No.4 of 2023 in O.S.No.86 of 2021 on the file of Additional District Munsif, Vellore District.

For Petitioner : Mr.PA.Sudesh Kumar



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ORDER

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This Civil Revision Petition arises against the order passed by the learned Additional District Munsif, Vellore in I.A.No.4 of 2023 in O.S.No.86 of 2021 dated 19.01.2024.

2.The civil revision petitioner is the 7th defendant to the suit. The respondent/plaintiff is a Church established about 60 years ago. One of its followers, namely, one Jeevarathinam had donated 7 ½ cents in favour of the Church on 12.06.1970. Subsequently, on 15.06.1970, he sold another extent of 5.5 cents to the plaintiff, after receiving valuable consideration. On 12.11.1971, he executed one more Sale deed in favour of the plaintiff to an extent of 1120 sq ft. All these deeds covered properties situated in Survey No.1777 of Vada Vellore Village, Vellore Town.

3.The plaintiff pleaded that on these properties, a Church has been constructed and the plaintiff is in possession of the property. The settlor cum vendor of the aforesaid documents, namely, Mr.Jeevarathinam passed away on 22.03.1989. Thereafter, the 1st defendant, namely the wife of the



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said Jeevarathinam, started giving pinpricks to the plaintiff. She allegedly threatened to cancel the settlement deed executed by her husband two decades earlier. The plaintiff pleaded that after a period of 38 years from the date of execution of the Settlement deed, a cancellation document was executed by the wife of said Jeevarathinam namely, the 1st defendant.

4. Not being satisfied with the cancellation of the Settlement deed, the 1st and 7th defendants executed Sale deeds for the very same property on 31.03.2009 and the 7th defendant also executed a Power of Attorney in favour of the 2nd defendant on 06.11.2019. On the strength of this power of attorney, sale agreements were had been entered into. On the strength of these documents, the plaintiff proceeds that the defendants attempted to interfere with the possession of the plaintiff on 09.01.2021, 13.02.2021 and 24.03.2021. Being left with no other option, the plaintiff came forward with the suit for following reliefs:

“a) Declare the Cancellation Deed Doc. No.5985/2008 dated 27/05/2008 executed by 1st defendant at the 12th defendant register office is illegal, Null and Void, and Unenforceable.



b) Declare the sale Deed Doc.No.2875/2009 dated 31/03/2009 executed between 1st defendant and the 7th defendant at the 12th defendant registrar office is illegal, Null and Void, and Unenforceable.

c) Declare the Power of Attorney Deed Doc.No.9650/2019 dated 06/11/2019 executed by 7th defendant in favour of the 2nd defendant at the 12th defendant registrar office is illegal, Null and Void, and Unenforceable.

d) Declare the Sale Agreement Deed Doc.No.9694/2019 dated 06/11/2019 executed between 7th defendant (through power agent 2nd defendant) and defendants D-8 to D-10 at the 12th defendant registrar office is illegal, Null and Void, and Unenforceable.

e) Grant permanent injunction restraining the defendants D1 to D10, their men, agents, representatives etc from any manner interfering with the peaceful possession and enjoyment the schedule mentioned property i.e., Zion Pentecostal Church, situating in survey No.1777 of vada-vellore village (now T.S.1777/1A of R.W.II of Vellore Town) measuring 7.5 cents and bearing door no.8 pallar river bund, Near New Bus Stand, Vellore more fully described in the suit schedule.

f) Grant Permanent Injunction restraining the 11th defendant from any manner causing mutation of revenue records and name transfer etc., in survey No.1777 of vada-vellore village (now T.S.1777/1A of R.W.II of Vellore Town) based upon the fraudulent documents of the defendants D-1 to D-10.

g) Direct the 12th defendant Joint/Sub-register to remove all its entries from the register or file of the 12th



defendant (D-12) Joint Registrar Office Vellore and pass such further and other orders in the circumstances of the case and thus render justice.”

5. After being served with summons, the 7th defendant, took out an application in I.A.No.4 of 2023. He sought for rejection of the plaint on the ground that he does not disclose the cause of action. The learned Judge, issued notice in the said application, received the counter from the plaintiff and proceeded to dismiss the said petition. Hence, this Civil Revision Petition at the instance of the 7th defendant.

6. I heard Mr.Pa. Sudesh Kumar for the civil revision petitioner.

7. Mr.Pa.Sudesh Kumar contends that the cancellation document having been executed on 27.05.2008, the suit having been presented in the year 2021, is hopelessly barred by time. He argues that there is no cause of action for the suit. Therefore, he pleads that the order of the learned Trial Judge dismissing the petition is erroneous and requires to be interfered with by this Court.



8. I have carefully considered the submissions of Mr.Pa.Sudesh Kumar.

9. For the purpose of rejection of plaint, I had to take the averments made in the plaint to be true and thereafter, I should come to a conclusion that the averments in the plaint do not disclose a cause of action or is barred by time, before I pass an order rejecting the plaint.

10. The narration of the facts show that the plaintiff pleaded that he acquired title to the suit schedule mentioned property, as early as in 1970 and 1971. The plaint also proceeds that on the basis of purchases, a settlement in favour of the plaintiff Church, for establishment of a pentacostal Church under the name and style of “Zion Pentacostal Church”. A Church had been built upon the land and it still performing church related activities. The cause of action for the suit is the alleged trespass made by the defendants, on the 3 dates set forth above. The plaint alleges that as the original owner Jeevarathinam had transferred, whatever title he had in and over the property in favour of the Church, his wife cannot cancel the said



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Settlement deed and on the basis of such cancellation, proceed to create further documents. Therefore, the pleading is, as the original owner Jeevarathinam had executed the Settlement deed and Sale deed, his legal representatives do not have right to cancel the said document, that had been created in favour of the Church.

11. Mr.Pa.Sudesh Kumar pleads that the Settlement deed is not an absolute one but a conditional one. Whether it is an absolute one or a conditional one has to be gone into only at the time of trial. I am certain that if Mr.Pa.Sudesh Kumar's client files a written statement to that effect, the Court below will frame an issue and answer the same. Suffice it to say, there is a cause of action for the plaint, as the alleged owner of the property namely, the Church wants to protect its title.

12. In so far as, the plea of limitation is concerned, under Article 59 of the Limitation Act, 1963, it is 3 years from the date of knowledge of the deed. The plaintiff pleads that he came to know about the documents only when the defendants attempted to trespass into the suit property in 2021.



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The suit, having been filed within a year from the date of alleged trespass, I do not find any bar of limitation.

13. Furthermore, it has been settled by a ***Division Bench of this Court in Kandasami Pillai & Others vs. Munisami Mudaliar, (1932) 35 LW 350 = AIR 1932 Mad 589*** that the cause of action, to present a suit regarding a deed would not arise on the day of execution of the document but on the day, on which, the document is sought to be enforced against a person, who has a right over the property.

14. The Division Bench Judgment has been holding forth for nearly 90 years. Hence, a surreptitious cancellation of the Settlement deed by the wife of the original settlor, without due notice of the same, in favour of the plaintiff, will not commence the cause of action. In any event, as the plaintiff pleads it is the absolute owner of the property. Applying the Judgment in ***N.Thajudeen vs Tamil Nadu Khadi and Village Industries Board, 2024 SCC Online SC 3037***, the question of limitation does not arise as long as the right to the property exists. The Supreme Court has held as



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long as the right to property exists, the question of suit which enforces that right to property would not be barred by limitation.

15. I should hasten to act that, I only discussed the aforesaid aspects on limitation and the cause of action only on the basis of the averments made in the plaint. It is open to the defendants to raise all such pleas including limitation, which in case raised, will be considered by the Court, at the time of trial.

16. In the light of the above discussions, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition stands closed.

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Index : Yes/No

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Neutral Citation Case: Yes/No



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V.LAKSHMINARAYANAN, J.

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