



C.R.P.(MD).No.566 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.03.2024

DELIVERED ON : 07.06.2024

CORAM

THE HON'BLE MR. JUSTICE G.ILANGO VAN

C.R.P.(MD).No.566 of 2024

and C.M.P.(MD).No.2777 of 2024

1.M.Vasudevan
2.M.Ravichandran
3.M.Ganesh Babu
4.M.Ramesh Babu

... Petitioners/Petitioners/Defendants

Vs.

N.Vanjimuthu

... Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 18.01.2024 passed by the learned Principal District Judge, Dindigul in I.A.No.94 of 2020 in O.S.No.276 of 2019.

For Petitioners : Mr.N.K.Rajesh, Senior Counsel for
Mr.Rohini Ravikumar

For Respondent : Mr.G.Prabhu Rajadurai for
Mr.V.Janakiramulu



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ORDER

This civil revision petition has been filed to set aside the fair and decreetal order, dated 18.01.2024 passed by the learned Principal District Judge, Dindigul in I.A.No.94 of 2020 in O.S.No.276 of 2019.

2.The facts in brief:

The respondent filed the plaint in O.S.No.276 of 2019 with a following averments.

The suit property called M/s.Senthil Residency, originally belongs to the defendants 1 to 4. In the year 2000, they leased out the property to the plaintiff for the monthly lease amount of Rs.50,000/-. Subsequently, in the year 2003, they proposed to sell the property and agreement was reached between them mutually for the total sale consideration of Rs. 1,15,00,000/- and on 11.08.2003 sale deed was also executed. At the time of sale, the defendants 1 to 4 assured that except the encumbrance certificate mentioned in the sale deed no other encumbrances existed. They also undertook to settle the encumbrances. As per the sale deed the plaintiff was liable to pay Rs.45,40,323/- to 69 creditors of the defendants 1 to 4. By deducting that amount, balance sale consideration



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was received by the defendants 1 to 4. The plaintiff also settled the dues to the creditors mostly. Later, patta was also transferred in his name and plaintiff was put in possession as a purchaser. But, later, he came to know that an interim attachment was made due to the default committed by M/s. Ravi and Company by the Government by the order G.O.Ms.No. 1368 Home (Courts-IA) Department, dated 18.12.2000. The defendants 1 to 4 were the partners of the business. The encumbrances was suppressed by the defendants 1 to 4. On 02.09.2006, the District Revenue Officer seized the property and sealed the premises. The defendants 1 to 4 approached the RDO to hand over the possession stating that they cleared all the dues. They also stated that the plaintiff is carrying on the business under his control. But the plaintiff approached the competent authority and possession was handed over to him. In view of the settlement of the dues, the attachment order was raised by the Special Court on 15.04.2017. So the suit is filed for declaration that the suit property absolutely belongs to the plaintiff by virtue of the sale deed dated 11.08.2003 and permanent injunction with cost.



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3. Pending the further process the petition was taken out by the revision petitioner herein in I.A.No.94 of 2020 with the following averments:-

The plaintiff came forward to help the defendants by buying the properties and also undertook to clear all dues as early as possible. The plaintiff was earlier aware of the attachment order passed by the Government. The amount mentioned in the sale deed was not actually paid. Without settling the due amounts to the creditors, the plaintiff took over the property and changed the name as Senthil Residency. The plaintiff did not comply the undertaking given by him in the sale deed dated 11.08.2003. The plaintiff also took part in the proceedings before the trial Court. The right of the plaintiff to claim title over the property was negated by this Court in W.P.(MD).No.4124 of 2016 by the order dated 22.07.2016. Only the defendants settled all the dues to the creditors who approached the Inspector of Police, Economic Offences Wing. C.M.A.(MD).No.422 of 2017 is also pending before this Court for disposal. The suit is barred by limitation. The relief is under valued. There is no cause of action for the suit and suit is also barred under the provision of the Tamil Nadu Protection of Interest of Depositors Act.



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4. After hearing both sides, the trial Court by the order dated 18.01.2024 dismissed the petition. Against which this revision is preferred.

5. The ground on which, this petition came to be filed by the petitioners viz., (1) there is no cause of action for the suit; (2) The valuation of the suit and payment of court fee is not proper; and (3) it is barred by limitation. Finding order and order of the trial court.

6. With regard to the first point that there is no cause of action, the trial court has recorded a finding that the plaintiff namely the respondent herein took the possession of the property as a lessee. Later, he purchased the property in the year 2003. Later dispute arose between them in respect of the suit property. Over which, several civil and criminal proceedings were initiated. In the criminal proceedings initiated before the Special Court under the provisions of the Tamil Nadu Protection of Interest of Depositors Act, the petitioners herein have been acquitted. It is observed by the trial court that the main issue is with regard to the settlement or non-settlement of the amount due to the depositors. So



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whether deposit was made by the petitioners or by the respondent requires proper evidence at the time of trial. So that issue got to be decided on the basis of the documentary and oral evidence to be adduced by the parties. So, the conclusion of the trial court is that this ground is not available to the petitioners.

7. With regard to the valuation of the suit and payment of court fee, it is observed by the trial court that no documentary evidence was produced on either side to show the correct market value of the suit property on the date of the plaint. If the trial court find that the deficit court fee been paid by the plaintiff due to improper valuation of the suit, then it can direct the plaintiff to make good the deficit court fee. So that ground is not available to the petitioner now. Accordingly that ground was also rejected.

8. With regard to the limitation point, it is already observed by the trial court that the suit is not one for recovery of money, but for declaration and consequential injunction. Even though, there is no direct answer with regard to the limitation, it is observed that in view of the



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judgment of the Hon'ble Supreme Court in SLP Nos.17332 and 17333 of 2013, the suit would be decided on its merits on the basis of the materials to be adduced by the parties. Similarly, this High Court has also directed the trial court to dispose the matter on its own merit. So, according to the trial court, no valid ground is raised by the petitioners to reject the plaint.

9.The learned Senior Counsel appearing for the petitioners would submit that the trial court was carried away by the order of this court passed in CMA(MD)Nos.422 of 2017 and 133 of 2023, dated 01/06/2022 and the judgment of the Hon'ble Supreme Court, passed in SLP(C) Nos. 17332-17333 of 2023, dated 28/08/2023. According to him, when the trial court order has been carried away by the observation of this court and the Hon'ble Supreme Court, the matter must be remitted back to the trial court for fresh consideration, in the light of the arguments to be advanced by the parties. He would further submit that simply because the Hon'ble Supreme Court has directed the parties to work out the remedy in the suit, which is pending, it does not take away the right of the parties to agitate the matter on its own merits by filing proper application under Order 7 Rule 11 CPC to reject the plaint. So according



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to him, that application is also one of merits to be taken into account by the trial court. Rejecting the application on the ground of maintainability in the light of the judgement of the Hon'ble Supreme Court, according to the learned Senior counsel appearing for the petitioners, is not proper. So it must be remitted back.

10.He is referring to the judgment of the Division Bench of this court in **Vellaiamma and Others Vs. Subbulakshmi and others (AS(MD)No.88 of 2022, dated 05/012024)**. In that matter, a suit in OS No.285 of 2013 was filed before the District Munsif Court-cum-Judicial Magistrate, Vedasanthur, on 30/09/2015. That suit was withdrawn without getting proper liberty from the Court to file a fresh suit on the same cause of action. Thereafter, writ petition was filed by the plaintiff in WP(MD)No.18927 of 2015 and that was dismissed granting liberty to the petitioner to establish her right before the civil court. Thereafter, suit in OS No.223 of 2018 was filed. That sought to be explained in AS No.88 of 2022 by the Division Bench of this court. The Division Bench has observed that liberty that was granted by the writ court cannot be taken advantage by the plaintiff. Finally, it was concluded stating that when the



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earlier suit was withdrawn without getting proper liberty from the trial court to file a fresh suit on the very same cause of action, liberty granted by the writ court will not amount to granting fresh permission to the plaintiff to file a fresh suit for the very same cause of action. Dehors the provision under Order 23 CPC, according to the Division Bench of this Court, even if liberty is granted by any court, it is subjected to normal substantial procedure of law.

11.While pointing out this judgment, learned Senior counsel appearing for the petitioners would submit that simply because liberty was granted by this court in CMA(MD)No.422 of 2017 and the Hon'ble Supreme Court in SLP(C) Nos.17332-17333 of 2023, dated 28/08/2023, the other points namely bar of limitation and availability of cause of action are the matters got to be decided by the trial court even under the application filed under Order 7 Rule 11 CPC.

12.In effect what was the argument is that the trial court has not dealt the matter on merits in accordance with Order 7 Rule 11 CPC. Simply carried, carried away by the observation of this court in



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CMA(MD)No.422 of 2017 and in the Hon'ble Supreme Court in SLP(C) Nos.17332-17333 of 2023, dated 28/08/2023 will not amount to application of mind to the merits. According to him, the matter must be remitted back to the trial court.

13.Per contra, the learned counsel appearing for the respondent would submit that the point of limitation is a mixed question of law and facts. Limitation point cannot be decided isolating the same from the facts and circumstances. He is referring the judgments reported in Mongia Reality and Buildwell Private Limited Vs. Manik Sethi (2022)11 Supreme Court Cases 572 and Srihari Hanumandas Totola Vs.Hemant Vithal Kamat and others [(2021)9 SCC 99] to the *re-judicata* plea, according to him, even on the basis of the plaint averments, it must be decided, if cause of action has arisen. There is no limitation for the suit; the starting point of limitation must be constructed or computed only from the date of notice or knowledge. But in view of the several proceedings, now according to him, the suit has not barred by limitation.

14.Now a short question arises for consideration is whether the matter must be remitted back to the trial court for fresh consideration.



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15.As extracted above, with regard to the cause of action, there is a clear finding that there is cause of action. Regarding the payment of court fee, there is a clear finding by the trial court . With regard to the limitation only, the trial court has not given any answer directly. But from the judgment of the Hon'ble Supreme Court in *Mongia Realty and Buildwell Private Limited Vs. Manik Sethi* (2022)11 SCC 572, the point of limitation cannot be taken in isolation, when there is no admission of facts by the parties. We will deal this issue later, in detail.

16.Here, there are disputed questions, as pointed out by the trial court whether the plaintiff was put in possession of the property as a purchaser with the condition to clear the amount due to the depositors; Whether that obligation was discharged by the plaintiff properly or not are the issue to be decided. Now the petitioners says that in view of the judgment of this court in CMA(MD) No.422 of 2017, dated 01/06/2023, it is a clear finding that they have discharged the liability. According to him, when there is a clear finding by this court in CMA (MD)No.422 of 2017, the trial court cannot go into that aspect; Now it is a clearly barred by *res-judicata*.



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17. But it is not the case of the plaintiff that only the revision petitioners discharged the amount due to the depositors.

18. As mentioned above, it is disputed and denied by the respondent herein. When that is being so, whether in the light of the observation made by this court in CMA(MD)No.422 of 2017, dated 01/06/2023, the prayer that is sought by the plaintiff is to be negated must be considered on its own merits by the trial court on the basis of the materials to be produced in the form of documentary and oral evidence. So I find that it requires clear evidence. I find no reason to differ. So, that portion of the order requires no interference by exercising the power under section 115 of the Civil Procedure Code.

19. With regard to the payment of court fee also, there is a clear finding to the effect, as mentioned above. So in the absence of any documentary evidence to show the correct market value of the property on the date of the plaint, then the issue can be framed by the trial court and it must be decided on its merit during the course of trial. So, the conclusion reached by the trial court requires no interference.



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20. In the light of the above said discussion, now we will go to the grounds mentioned in the affidavit to get the discussion complete.

21. It has been stated in the affidavit filed in support of the petition that the issue with regard to the title of the plaintiff was decided against him in WP(MD)No.4124 of 2016. Wherein according to the affidavit, it is a clear finding that the plaintiff can hold the possession like custodian or possession and dismissed OA No.19 of 2021; the plaintiff cannot make any title or claim title over the property; It was declared that the sale deed itself is not valid under law; Now the OA has been decided. Attachment was raised. The property is ordered to be returned to the petitioners. So, according to the affidavit, the title has been decided in more than one occasion.

22. To this only, the learned counsel appearing for the respondent would submit that not only the respondent, but also the petitioners filed writ petition. Receiver was appointed. In the meantime, dispute arose.



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23.Regarding the possession, he would submit that he has to file an application for amendment. He would further submit that proceedings before the TNPID Court is with reference to the dispute between the vendor and the respondent herein. The issue with regard to the possession and title is only between the petitioners and the respondent herein, for which, the Special Court cannot decide the issue. More over, the suit is not merely based upon the special court proceedings. When the title and possession is involved, it must be taken to its logical conclusion. So far no suit was filed by the petitioners to set aside the sale. More over, these pleas were not taken by the petitioners either before the Writ Court or before the Special Court or before the Hon'ble Supreme Court.

24.For which, the learned Senior counsel appearing for the petitioners would submit that the argument that has been advanced by the respondents counsel are not based on the findings available on record. He got every opportunity to face it. But absolutely, no finding has been recorded by the trial court on this aspect. So what he requires is the remand order and nothing more.



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25. Now coming back to the affidavit on the point of limitation, it is stated that the plaintiff has specifically omitted to mention the correct date of knowledge over the attachment order, dated 18/12/2020. This fact is a crucial one; The respondent dishonestly omitted to mention the correct time, the date of sale deed, dated 11/08/2023; The suit was filed on 11/12/2019, after 16 years of the sale deed, dated 11/06/2023; So, it is clearly barred by limitation under Article 58 of the Limitation Act.

26. As mentioned above, the learned counsel appearing for the respondent would rely up the judgment reported in ***Salim Vs. Shamalji Oddhavji Thakkar and others [(2021)17 SCC 100]*** as to the point of starting point of limitation. So according to him, as per the judgment of the the Hon'ble Supreme Court, it is a triable issue as to whether the suit is barred by limitation or not. Similarly, as mentioned above, the judgment of the Hon'ble Supreme Court reported in ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and others [(2021)9 SCC 99]*** also says that when there is a mixed question with regard to the factual aspects, limitation point cannot be taken as preliminary issue. For that purpose only, I extracted the relevant portion from the affidavit.



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27.As mentioned above, even from the affidavit, it is admitted by the petitioners that the plaintiff omitted to mention the correct date of knowledge of the order passed by the Government. This is the factual issue. On which date, he came to know about the attachment order can be gone into by the trial court only on the basis of the evidence both oral and documentary. So when the factual issues are involved as held by the Hon'ble Supreme Court that cannot be taken as a issue of preliminary to reject the plaint. So even though, there is no direct answer by the trial court on this aspect, on the materials placed before this court, I am of the considered view that factual issues are involved to decide the limitation point. So this ground raised by the petitioners is rejected outright.

28.With regard to the bar of suit, section 64 of the Tamil Nadu Protection of Interest of Depositors Act is concerned, as pointed out earlier, it is the issue between the depositors and the vendors. There is no prohibition or specific bar, for the parties to agitate the matter before a civil court as to the title of the property.



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29.As pointed by the learned counsel appearing for the respondent, the issue is to be decided only with regard to the condition imposed upon the plaintiff to discharge the liability. *Dehors* the obligation that has been imposed upon the plaintiff, whether he can sustain the suit for title is the point to be answered by the trial court on its own merits.

30.So in the result, I find no reason to remit the matter back. The petition deserves dismissal.

31.In the result, this civil revision petition is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

07.06.2024

Index : Yes/No
Internet : Yes/No
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To

- 1.The Principal District Judge, Dindigul.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

er/TM

ORDER MADE IN

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