



C.R.P.(MD)No.531 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.11.2024

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THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

C.R.P.(MD)(PD)No.531 of 2021

Janab M.Jahubar

... Petitioner

vs.

Janab A.Ahamed Sulaiman

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order and decree made in O.S.No.77 of 2019 dated 29.01.2020 on the file of the Principal District Court, Ramanathapuram and allow the appeal.

For Petitioner : Ms.A.Devaki

For Respondent : Mr.R.Dasaratha Rao

ORDER

This Civil Revision Petition is filed seeking to set aside the order and decree made in O.S.No.77 of 2019 dated 29.01.2020 on the file of the Principal District Court, Ramanathapuram.



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WEB COPY 2. Heard the learned counsel appearing on either side and perused the materials placed on record.

3. It is claimed by the plaintiff that the suit property belongs to the wife of the plaintiff under the Hiba document dated 19.10.2007. There was a dispute between the family members of the plaintiff's wife. In order to set right the same, the wife of the plaintiff had executed a settlement deed in favour of her husband/plaintiff, who in turn executed a registered sale deed dated 13.12.2007 in favour of the defendant without receiving any sale consideration. Since the defendant failed to hand over the possession of the property by executing a sale deed, the plaintiff filed a suit in O.S.No.77 of 2019 to declare the sale deed executed by the plaintiff as sham and nominal. The trial Court, while considering the suit on the ground of limitation and maintainability, had passed the following order:

“The plaintiff filed the suit for declaration and injunction to set aside the sale deed dated 13.12.2007 under document No. 1850/2007. It is settled Law that the scope and jurisdiction of the Court under Order 7 Rule 11 of the C.P.C is very limited one and the Court shall taken into consideration the averments made in the plaint alone to arrive the conclusion under Order 7 Rule 11 of the C.P.C. Further, the



defense taken by the defendant need not be considered at this stage. Bearing in mind, let us proceed that the suit is maintainable or not. The plaintiff being a party to the sale deed in question. Therefore, under Article 59 of the Limitation Act, the plaintiff shall file a suit within 3 years when the fact entitled the plaintiff have the instrument set aside first become known to him. Admittedly the plaintiff in his letter produced along with plaint as document No.7 stated that he know the factum of the impugned sale deed as early as on 7.1.2013 itself. Therefore, on 7.1.2013 itself, the plaintiff first became known about the impugned document. The period for setting aside the above said document starts on 7.1.2013. The plaintiff ought to have filed the suit within 3 years i.e. on or before 16.1.2016. But the plaintiff has chosen to file the suit only on 7.11.2019. Therefore even on bare reading of the averments made in the plaint the suit filed by the plaintiff is clearly barred by limitation. The learned Counsel for the plaintiff submitted the following authorities.

- 1.Ningawwa -vs- Byrappa Siddappa Hirekurabar and others reported in 1968 (2) Supreme Court Journal page 555.***
- 2.Someshwar Dutt -vs- Tribhawan Dutt and another reported in A.I.R. 1934 Privy Council 130 page 134.***
- 3.Ramachandra Jivaji Kanago and another-vs- Laxman Shrinivas Naik and another reported in A.I.R. (32) 1945 Privy Council 54.***
- 4.Parikh Aimaram Maneklal -vs- Bail Hira reported in A.I.R. (35) 1948 Privy Council 111.***

The above said Judgments referred are relates to the period of limitation runs from the date when the impugned document was



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discovered by the party. The averments made in the para 8 of the plaint and document No.7, the plaintiff has discovered the nature of the document as a sham and nominal document on 7.1.2013 itself. Therefore, the above said Judgments are not applicable to the facts of the case. Since the suit is clearly barred by limitation there is no scope for trial in the suit, such vexatious suit must be rejected and hence the suit is liable to be rejected as not maintainable. Accordingly, the suit is to be rejected.

5. In fine, the suit is rejected.

Dictated to the Executive Assistant, transcribed by her in computer, corrected and pronounced by me in open Court, this the 29th day of January 2020.

4.The main contention of the petitioner is that the trial Court ought not to have expressed its opinion on the point of limitation as it is the question of facts and law to be decided during trial. Apart from that the vacant site in the suit property was not considered by the trial Court while passing order impugned in this petition. Though the petitioner contends that there is a vacant land and it was not considered by the trial Court, the respondent contends that the vacant land itself is the suit property and it is the subject matter of the suit.



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5.The trial Court while dismissing the suit had recorded a specific finding that the plaintiff is the party to the sale deed in question and under Article 59 of the Limitation Act, the plaintiff having known about the sale deed, ought to have filed the suit within a period of three years when the fact entitled the plaintiff to have the instrument set aside. Admittedly, the plaintiff failed to institute the suit within the statutory period. Hence, this Court fees that there is no infirmity in the order passed by the trial Court in O.S.No.877 of 2019. Accordingly, this Civil Revision Petition is dismissed. No costs.

27.11.2024

Internet :Yes/No
NCC :Yes/No
Index :Yes/No

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To

The Principal District Court, Ramanathapuram.



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N.SENTHILKUMAR, J.

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