



C.R.P.PD(MD)No.760 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.PD(MD)No.760 of 2020

&

C.M.P.(MD).No.5082 of 2020

1.S.Chandrasekaran

2.J.Balaji

... Petitioners

Vs.

1.Maruthapillai

2.Andiappan

3.Palanikannu

4.Vijaalakshmi

5.Kumaravalli

6.Velmurugan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India challenging the order passed in I.A.No.532 of 2019 in O.S.No.269 of



C.R.P.PD(MD)No.760 of 2020

2018 dated 15.07.2020 on the file of the Sub-Court, Vendasandur, Dindigul District dated 15.07.2020.

For Petitioners : Mr.L.Prabhu

For Respondents : Mr.S.V.Muthu Samundeeswaran
for R2 to 6

No appearance for R1

ORDER

This Civil Revision Petition is directed against an order dated 15.07.2020 in I.A.NO. 532 of 2019 in O.S.No.269 of 2018 on the file of the Sub Court, Vedsanthur, Dindigul district.

2. The said I.A.No.532 of 2019 was filed by the petitioners here in who are the defendants 3 and 4 in the suit under Or.7 R.11 C.P.C seeking rejection of the plaint on the ground that the suit is barred by limitation and there is no cause of action for filing the suit. The said application was considered by the learned Trial Court and arrived at a conclusion that none of the grounds enumerated under Or.7 R.11 are satisfied in the facts and circumstances of the case and dismissed the said application. Aggrieved by



C.R.P.PD(MD)No.760 of 2020

the same, the petitioners here in approached this court by filing the present Civil Revision Petition.

3. Heard the learned Counsel on either side.

4. The contention of the learned counsel for the petitioners is that the respondents/plaintiffs on an earlier occasion filed O.S.No. 121 of 2009 on the file of the court of District Munsif cum Magistrate Court at Vedasandur seeking declaration of title and permanent injunction against the vendors of the petitioners herein in respect of the very same suit property and in the suit the interlocutory application filed by the respondents/plaintiffs in I.A.No.334 of 2009 was dismissed by an order dated 23.02.2010 holding that the petitioners failed to establish their possession over the suit property and thereafter the said suit in O.S.No.121 of 2009 was disposed of as settled out of Court. In spite of the said decree in O.S.No.121 of 2009, the respondents/plaintiffs once again filed the present suit seeking partition of the very same property which was the subject matter of O.S.No.121 of 2009, which was disposed of on 21.04.2011 and almost after a lapse of six years



C.R.P.PD(MD)No.760 of 2020

and thus he contended that the suit is barred by limitation. He also further contended that the respondents/plaintiffs have suppressed several facts which are relevant and relating to the suit property and therefore plaint is liable to be rejected under Or.7 R.11 C.P.C.

5. Learned counsel also placed reliance on the judgement of the Hon'ble Supreme Court in the case of ***Raghwendra Sharan Singh Vs. Ram Prasanna Singh (dead) by Legal Representatives***, reported in (2020) 16 SCC 601 in support of his contentions.

6. On the other hand, the learned counsel, appearing for the respondent/plaintiffs contended that the said O.S.No.121 of 2009, has nothing to do with the relief sought for in the present suit and in the present suit, the petitioners are seeking to declare that a Will set up by the defendants in the suit as null and void and not binding on the respondents/plaintiffs and also seeking other reliefs and that there is no suppression of facts and the relevant and material facts have been disclosed in the plaint in O.S.No.269 of 2018 and therefore there is no error in the order passed by the learned trial



C.R.P.PD(MD)No.760 of 2020

WEB COPY court.

7. This court has thoroughly considered the submissions made by the learned counsel and also perused the order passed by the learned Trial court. Though the court is totally dissatisfied with the manner in which the learned Trial court has passed the order by repeating the averments in the affidavits and counter affidavits thrice while deciding an application under Or.7 R.11, is in agreement with the final conclusions arrived at by the learned Trial Court while passing the order under revision. Limitation is a mixed question of law and facts, unless it is apparent on the face of the record that the relief sought in the suit is barred by limitation. Yet another ground raised by the learned counsel for the petitioners about the suppression of the fact is concerned, this Court is of the considered view that suppression of fact is not a matter or a ground that can be taken into consideration while considering an application under Or.7 R.11. At the most, the suppression of fact may disentitle the respondents/plaintiffs to have equitable relief in certain circumstances. Every suppression of fact will not result in dismissal of a suit therefore that is also a matter that can be gone into by the learned Trial Court at the time of trial and



C.R.P.PD(MD)No.760 of 2020

final disposal. Thus, the same is also not a ground for allowing the application filed under Or.7 R.11.

8. Coming to the decision of the Hon'ble Apex Court relied upon by the learned counsel for the petitioner in ***Raghwendra Sharan Singh Vs. Ram Prasanna Singh (dead) by Legal Representatives***, reported in (2020) ***16 SCC 601***, the same is a case, where it is apparent on the face of the record and from the pleadings made in the plaint and the documents appended there to, it is made out that the suit is barred by law of limitation and hence the power under Or.7.R.11 was exercised.

9. But in the instant case, it is not clear or apparent to say that the relief sought is barred by limitation and as such the question of limitation cannot be decided basing upon the averments made in the plaint or the appended documents. Though there was a serious mention made to the previous civil suits that are decided between the parties, no such material is placed before the learned Trial court while deciding the application under Or. 7 R.11. C.P.C. An application filed under O.7 R.11 is required to be



C.R.P.PD(MD)No.760 of 2020

considered basing upon the averments made in the plaint and the documents attached to the plaint. If the averments made in the plaint are taken as true also, no cause of action is made out then the power under Or.7 R.11 can be exercised. But the case on hand is not one such case warranting exercise of power under Or.7 R.11. The learned trial court has arrived at a right conclusion on the application filed by the petitioners herein and this Court does not find any error or illegality in the order passed by the learned Trial Court.

10. In the circumstances, this court does not find any merit in the Civil Revision petition and the same is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
kpr
To
The Sub Judge, Vendasandur, Dindigul District



WEB COPY



C.R.P.PD(MD)No.760 of 2020

MUMMINENI SUDHEER KUMAR, J.

kpr

C.R.P.PD(MD)No.760 of 2020
&
C.M.P.(MD).No.5082 of 2020

12.03.2024