



C.R.P.(MD).No.2966 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.03.2024

DELIVERED ON : 04.06.2024

CORAM

THE HON'BLE MR. JUSTICE G.ILANGO VAN

C.R.P.(MD).No.2966 of 2023

and C.M.P.(MD).No.15251 of 2023

1.Nirmalarani

2.Arthi

... Petitioners/Petitioners/Defendants 1 & 2

Vs.

1.Geetha

2.Muhilarasan

3.Muhesh

4.Anjammal

... Respondents/Respondents/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.344 of 2020 in O.S.No.84 of 2020 on the file of the learned District Munsif cum Judicial Magistrate, Orathanadu, dated 17.08.2023.

For Petitioners : Mr.S.Prabakaran Senior Counsel for
Mr.V.Karuna

For Respondents : Mr.Rajakarthikeyan for R1 to R4



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ORDER

This civil revision petition has been filed to set aside the set aside the fair and decreetal order passed in I.A.No.344 of 2020 in O.S.No.84 of 2020 on the file of the learned District Munsif cum Judicial Magistrate, Orathanadu, dated 17.08.2023.

2.The facts in brief:

Suit in O.S.No.84 of 2020 was filed by the respondent seeking the relief of declaration that the cancellation of the sale deed dated 19.12.2013 in respect of the second schedule of the suit property against the 6th defendant is void, permanent injunction restraining the defendants 1 to 3 from interfering into the plaintiffs' peaceful possession in respect of item Nos.1 to 4 of the first schedule, mandatory injunction directing the defendants 4 and 5, return of the title documents to him and other consequential permanent injunctions. Pending the suit I.A.No.344 of 2020 is taken out by the revision petitioner to struck off the plaint under Order 7 Rule 11 of CPC. That was dismissed. Against which this revision is preferred.



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3.The first plaintiff is the wife of Late V.Anbarasan. The second and third plaintiffs are their children. The father of V.Anbarasan was one R.Vaithilingam. He executed a registered gift settlement deed, dated 12.04.2006 in favour of Anbarasan. Anbarasan accepted the gift settlement, took possession and enjoyment, paying the kists, taxes, etc.

4.Anbarasan was indebted that several persons. One among them was Senguttuvan, the husband of the first defendant and father of defendants 2 and 3. The Senguttuvan died on 23.02.2020. On 05.12.2017, when the plaintiffs were doing agricultural work in the second schedule, the 6th defendant prevented them stating that Anbarasan executed sale deed on 19.02.2013.

5.The plaint averments further reads that Anbarasan never executed such a sale deed and also reads further which are not necessary for reproduction here. Seeking the relief of permanent injunction, mandatory injunction and declaration that the sale deed dated 19.02.2013 is void, the suit is filed.



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6. Now coming to the grounds made in the petition, it is stated by the defendants 1 and 2 that the plaint is presented under Order 37 Rule 1 CPC. The trial Court is not conferred with any such power to try the suit summarily. So the plaint must be rejected.

7. That was resisted by the plaintiff by filing counter. The trial Court, by the impugned order dismissed the petition filed by the revision petitioner stating that the suit can be tried as ordinary suit. Regarding the payment of Court fee and valuation of the suit, it was held that since the plaintiffs are not party to the document, valuation is also proper and accordingly dismissed the petition observing that suit can be tried as ordinary suit.

8. Against which this revision has been preferred on the ground that the suit itself is barred by limitation, since the sale deed was executed by Anbarasan on 15.11.2006. Without challenging the sale deed the relief itself is not maintainable. The issue of the fraud was not considered by the trial Court.



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9.Regarding the limitation issue, the trial Court has observed that it is mixed question of law and facts. The suit cannot be rejected simply on the ground of limitation. It would rely upon the judgment of the Honourable Supreme Court in the case of ***Padhiyar Prahladi Chenaji (Deceased) Vs. Maniben Jagmalbhai*** reported in ***(2022) 12 SCC 128***. No doubt that after a long gap, the suit is filed by the plaintiff. But whether such a relief is maintainable or not can be found out only at the time of trial on the evidence adduced. So this is premature stage to say that the suit itself is barred by limitation.

10.But, as mentioned above in the affidavit filed in support of the petition, it was stated that only they are in possession of the property and apart from that other facts and circumstances also stated which cannot be taken into account. At this stage, it is sufficient to say that limitation point can be raised and canvassed only at the time of trial on the basis of the evidence to be adduced by the parties. On that ground the revision is also not maintainable.



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11.Regarding the relief sought, the counsel for the revision petitioner by relying upon para 18 and 19 of the judgment cited by him, would submit that when the plaintiffs are not in possession of the property they are not entitled for any permanent injunction. On that ground, the suit itself is not maintainable. But that judgment was pronounced after the full trial. Here, it is not the case, so that point also cannot be canvassed and discussed. Whether there is any cause of action for the suit for granting permanent injunction decree also a matter for consideration at the time of trial. So, I find absolutely nothing on record worth considering to reject the plaint. I find absolutely no error or irregularity or illegality in the order passed by the trial Court. So the revision is liable to be dismissed.

12.Accordingly, this civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.06.2024

Index : Yes/No
Internet : Yes/No
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To

- 1.The District Munsif cum Judicial Magistrate, Orathanadu.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

TM

PRE-DEIVERY ORDER MADE IN

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