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Civil Revision Petition No. 635 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.PD.No.635 of 2025
and C.M.P.No.3644 of 2025

1. S.K.Sadasivam

2. S.K.Loganathan

3. Selvi

... Petitioners

Vs

Ponnusamy

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order passed by the I Additional Sub Judge, Erode in I.A.No.9 of 2024 in O.S.No.1128 of 2022 dated 08.11.2024 by allowing the Civil Revision Petition.

For Petitioners

: Mr.P.Kannan Kumar



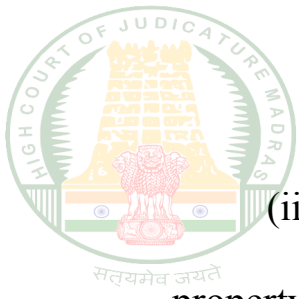
ORDER

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The civil revision petition is filed challenging the order passed in I.A.No.9 of 2024 in O.S.No.1128 of 2022 by the learned I Additional Subordinate Judge, Erode.

2. The facts are herein below set out briefly with the parties being referred to in the same ranking as before the trial Court.

(i) The plaintiff had filed the suit O.S.No.1128 of 2022 on the file of the I Additional Subordinate Court, Erode seeking a declaration that the Sale Deed dated 08.05.2003 registered as Document No.1134 of 2003 on the file of the Sub Registrar Office, Avalpoondurai executed by the 2nd defendant in favour of the 3rd defendant is null and void and not binding on the plaintiff and to cancel the same and for an injunction restraining the defendants, their men or agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.



(ii) The plaintiff would contend that he had purchased the suit property on 11.09.1985 with his self earned income and has constructed a house thereupon. In the year 1999, since the plaintiff was unwell and he had required urgent funds for family needs, he had approached the 1st defendant a money lender to lend him for a sum of Rs.1,00,000/-. The plaintiff had only received a sum of Rs.1,00,000/- as loan which is repayable with interest @ Rs.1.50 per hundred rupees. The 1st defendant had also got executed a Power of Attorney in favour of the 2nd defendant as security for the loan on 05.07.1999.

(iii) The plaintiff would submit that he has been regularly paying interest and in the month of January 2005, he had cleared the entire loan to the 1st defendant in the presence of his close relatives. However, the 1st defendant did not cancel and handover the agreement of sale and power deed but would state that after calculating the interest the same would be returned. Thereafter, the 1st defendant had informed the plaintiff that since the Power of Attorney had become barred by limitation, there is no necessity to spend money and cancel the Agreement of Sale. He had also retained the original documents to



himself. On 16.10.2022, the defendants 1 and 2 attempted to measure the property and the plaintiff had informed them that there was no necessity to measure his lands. At this juncture, the 1st defendant informed the plaintiff that the property belonged to the 3rd defendant and he had threatened the plaintiff. Immediately, the plaintiff had applied for the encumbrance certificate and on perusing the same, the plaintiff came to learn that the 2nd defendant has sold the property to the 3rd defendant for a sale consideration of Rs.1,30,000/-. The property is today worth over a sum of Rs.50,00,000/-. The property which in the year 1999 is said to have been sold for the price of Rs.1,40,000/-. 4 years later, has been sold for a sum of Rs.1,30,000/-. The plaintiff would submit that no point in time had he intended to sell his property. The agreement of sale and Power of Attorney were executed only as security for the loan. Therefore, he has come forward with the suit in question.

3. The 3rd defendant had filed a written statement *inter-alia* contending that a suit for cancellation of the Sale Deed has to be filed within 3 years from the date of the registration of the document



whereas the present suit has been filed 19 years thereafter and therefore, the suit was hopelessly barred by limitation. The plaintiff's contention that he had borrowed money from the 1st defendant was denied as false. The discharge of the said mortgage was also denied. The 3rd defendant would submit that the agreement of sale between the plaintiff and the 1st defendant had been entered into after due negotiations. The plaintiff had approached the 2nd defendant to act as a Power Agent to deal with the suit property and the 2nd defendant had been appointed as his Power Agent under the Power of Attorney Deed dated 05.07.1999. The 2nd defendant acting as the Power Agent of the 1st defendant has sold the property to the 3rd defendant for a valuable consideration. The possession has also been delivered to the 3rd defendant and the mutation of revenue records has also taken place. He would also contend that the plaintiff has come to the Court suppressing the true facts and that he was not entitled to the relief. Therefore, they sought for dismissal of the suit.

4. The defendants have taken out an application for rejecting the plaint on the following grounds:

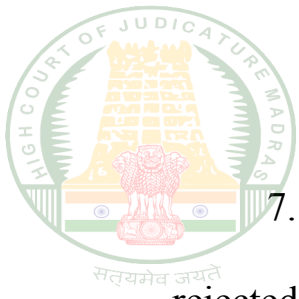


a) There is no cause of action

b) It is barred by limitation.

5. The same was resisted by the plaintiff by contending that the Sale Deed dated 08.05.2003 created by the petitioner is a fraudulent one without paying the consideration or taking possession of the property. The plaintiff would contend that only the contents of the plaint was to be considered for the purpose of deciding on the maintainability of the suit. Further, evidence had commenced in the suit and P.W1 was examined partly in cross and thereafter, the parties were referred to mediation which was subsequently cancelled. The plaintiff would submit that they are not parties to the aforesaid documents. Further, the defendants have to prove the documents standing in their names and they sought for dismissal of the application.

6. Heard the learned counsel for the petitioner and perused the materials available on record.



7. The learned I Additional Subordinate Judge, Erode had rejected the application on the ground that the plea of limitation would not apply to the instant case as even according to the pleading of the plaintiff, he had come into knowledge about the sale in favour of the 3rd defendant when attempts were made by the defendants 1 and 2 to measure the property on 16.10.2022. Within a few months, the suit has been filed. Therefore, the allegation that the suit has been rejected on the ground that it is barred by limitation cannot be sustained. Challenging this order, the petitioner is before this Court.

8. A perusal of the affidavit filed in support of I.A.No.9 of 2024 clearly shows that the allegations on which the defendants seek to reject the above application are:

- a) There is no cause of action and the cause of action pleaded is an illusory one.
- b) The suit is barred by limitation since the suit is filed 20 years after the Sale Deed that is sought to be cancelled.



With reference to the plea of lack of cause of action, a reading of the plaintiff would indicate that the existence of cause of action for filing of the suit, the plaintiff has pleaded that the agreement of sale and Power of Attorney had been obtained only as a security for the sum of money borrowed by the petitioner. The factum of the sale has come to the knowledge of the petitioner only on 16.10.2022 when the defendants 1 and 2 had attempted to measure the property. The petitioner had thereafter made applications and perused the encumbrance certificate after which the plaintiff has come into knowledge of the Sale Deed is dated 08.05.2003. Therefore, a *prime- facie* reading of the plaint makes out a cause of action for filing the suit.

9. It has been time and again held by this Court as well as the Hon'ble Supreme Court that when considering the application for rejecting the plaint, the Court should *prima facie* consider whether a plaint makes out a case for consideration. Unless there is a manifest, fraud, lack of cause of action and issue of limitation which on the face of the document is available the Courts would not non-suit a plaintiff at the threshold. This power has to thereafter be exercised diligently and



Civil Revision Petition No. 635 of 2025

is not one for asking. The trial Court has rightly appreciated the pleadings on hand and has rejected the application. I see no reason to interfere with the order of the learned I Additional Subordinate Judge, Erode. Accordingly, the civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

28.02.2025

Index: Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No
srn

To,

The I Additional Sub Judge, Erode.



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P.T.ASHA, J.,

srn

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