



C.R.P(MD)Nos.378 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.04.2025**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.378 of 2025

V.Kannan

... Petitioner

Vs.

1.Rajalakshmi

2.M.P.Suresh Babu

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, 1908 to allow this Civil Revision Petition directing the Subordinate Judge, Thirumangalam to number the suit in Unnumbered O.S.No.A 8782 of 2024 and to pass such further or others orders as this Court.

For Petitioner : Mr.T.Sivananthan



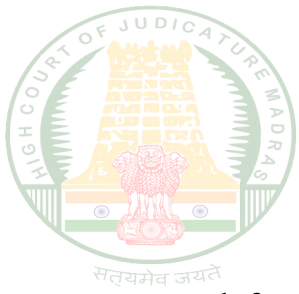
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ORDER

The plaintiff in Unnumbered O.S.No.A 8782 of 2024 on the file of the Subordinate Court, Thirumangalam has filed the present revision petition challenging the rejection of plaint on the ground that the suit is barred under Order II, Rule 2 of the Code of Civil Procedure, 1908 and on the ground of limitation.

2. A perusal of plaint averments reveal that the plaintiff has entered into a sale agreement for purchasing the suit schedule properties on 03.03.2005, wherein, a period of one year is fixed for completion of the sale. Since the first defendant attempted to alienate the properties, the plaintiff had filed O.S.No.131 of 2007 seeking permanent injunction as against the first defendant not to alienate the suit schedule properties to any third party except the plaintiff. After contest, the suit was decreed on 01.11.2014. Thereafter, according to the plaintiff, in violation of the said decree, the first defendant has sold the property in favour of the second

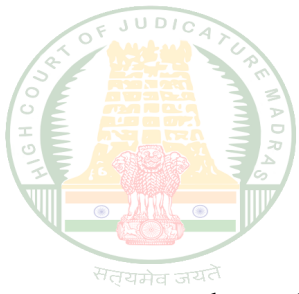


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defendant on 28.08.2019. This has prompted the plaintiff to file the present suit on 29.11.2024.

3. A perusal of the plaint prayer reveals that the plaintiff has sought for a declaration that the sale deed executed by the first defendant in favour of the second defendant on 28.08.2019 is null and void. The plaintiff has further prayed for a decree for specific performance or in the alternative for refund of the advance amount.

4. The Trial Court has rejected the plaint even without numbering the same on the ground that the present suit for specific performance is clearly barred under Order II, Rule 2 of CPC, since he has filed only a suit for permanent injunction in the year 2007. The Trial Court has further found that the refund of the advance amount is governed by Article 62 of the Limitation Act, 1963 and therefore, the present suit filed on 29.11.2024, which is beyond a period of 12 years is also barred by limitation. Challenging the said order, the present revision petition has



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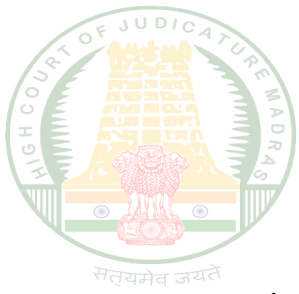
been filed.

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5. Pending revision petition, the plaintiff has filed an affidavit to the effect that he would not press for the first part of the (b) prayer which is a prayer for specific performance and he may be permitted to prosecute the suit with regard to the other prayers. The affidavit is taken on record.

6. As far as the first prayer in the suit with regard to declaration of the sale deed, dated 28.08.2019 is concerned, according to the learned Counsel appearing for the plaintiff, the same is in violation of the decree passed in O.S.No.131 of 2007 and he had knowledge about the same only on 23.12.2023. Therefore, it would be a subject matter of trial whether the plaintiff had knowledge about the sale deed only in the year 2023 or he had knowledge about the same in the year 2019 itself.

7. As far as the prayer for refund of advance amount is concerned, since the first defendant has alienated the property in favour of third



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parties, the plaintiff has sought for the alternative prayer. Therefore, from the date of alienation made by the first defendant, the suit has been filed within a period of 12 years. In such circumstances, such a prayer can be considered to be within the period of limitation. However, as far as the prayer relating to suit for specific performance [first part of prayer (b)] is concerned, it is clearly barred by limitation and the Trial Court has rightly held that the said prayer is also barred under Order II, Rule 2 of CPC. The plaintiff has also filed an affidavit to the effect that he may be permitted to withdraw the first part of the prayer relating to specific performance.

8. In view of the above said deliberations, the Trial Court is directed to number the suit after appropriate amendments are carried out by the plaintiff. The numbering of the suit will be subject to the plea of limitation to be raised by the defendants.



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9. With the above said observations, this Civil Revision Petition stands partly allowed to the extent as stated above. There shall be no order as to costs.

22.04.2025

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

The Subordinate Judge,
Thirumangalam.



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R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)No.378 of 2025

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