IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 11.03.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(PD)No.1027 of 2015
and M.P.No.1 of 2015

Sunitha Sankara Menon
Sangeetha Sankara Memo ... Petitioners/Defendants 2 & 3

Vs

1.B.Mythili ... 1st Respondent / Plaintiff

2.Sanjay Sankara Menon
3.Reena
4.Syndicate Bank
Rep.by its Branch Manager,
No.21, Sir Tiyagaraya Road,
T.Nagar, Chennai – 600 017.
5.V.Ramesh ... Respondents / Defendants

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 15.07.2014 passed by the learned District Judge, VII Additional City Civil Court in I.A.No.360 of 2014 in O.S.No.9280 of 2010.

For Petitioners : Mr.AR.L.Sundaresan
Senior counsel for
Ms.S.P.Arthi

For Respondents : Mr.N.Anand Venkatesh
Caveator for R1

O R D E R

This revision is directed against the order passed in I.A.No.360 of 2014 in O.S.No.9280 of 2010 by the VII Additional City Civil Court, Chennai.

2. The defendants 2 and 3 in O.S.No.9280 of 2010 are the revision petitioners. The first respondent had instituted a suit in O.S.No.624 of 2002 on the original side of this Court against the petitioners and respondents 2 to 4 herein for declaring that the plaintiff is the absolute owner of the property, house, ground and premises bearing Old Door No.95 and New Door No.13, Dr.M.G.Ramachandran Road, Kalashetra Colony, Chennai – 90 and for direction to the defendants to pay damages alongwith interest. Subsequently, the suit was transferred to the file of VII Additional City Civil Court, Chennai and re-numbered as O.S.No.9280 of 2010. The suit was taken up for trial and when the plaintiff's side witness was proceeding, the petitioners alongwith second respondent herein, filed an application in I.A.No.360 of 2014 under Order VII Rule 11 and 151 C.P.C to reject the plaint as being barred by law of limitation.

3. The case of the petitioners is that the plaintiff has filed the suit based on a memorandum of understanding dated 03.11.1989 alleging that the same was not acted upon by the defendant. The

right claimed by the plaintiff has been assailed by the petitioner as early as in the year 1985 and the right flown from the memorandum of understanding came out in the month of November 1989 and therefore the suit for declaration of title ought to have been filed within three years from the date the title is challenged and even assuming such right of the plaintiff arose after the purported settlement of 1989, the suit should have been filed on or before 02.11.1992 but however the suit was filed only in the year 2002, i.e. after a lapse of 13 years. Under such circumstances, as per Article 58 of the Limitation Act, the suit is barred.

4. The application was resisted by the first respondent/plaintiff by filing a counter stating that the petitioners/defendants 2 and 3 had filed the suit in C.S.No.368 of 1985 before the Hon'ble High Court against the plaintiff/first respondent herein and others, for declaration of title to the suit property and for recovery of possession. The suit was transferred to the City Civil Court and re-numbered as O.S.No.3083 of 1996 and it was tried alongwith O.S.No.7401 of 2012. When the matter stood for continuation of cross examination of PW1, the petitioners have come out with the present application for rejection of plaint solely on the ground of limitation presuming that the suit was filed for specific

performance. It is further stated that the plaintiff/first respondent had entered into a registered sale agreement on 01.06.1983 with the father of the petitioners herein for purchase of the suit property alongwith subsisting mortgage in favour of Senthil Traders and Syndicate Bank and physical possession was handed over to her; that she purchased the property vide sale deed dated 27.03.1985 and thereafter improved the suit property.

5. While so, the petitioners represented by their mother filed suit in O.S.No.368 of 1985 and thereafter the petitioners had entered into an agreement of sale dated 16.07.1986 with the fourth respondent, Ms.Reena for selling the suit property for a sale consideration of Rs.6 lakhs and received Rs.3 Lakhs as advance and remaining Rs.3 lakhs had been paid to Syndicate Bank as per their suit claim in C.S.No.40 of 1983. At that juncture, a memorandum of understanding dated 03.11.1989 was entered into between the plaintiff and the defendants to assign the agreement of sale dated 16.07.1986 in favour of the plaintiff and she paid Rs.5,20,000/- to the 4^{th} defendant / agreement holder and got the sale agreement assigned in her favour. As per the Memorandum of Understanding, the plaintiff had to pay the balance amount of Rs.3 lakhs to the Syndicate Bank and one of the pre-condition was that the petitioners

shall withdraw their suit in C.S.No.368 of 1985.

6. The plaintiff has further stated in her counter that she had paid the entire dues to the Syndicate Bank on 01.06.2000, as per the suit in CS No.40 of 1983 amounting to Rs.5,39,415/- and also paid Rs.1,50,000/- to the proprietor of M/s.Senthil Traders for extinguishment of mortgage on 01.06.2000, so the cause of action to file the present suit arose on 01.06.2000 and when the petitioners did not withdraw the suit. The trial court dismissed the application. Aggrieved by the order, the present revision is filed.

7. Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioners submitted that the suit filed by the first respondent is barred by limitation as the plaintiff claims right through the Memorandum of Understanding dated 03.11.1989. As per Article 58 of the Limitation Act, the suit should have been filed within a period of three years when the right of sue first accrues. It is further contended that as per the Memorandum of Understanding, the defendants have not withdrawn the suit in C.S.No.368 of 1985 and therefore the suit should have been filed on or before 02.11.1992 and that the trial court erred in dismissing the application holding that the starting point of limitation will be decided only after completion of the

trial. It is the contention of the learned Senior Counsel that it is a pure question of law and there is no facts and law involved in this case. Therefore as per Article 58 of the Limitation Act, the trial court ought to have rejected the plaint.

8. Per contra, Mr.Anand Venkatesh, learned counsel for the respondent submitted that order in the application was passed on 15.07.2014 and the order copy was made ready in July 2014 and thereafter the defendants/petitioners herein had extensively cross examined PW1; that the petitioners have also filed application for interrogatories, thereupon the suit was posted for argument on 06.03.2015, after the arguments of the plaintiff's side was over and when the suit was posted for arguments of the defendants on 10.03.2015, the petitioners chose to file an application to re-open the suit and thereafter filed the present application under Order VII Rule 11. It is further contended by the learned counsel that the conduct of the petitioners would reveal that they want to prolong the litigation on one reason or other.

9. The learned counsel further contended that the plaintiff traces her title through the sale deed dated 27.03.1985, in and by which the father of the defendants 1 to 3 had sold the entire property

in favour of the plaintiff. Subsequently, in view of the memorandum of understanding, the plaintiff discharged her obligation of payment of money to the Syndicate Bank and Senthil Traders on 01.06.2000 and thereafter only when the defendants/petitioners failed to withdraw the suit in C.S.No.368 of 1985 and when they filed Transfer CMP No.393 of 2000 seeking transfer of the case, the plaintiff came to know that the memorandum of understanding was violated by the defendants. Therefore the right to sue first accrues only in the year 2000 and the suit filed in the year 2002 is well within the period of limitation.

10. The learned counsel further contended that while considering the application under Order VII Rule 11, the court has to consider only the averments contained in the plaint and the case of the defendants nor the written statement cannot be taken into consideration. So, as per the averments the plaint, the suit is not barred by limitation and further the limitation is a mixed question of facts and law and therefore the trial court has rightly rejected the application of the petitioners, which does not warrant interference by this Court.

11. The Hon'ble Supreme Court in ***2006 (3) SCC 100*** ***[Mayar (H.K.) Ltd., and others v. Owners & Parties, Vessel M.V.***

Fortune Express and Others] has held that so long as the plaint discloses some cause of action which requires determination by the Court, the mere fact that in the opinion of the Judge that the plaintiff may not succeed, cannot be a ground for rejection of the plaint.

12. A Division Bench of this Court in a decision reported in ***2008 (3) CTC 724 [Wipro Limtied v. Oushadha Chandrika Ayurvedic India (P) Ltd.]*** has held as follows:

> *"18. In our opinion, the learned single Judge is clearly in error in going beyond the statement contained in the plaint. It has been repeatedly held by the Supreme Court that for the purpose of deciding an Application under clauses (a) and (b) of the Order 7, rule 11 of the C.P.C., the averments made in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. (see O.N. Bhatnagar v. Rukibai Narsindas, 1982 (2) SCC 244; RoopLal Sathi v. Nachhattar Singh Gill, 1982 (3) SCC 487 and Sopan Sukhdeo Sable v. Asst. Charity Commissioner, 2004(3) SCC 137)."*

13. In the instant case, the plaintiff/first respondent herein seeks declaration of title to the property on the basis of a registered sale agreement dated 01.06.1983, a sale deed dated 27.03.1985 and on the basis of memorandum of understanding dated 03.11.1989 and the payment of Rs.5,39,415/- made to Syndicate

Bank and Senthil Traders on 01.06.2000. According to the plaintiff, the right to sue first accrues in the year 2000 when the petitioners/defendants filed Transfer CMP No.383 of 2000 and when the plaintiff paid amounts to Syndicate Bank and Senthil Traders on 01.06.2000. The defendants filed the present application to reject the plaint mainly contending that the cause of action arose on 03.11.1992 when the defendants have not chosen to withdraw the suit and the starting point is November 1989. The trial court having observed that the issue of limitation is a mixed question of facts and law and the issue of starting point of limitation can be decided only after full fledged trial, rejected the petition.

14. In my considered view, the contentious issues cannot be decided in the petition filed under Order VII Rule 11 CPC. The trial court has rightly dismissed the petition. Hence, I do not find any illegality or infirmity in the order impugned in this revision.

15. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The learned VII Additional Judge, Chennai, is directed to dispose of O.S.No.9280 of 2010, as expeditiously as possible, preferably within a period of three months from the date of receipt of copy of the order

on merits and in accordance with law. The trial court shall not get influenced with any of the observations and findings of this Court contained in this order.

11.03.2015

Index:Yes
Internet:Yes
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To

The VII Additional Judge,
City Civil Court,
Chennai.

K.KALYANASUNDARAM,J

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Order in
C.R.P(NPD)No.1027 of 2015

11.03.2015