

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2015

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Civil Revision Petition (PD).No.1704 of 2015
and M.P.No.1 of 2015

E.K.Palanisamy

... Petitioner

Vs.

1.P.C.Krishnan
2.A.Balasubramaniam
3.C.Balachandran
4.Rajammal
5.M.Thangaraj
6.Ranganatha Gopal
7.M.Geetha
8.N.Selvakumar
9.Kirandevi
10.Premalatha
11.N.Karikalan

... Respondents

Prayer:- Civil Revision Petition filed to set aside the fair and final order dated 20.02.2015 made in I.A.No.292 of 2014 in O.S.No.228 of 2012 on the file of II Additional District Court, Erode.

For Petitioner : Mr.T.Murugamanickam

For Respondents : Mr.R.Sivaprakasam for R1.

O R D E R

Heard both sides.

2. This Revision Petition has been filed challenging the fair and decretal order passed in I.A.No.292 of 2014 in O.S.No.228 of 2012 by

the learned II Additional District Court, Erode dated 20.02.2015 for dismissing the application under Order VII Rule 11 of Civil Procedure Code.

3. Learned counsel appearing for the petitioner submits that the first respondent herein / plaintiff, filed suit for declaration of title and recovery of possession of the suit property. The averments in the plaint is that as per the settlement deed dated 24.07.1950 between V.C.Periyasamy Mudaliar and Vinayathammal and Vinayathammal was given life estate in respect of the suit property and dwelling house and she had the right to enjoy the usufructs of the properties till her life time without any power of alienation and after her death, the properties should go to V.C.Periasamy Mudaliar and after his death, the properties should go to his heirs. Vinayathammal died on 07.11.1994, so, as per the settlement deed, the respondents have inherited the property from whom, the first respondent/plaintiff herein purchased the property for valuable consideration and thus the plaintiff has become the owner of the suit property from the date of purchase viz., 5.11.2001.

4. The case of the petitioner herein is that he got the property by way of Will executed by Vinayathammal, who was owner of the suit property. Even though the first respondent herein viz., the plaintiff in the suit in O.S.No.123 of 2008, in his pleadings stated that the cause of action

for the suit arose on 05.11.2001, he has not specifically mentioned when he has been given possession; when he is dispossessed of from the property. Further more, according to the petitioner, on the death of Vinayathammal, as per the Will, as a legatee, he got the suit property, and got possession, hence, suit filed in O.S.228 of 2012 is barred by limitation; hence, he filed an application in I.A.No.292 of 2014 for rejection of plaint under Order VII Rule 11 CPC before the trial court. The first respondent herein viz., the plaintiff filed objection/counter statement before the trial court in I.A.No.292 of 2014 stating that the petition filed by the first defendant in O.S.No.228 of 2012 is with the malafide intention of dragging on the above suit.

5. According to the petitioner herein, who is the first defendant in the suit, the trial court, without considering the facts viz., non-disclosure of cause of action of the fact as regards the possession and dispossession of the plaintiff and also the aspect concerning the suit barred by limitation, the petition filed to reject the plaint was dismissed, hence, prayed for setting aside the said fair and decreetal order dated 20.02.2015.

6. The first limb of argument raised by the learned counsel for the petitioner is that from the date of death of Vinayathammal i.e., 07.11.1994, the petitioner is in possession of the suit property and there

is no averment in the plaint in O.S.228 of 2012 as regards when did the plaintiff took possession as per the sale deed and when did the plaintiff was dispossessed; hence, for the reasons of non-disclosure of the cause of action in the plaint, the plaint has to be rejected. The second limb of argument of the learned counsel for the petitioner is that as a legatee, from the date of death of Vinayathammal, he is in possession, i.e, from 07.11.1994, hence, the suit filed in the year 2012 is clearly barred by limitation. On the above submissions, the petitioner herein prays for setting aside the order passed in I.A.No.292 of 2014.

7. On the other hand, learned counsel appearing for the first respondent has submitted that as per the settlement deed, Vinayathammal had the right to enjoy the usufructs of the properties till her life time without any power of alienation and after her death, the properties should go to V.C.Periasamy Mudaliar and after his death, the properties should go to his heirs; thus Vinayathammal was only given the life estate and she was not having any power to execute the Will and to bequeath the property to the petitioner herein. The learned counsel further submitted that as per the sale deed, possession has been handed over to the plaintiff and the recital is such and the mutation of revenue records has been taken to that effect; in such circumstances, when did the plaintiff/first respondent has taken possession of the suit property and when he is dispossessed is a question of fact.

8. Learned counsel for the first respondent submits that he purchased the property on 05.11.2001 and the suit has been filed in the year 2008 i.e., within 7 years, hence, the suit is not barred by limitation. Further, he would submit that question of limitation is a mixed question of law and fact and that has to be decided by letting oral and documentary evidence before the trial court. Thus, the learned counsel submitted that the trial court has considered all the aspects in proper perspective and dismissed the I.A., filed by the petitioner herein for rejection of plaint.

9. Admittedly, V.Chockalingam Mudaliar had two wives; 1st wife is Deivanai Ammal and 2nd wife is Vinayathamal. V.Chockalinga Mudaliar died on 04.06.1950. V.Chockalingam Mudaliar had a son by name V.C.Periasamy Mudaliar and 2 daughters by name Muthulakshmi and Senthayammal through 1st wife / Deivanai Ammal and she died on 24.03.1964. 2nd wife Vinayathammal died on 07.11.1994 and she died intestate without having any issues. As per the settlement deed dated 24.07.1950 between V.C.Periyasamy Mudaliar and Vinayathammal, Vinayathammal was given life estate in respect of the suit property and dwelling house. After Vinayathammal's life time, the properties should go to V.C.Periasamy Mudaliar and after him, to his heirs.

10. According to the petitioner, Vinayathammal, in her life time,

executed a Will dated 22.12.1986 and as per the said Will, he is in possession and enjoyment of the property and hence, for the reasons viz., non-disclosure of the cause of action by the plaintiff in the suit and on limitation aspect, plaint has to be rejected.

11. I have carefully considered the submissions made by both sides counsel and perused the materials on record.

12. On going through paragraphs 6 and 12 of the plaint filed in O.S.No.228 of 2012, I am of the view that cause of action has been disclosed by the plaintiff. Hence, the factum as regards the cause of action was correctly decided by the trial court.

13. Thus, the argument of the learned counsel for the petitioner in respect of non-disclosure of the cause of action, for rejecting the plaint, does not merit acceptance by this Court since cause of action has been disclosed by the plaintiff.

14. As far as the next limb of argument of the learned counsel for the petitioner with reference to plea of limitation is concerned, even though the same is raised in paragraph No.7 of the affidavit of this Revision Petition, during the course of argument before this Court, learned counsel has stated that the said point has to be decided at the time of trial

only.

15. It is also well settled dictum of Apex Court that question of limitation is a mixed question of law and fact. Further more, the trial court in its order passed in I.A.No.292 of 2014, in paragraph Nos.19 and 20, it was observed that plaint cannot be read in isolated parts and it has to be read as a whole to find whether there is a cause of action or not.

16. In such circumstances, I am of the view that the fair and decreetal order passed by the trial court in I.A.No.292 of 2014 in O.S.No.228 of 2012 dated 20.02.2015 does not suffer from any illegality or irregularity. Hence, the same is confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

04.06.2015

Index:Yes/No
Internet:Yes/No
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R.MALA,J.

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To

The II Additional District Court, Erode.

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