IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.2437 of 2015
and M.P.No.1 of 2015

1.V.Padma @ Pappa
2.K.Kalyani @ K.Srikalyaani
3.V.Elango .. Petitioners

Vs

1.T.R.Mohan
2.P.Radhakrishnan
3.D.Raghavendra
4.R.Shanmugam
5.Mahesh Ramachandran
6.B.Sridhar

7.Housing Development Finance
Corporation Ltd., (HDFC)
2nd Floor, ITC Centre,
760, Anna Salai, Chennai – 600 002.

8.The Sub Registrar,
Pallavaram at Chromepet,
Chennai – 600 044. .. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 09.01.2015 made in I.A.No.2241 of 2013 in O.S.No.1044 of 2013 on the file of the Additional District Munsif Court, Alandur.

For Petitioners : Mr.N.Manokaran
For Respondents : Mr.R.Vijayaraghavan

O R D E R

The Civil Revision Petition is filed against the order dated 09.01.2015 made in I.A.No.2241 of 2013 in O.S.No.1044 of 2013 on the file of the Additional District Munsif Court, Alandur.

2.The first respondent as a plaintiff filed a suit in O.S.No.1044 of 2013 to cancel the deed of power of attorney dated 09.06.1990 executed by the plaintiff in favour of the first defendant and also declaring the sale deed dated 27.09.2001 executed by the first defendant in favour of the second defendant as null and void and consequently declaring the sale deeds executed by the second defendant in favour of the defendants 4 to 8. The first respondent/plaintiff purchased the property on 01.06.1982, he executed a Power of Attorney on 09.06.1990 and since the Power of Attorney is coupled with interest, he filed a suit for cancellation of Power of Attorney. The first defendant executed a sale deed in favour of the second defendant, who is none other than his daughter, the defendants 2 and 3 developed the prperty and sold the same in favour of the defendants 4 to 8. Now, the plaintiff/first respondent has filed the suit for cancellation of Power of Attorney and to declare the sale deed in favour of the second defendant executed by the first defendant as null and void and also consequently declare the sale deeds in favour of the defendants 4 to 8 executed by the second defendant as null and void. During the pendency of the suit, the petitioners/defendants 1 to 3 filed an application in I.A.No.2241 of 2013 to reject the plaint on the ground of not disclosing the cause of action and the suit is under valued and barred by limitation. It is submitted that since the plaintiff filed a suit for setting aside the sale deeds alleged to be executed in favour of the second defendant and also defendants 4 to 8, he ought to have valued the suit under Section 40 of Tamil Nadu Court Fees and Suit Valuation Act, but the plaintiff has valued the suit under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act and paid the Court fees, which is illegal. The Trial Court after hearing both sides, has dismissed the application. Against which, the present Civil Revision Petition has been filed.

3.Heard the learned counsel for the petitioners and the learned counsel for the respondents.

4.Learned counsel for the petitioners submitted that the suit is barred by limitation. He further submitted that the plaint averments itself shows that the suit has been filed after the lapse of 12 years after the Power of Attorney has been executed and hence prima facie the suit is barred by limitation. He would also submit that as per Article 59 of the Limitation Act, the suit ought to have filed within three years, but it was filed after 12 years and so, the suit is barred by limitation. Hence, he prayed for setting aside the order passed by the Trial Court. To substantiate his argument he relied upon the following decisions:

1) ***2015 (3) CTC 218 (Fatehji & Company and others vs. L.M.Nagpal and others)***
2) ***2014 (14) SCC 254 (Suresh Kumar Dagla vs. Sarvan and another)***
3) ***2015 (5) CTC 629 (Dr.L.Ramachandran and another vs. K.Ramesh and others)***
4) ***2015 (3) CTC 54 (Vasumathi H.Shah vs. Pushpa Raju)***

5.Resisting the same, the learned counsel for the first respondent/plaintiff would submit that the question of limitation is the mixed question of law and fact and that has to be decided only at the time of trial. He further submitted that while deciding the application under Order VII Rule 11 CPC, only the averments in the plaint alone has to be taken into account and not the written statement, and documents filed by the defendants. Hence, he prayed for dismissal of the revision petition. To substantiate his argument, he relied upon the decision reported in ***2011 (3) CTC 153 (N.Ravindran vs. V.Ramachandran).***

6.Considered the rival submissions made on both sides and perused the typed set of papers.

7.It is well settled dictum of the Hon'ble Apex Court that while deciding the application under Order VII Rule 11 CPC, only the plaint averments and the documents filed by the plaintiff along with the plaint alone has to be looked into and so, there is no quarrel over the ratio laid down in ***2011 (3) CTC 153 (N.Ravindran vs. V.Ramachandran).*** Now, this Court has to decide whether prima facie the averment in the plaint itself has proved that the suit is barred by limitation. In the plaint, it was specifically stated that the plaintiff is the owner of the property, he executed the Power of Attorney after receipt of Rs.50,000/- in favour of the first defendant on 09.06.1990. So, as per Section 202 of the Indian Contract Act, the Power of Attorney is coupled with interest and so, without notice to the agent the power shall not be terminated. It is appropriate to incorporate Section 202 of the Indian Contract Act, which is as follows:

> **202.Termination of agency, where agent has an interest in subject-matter:-** Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

8.It is also relevant to incorporate Section 204 of the Indian Contract Act, which is as follows:

> **204.Revocation where authority has been partly exercised:-** The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

9.Here, admittedly the first defendant has executed a sale deed in faovur of the second defendant during the existence of Power of Attorney. So, the Power of Attorney has been acted upon. In such circumstances, without notice to the Power of Attorney the power deed could not be revoked. Because of that, the plaintiff has filed a suit for cancellation of the Power of Attorney executed on 09.06.1990. But it is pertinent to note that even today the Power of Attorney is subsisting. The first defendant who is the Power of Attorney, who is coupled with interest has executed a sale deed in faovur of the second defendant on 27.09.2001. But the suit has been filed on 07.10.2013. Once the sale deed has been executed, the Power of Attorney deed in respect of the property has been acted upon by the agent and from 27.09.2001, the second defendant is the owner of the property. Admittedly, the suit has been filed on 07.10.2013 i.e. after 12 years which is prima facie barred by time. It is appropriate to incorporate Article 59 of the Limitation

Act, which is as follows:

Description of suit	***Period of Limitation***	***Time from which period begins to run***
59. To cancel or set aside an instrument or decree of for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

10.At this juncture, the learned counsel for the first respondent/plaintiff would submit that the plaintiff came to know of the sale deed only on 24.05.2013 and so, the cause of action arose only on that date and he ought to have filed as suit within three years from 24.05.2013. Hence, he filed a suit in time. But the above argument does not hold good because the sale deed is of the year 2001. Once the Power of Attorney has been executed, what are the acts done by the agent has been binding the principal. So the sale deed is of the year 2001 and thereafter, from the power agent, the property has been sold in the year 2013. But the suit has been filed only on 07.10.2013. So, the suit is apparently barred by time.

11.Now, it is appropriate to consider the decisions relied upon by both the learned counsel.

12.In the decision reported in ***2015 (3) CTC 218 (Fatehji & Company and others vs. L.M.Nagpal and others)***, wherein it was held that in a suit for specific performance dated 02.07.1973, subsequently time has been extended till 01.02.1977, possession also has been handed over and the suit was filed on 29.07.1994. At this juncture, it was held that the suit is barred by limitation and so, there is no question of cause of action for filing the suit. It is appropriate to incorporate paragraph Nos.6, 7 and 9, which is held as follows:

> "6.We considered the rival submissions. The specific performance is claimed of a written agreement of sale dated 2.7.1973 and as per the terms the performance of the contract was fixed till 2.12.1973. The defendants by subsequent letters dated 7.4.1975, 1.10.1975 and 1.8.1976 sought for extension of time to enable them to obtain permission of lessor and the last extension of six months expired on 1.2.1977. In view of Order VII Rule 11(a) and 11(d) the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. Article 54 of the Limitation Act stipulates that the limitation for filing the suit for specific performance of the contract is three years from the date fixed for the performance or if no such date is fixed, when the plaintiff has noticed that performance is refused.
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> 7.The fact that the plaintiffs were put in possession of the property agreed to be sold on the date of agreement itself would not make any difference with regard to the

limitation of filing the suit for specific performance. In fact both the courts below have rightly held that Article 54 of the Limitation Act does not make any difference between a case where possession of the property has been delivered in part performance of the agreement or otherwise. In the same way the courts below have also concurrently held even if any permission is to be obtained prior to the performance/completion of the contract, the mere fact that the defendants have not obtained the said permission would not lead to inference that no cause of action for filing the suit for specific performance would arise. Further it is also not the case for postponing the performance to a future date without fixing any further date for performance. The last extension for a period of six months w.e.f. 1.8.1976 sought for by the defendants expired on 1.2.1977. The present suit seeking for specific performance was filed by the plaintiffs on 29.4.1994, much beyond the period of three years.

9.The plaintiffs averred in the plaint that the last and final cause of action accrued and arose to them after August 1991 when the defendants succeeded in hiding themselves and started avoiding the plaintiffs and the cause of action being recurring and continuous one, they filed the suit on 29.4.1994. As already seen the original cause of action became available to the plaintiffs on 2.12.1973, the date fixed for the performance of the contract and thereafter the same stood extended till

> 1.2.1977 as requested by the defendants. Though the plaintiffs claimed that oral extension of time was given, no particulars as to when and how long, were not mentioned in the plaint. On the other hand even after knowing the dishonest intention of the sons of the second defendant with regard to the suit property in the year1985, the plaintiffs did not file the suit immediately. The suit having been filed in the year 1994 is barred by limitation under Article 54 of the Limitation Act."

13.In the decision reported in ***2014 (14) SCC 254 (Suresh Kumar Dagla vs. Sarwan and anothers),*** wherein it was held that the respondent sold the property in the year 1994, he filed the suit in the year 2006 stating that after he came to know about the sale only, he filed the criminal complaint. But even then, it was held that the suit is barred by limitation.

14.But, here the first respondent/plaintiff is the Principal, who executed the Power of Attorney deed in the year 1990. The Power of Attorney deed is coupled with interest to the agent. Since he received Rs.50,000/- on the date of execution of the Power of Attorney, as already stated as per Sections 202 and 204 of the Indian Contract Act, he cannot suo moto terminate or revoke the Power of Attorney. In such circumstances, the act done by the agent is binding the principal as per Clause 6 of the sale agreement, which is as follows:

> "6.To adjust, appropriate and pay herself at the first instance out of the proceeds of such sale less all costs, charges and expenses the amount due to her and thereby deduct the amount already paid to me and pay the balance if any thereafter to me."

Hence the above citation is squarely applicable to the facts of the present case.

15.In the decision reported in ***2015 (5) CTC 629 (Dr.L.Ramachandran and another vs. K.Ramesh and others)*** wherein in paragraph Nos.21 and 26, it is held as follows:

> "21.........Thus, we have no hesitation to hold that the cause of action is absolutely vague and presumably to cover up the delay and to avoid the suit being thrown out on the ground of limitation. Yet, from the admitted averments in the plaint, the learned single Judge found that the suit was barred by limitation. Therefore, it has to be held that there was no cause of action for filing the suit in the year 2000, seeking to set aside the transactions which were done in the year 1979 / 1982.
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> 26.In terms of Order 7 Rule 11 (d) CPC, the Plaint shall be rejected where the suit appears from the statement in the Plaint to be barred by any law. The scope of Rule 11 of Order 7 CPC has been explained in various decisions and

the legal principle deducible are that, if the Plaint does not disclose the cause of action or is bared by law; can be rejected where the litigation was utterly vexatious and abuse of process of Court ; if any one of the conditions mentioned under the Rule were found to exist, thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation and where the suit was instituted without proper authority. Thus, the provision of Order 7 Rule 11 PC being procedural is designed and aimed to prevent vexatious and frivolous litigation. The plaint is liable to be rejected on the ground of limitation only where the suit appears from the statements in the plaint to be barred by any law and the law within the meaning of clause (d) of Order 7 Rule 11 CPC, shall include law of limitation as well."

16.In the decision reported in ***2015 (3) CTC 54 (Vasumathi H.Shah vs. Pushpa Raju)***, wherein it was held that the suit for specific performance, sale agreement entered on 25.03.2010, specific time for performance of contract has been fixed on or before 25.08.2010 and the suit has been filed on 21.08.2014. Time is the essence of the contract and once the time has been fixed, as per Article 54 of the Limitation Act, three years has been fixed for performance of contract. In this case, dated has been fixed on 25.08.2010 and suit has been filed on 21.08.2014. So, it is filed after three years and hence it was held that the suit is barred by limitation.

17.The execution of Power of Attorney has not been disputed and the Power of Attorney is coupled with interest. In pursuance of the power deed, the aged/first defendant/first petitioner has executed a sale deed in favour of the second defendant on 27.09.2001. The defendants 2 and 3 made development and sold the property in the year 2013. The suit has been filed on 07.10.2013 and hence the suit is barred by limitation. That factum was not considered by the Trial Court. So, the plaint has to be rejected on the ground of barred by law under Order VII Rule 11(d) of CPC i.e. barred by limitation.

18.The second limb of argument advanced by the learned counsel for the petitioner is that there is no cause of action. It is true that cause of action is bundle of facts and it cannot be decided at this application. In paragraph No.16 of the plaint, cause of action has been mentioned. It was stated that Power of Attorney has been executed on 09.06.1990 and he came to know of the sale deed only on 24.05.2013. Hence he filed a suit. So, once the suit is barred by time there is no cause of action of filing the suit as per the settled dictum of the Hon'ble Apex Court in ***2015 (3) CTC 218 (Fatehji & Company and others vs. L.M.Nagpal and others).*** So, I am of the view that there is no cause of action and this aspect was also not considered by the Trial Court. Hence the plaint to be rejected for non-disclosure of cause of action i.e. under

Order VII Rule 11(a) of CPC.

19.The third point is that the Court fee paid is not correct. The suit has to be valued under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act and not under Section 25(d). The Trial Court has held that since he is not a part to the proceeding he can very well file a suit for declaration that the sale deed is not binding. But the above finding is not correct because execution of the Power of Attorney is attempted and in pursuance of the Power of Attorney sale has been effected in faovur of the second defendant. As the owner the second defendant sold the property to defendants 4 to 8. Once the plaintiff filed a suit for declaration that the sale deeds are null and void, he have to file a suit only for declaration and valued the suit under Section 25(d) of the Tamil Nadu Court Fees and Valuation Act and not to file a suit for cancellation of sale deed. Hence the Trial Court has rightly held that whether the suit has to be valued under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act or under Section 25(d) has to be decided only at the time of trial. In such circumstances, I am of the view that I do not want to touch upon the order passed by the Trial Court. Furthermore, considering the Order VII Rule 11 of CPC, payment of Court fee under wrong provision of law alone is not a ground for rejection of the plaint. At this juncture, it is appropriate to incorporate Order VII Rule 11 of CPC, which is as follows:

> "**11.Rejection of plaint.__**The plaint shall be rejected in the

following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any, granted by the Court.

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of rule 9];

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

20.Order VII Rule 11(b) states that once the relief claimed is undervalued and the Court directed the plaintiff to pay the amount within the stipulated time and if he has not paid, then only the plaint has to be rejected. Further as per Order VII Rule 11(c), once the value has been correctly valued, the Court fee has not been paid, there is a deficit Court fee to be paid and if not paid then only the plaint to be rejected. Hence, I am of the view that the argument advanced by the learned counsel for the petitioner in respect of the fact that the suit has to be valued under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act instead of Section 25(d) is not a ground for rejection of the plaint.

21.Therefore, as discussed supra in view of the above finding, the plaint has to be rejected on the ground that the suit is barred by limitation under Order VII Rule 11(d) of CPC and non-disclosure of cause of action under Order VII Rule 11(a) of CPC. Hence, the impugned order passed by the Trial Court is hereby set aside and consequently, the Civil Revision Petition is hereby allowed.

22.In the result, the Civil Revision Petition is allowed. I.A.No.2241 of 2013 is allowed and the plaint is hereby rejected. No costs. Consequently, connected Miscellaneous Petition is closed.

14.12.2015

Index: Yes/No
Internet: Yes/No
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To

The Additional District Munsif Court, Alandur.

R.MALA. J.,

cse

CRP(PD).No.2437 of 2015
and
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