

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4473 of 2015

and

M.P. No.1 of 2015

1.Rasool Khan
2.Minor Sharu Khan
rep. by his father the first petitioner
.. Petitioners/Defendants 3 and 4

Vs.

1.Hussaina Bi
2.Basiri Bi
.. Respondents/Plaintiffs

Prayer:- This Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 13.10.2015 in I.A.No.313 of 2015 in O.S.No.42 of 2015 on the file of the Principal Sub-Court, Krishnagiri.

For Petitioners :Mr.G.Surya Narayanan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 13.10.2015 in I.A.No.313 of 2015 in O.S.No.42 of 2015 on the file of the Principal Sub-Court, Krishnagiri.

2.The respondents herein as plaintiffs filed a suit in O.S.No.45 of 2012 for partition and separate possession of their shares in the suit properties against their father, own sisters and brother. The 9th defendant in that suit, who is the first revision petitioner herein, has filed an application in I.A.No.148 of 2013 in O.S.No.45 of 2012 for rejection of plaint, which was allowed on 15.04.2014. Thereafter, father Mahaboob Khan died and the respondents/plaintiffs have come forward with the present suit in O.S.No.42 of 2015 against their own sisters and brother for partition and separate possession of 2/6th share in the suit properties and also for setting aside the gift deeds alleged to be executed by late Gori Bi and also late Mahaboob Khan in favour of the defendants 3 and 4 as null and void. During pendency of the suit, the defendants 3 and 4/revision petitioners herein, have filed an application in I.A.No.313 of 2015 for rejection of plaint. The trial Court, after hearing both sides, dismissed the application, against which, the present revision petition is preferred by the defendants 3 and 4.

3.Learned counsel for the revision petitioners submits that the present suit in O.S.No.42 of 2015 is barred under Order 2 Rule

2 C.P.C. The respondents/plaintiffs are well known about the existence of gift deeds even at the time of filing the previous suit, but the respondents/plaintiffs have not challenged the same in the previous suit, so the present suit is hit by Order 2 Rule 2 C.P.C. He further submits that once no property has been available for partition, cause of action does not arise and therefore, the present suit should be rejected. This factum was not considered by the trial Court. Hence, he prayed for allowing the revision petition.

4. At the time of admission, argument of the learned counsel for the revision petitioners is heard in length.

5. One Mahaboob Khan is the owner of the suit properties and he had one son and five daughters, out of five daughters, two daughters filed the suit in O.S.No.45 of 2012. The ninth defendant has filed an application in I.A.No.148 of 2013 for rejection of plaint stating that at the time of filing suit, father Mahaboob Khan/first defendant in that suit was alive. During his life time, as per Mohammedan law, his children are not entitled to any share. The trial Court allowed the said application on 15.04.2014 by holding that there is no cause of action for filing the suit. Admittedly, father

Mahaboob Khan died on 11.09.2012. The present suit has been filed in the year 2015 for partition and separate possession of 2/6 shares in the suit properties and setting aside the gift deeds executed by late Gori Bi and late Mahaboob Khan. During pendency of the suit, the revision petitioners/defendants 3 and 4 filed an application in I.A.No.313 of 2015 for rejection of plaint stating that the present suit is hit by Order 2 Rule 2 C.P.C.

6.Now this Court has to decide whether the suit in O.S.No.42 of 2015 is hit by Order 2 Rule 2 C.P.C.? At the time of filing earlier suit in O.S.No.45 of 2012, father Mahaboob Khan is the owner of the suit properties and he was alive. The respondents/plaintiffs have filed the suit against their father for partition and separate possession. Since he was alive, cause of action does not arise and therefore, that plaint was rejected. But now father Mahaboob Khan was not alive. Under such circumstances, the contention raised by the learned counsel for the revision petitioners that the present suit is hit by Order 2 Rule 2 C.P.C., does not merit acceptance.

7.According to the learned counsel for the revision petitioners/defendants 3 and 4, gift deeds are of the year 2008 and

2012 and therefore, the present suit is barred by limitation.

8.It is well settled dictum of the Apex Court that question of limitation is a mixed question of law and fact and that can be decided after letting oral and documentary evidence. So in the threshold, the suit cannot be dismissed on the ground that it is barred by limitation that too at the time of deciding application under Order VII Rule 11 C.P.C. So the argument advanced by the learned counsel for the revision petitioners that no property is available for partition and that there is no cause of action for filing the suit, does not merit acceptance.

9.It is also well settled dictum of the Apex Court that cause of action is not a single event, but it is a bundle of facts and that can be decided only at the time of trial. Furthermore, the suit has also been filed for setting aside the gift deeds allegedly executed by late Mahaboob Khan in favour of defendants 3 and 4. In such circumstances, genuineness of gift deeds can be decided only at the time of trial. So I am of the view, the trial Court has considered all the aspects in proper perspective manner and came to the correct conclusion. The order passed by the trial Court does not

suffer any illegality or infirmity and therefore, it is hereby confirmed. The Civil Revision Petition deserves to be dismissed and it is hereby dismissed. The trial Court, uninfluenced by any of the observations made by this Court in this order, shall dispose of the suit on merits.

10. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.11.2015

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Index: Yes/No

Internet: Yes/No

To

The Principal Sub-Court, Krishnagiri.

R.MALA,J.

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