

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 22.01.2015

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THE HON'BLE MR.JUSTICE R.SUBBIAH

Application No.5568 of 2014
in
C.P.No.553 of 2014

Mrs.Vasumathi H.Shah

... Applicant / Defendant

Vs.

Mrs.Pushpa Raju

... Respondent / Plaintiff

Prayer:- Application has been filed under Order 14 Rule 8 of Original Side Rules read with Order VII Rule 11(d) of C.P.C. read with Section 151 of C.P.C., praying to reject the plaint in C.S.No.553 of 2014 as barred by limitation.

For Applicant : Mr.R.Parthasarathy

For Respondent : Mr.V.Biman

(For M/s.Sampath Kumar & Associates)

ORDER

This application has been filed by the applicant/plaintiff under Order 14 Rule 8 of O.S. Rules r/w Order VII Rule 11(d) of CPC r/w Section 151 of CPC seeking to reject the plaint.

2.The applicant is the defendant and the respondent is the plaintiff in the suit. For the sake of convenience, the parties will be referred as per their rankings in the suit.

3.The respondent/plaintiff has filed the suit for the following reliefs_

(i)to direct the defendant to execute a Sale Deed in favour of the plaintiff on receipt of the balance sale consideration in respect of the suit schedule premises, under the Agreement for Sale dated 25.03.2010, failing which, to direct the Registrar of this Court to execute the Sale Deed on behalf of the defendant in favour of the plaintiff.

(ii)To grant an order of permanent injunction, restraining the defendant, her men, agents, representatives or anyone claiming on her behalf, from alienating, encumbering or entering into any sale agreement in favour of any third party in respect of the suit schedule premises in any manner whatsoever, till the issue of specific performance is settled;

(iii)to direct the defendant to pay the costs of

this suit.

4.The brief facts, which are necessary to dispose of this application, as averred in the plaint, as as follows__

4-1.The plaintiff herein was a tenant in respect of the suit schedule premises since 1992. From the inception, the plaintiff is paying the rent regularly to the defendant herein. The plaintiff is in peaceful possession and enjoyment of the suit schedule property since 1992 without any hindrance. While so, during the year 2010, the defendant offered to sell the suit schedule property to the plaintiff, being a shop portion measuring to an extent of 767 sq.ft approximately at Shop No.4, Wellington Estate, No.53, Commander-in-chief Road, Egmore, Chennai, for a total sale consideration of Rs.42,50,000/-. The offer was accepted by the plaintiff and an Agreement for Sale was entered into between the plaintiff and defendant on 25.03.2010 and the plaintiff paid an advance amount of Rs.2,00,000/- (Rs.1,00,000/- by cash and another sum of Rs.1,00,000/- by cheque No.486128, drawn on Vijaya Bank, Egmore, Chennai). The balance sale consideration of Rs.40,50,000/- was agreed to be paid on or before 25.08.2010.

4-2.The plaintiff by letter dated 31.07.2010 expressed her readiness and willingness to complete the sale and requested the defendant to make the original title deeds relating to the suit schedule property available for verification by her counsel. The plaintiff had further requested the defendant to fix a date, time and place, when and where her counsel may verify the original title documents, that too on or before 15.08.2010.

But, the defendant had neither given any reply to the letter of the plaintiff nor produced the original title documents as required by the plaintiff.

4-3.The plaintiff therefore wrote another letter dated 06.06.2011 reiterating her request to produce the original title documents and informed the defendant that she is ready and willing to perform her part of contract as early as possible, for which also she had neither received any response nor any reply from the defendant. The plaintiff had been conveying her readiness and willingness to perform her part of contract and requested the defendant to produce the original title deeds by letters dated 21.12.2011, 06.03.2012, 04.06.2012, 25.07.2012 and on 30.11.2012. But, the defendant having received the said letters, failed and neglected to send any reply or produce the documents for verification.

4-4.The defendant had been in the habit of not paying tax due to the CMWSSB in respect of the suit schedule premises with an intention to harass the plaintiff, who was in occupation of the subject premises. Hence, the plaintiff has been served with demand notice dated 15.05.2014 from Wellington Estate Society stating that the defendant has not paid the CMWSSB Water and Drainage Tax to the tune of Rs.59,374/-, and if not paid, threatening to seal the portion occupied by the plaintiff. This was duly informed to the defendant, but defendant did not take any step to pay the same. Hence, the plaintiff was compelled to pay the said taxes on behalf of the defendant. Thereafter, the plaintiff had again sent a letter to the defendant on 3.05.2014 informing her readiness and willingness to perform her part of contract and requested the defendant to complete the

transactions, and further, stating that failing which necessary legal action will be initiated.

4-5.The defendant on 10.06.2014, for the first time, sent a reply to the plaintiff stating that the agreement dated 25.03.2010 is not valid according to law and it is already time barred; that the time for the agreement had expired on 25.03.2013; that she did not have any intention to sell the suit schedule property. The defendant has, thus for the first time, refused to perform her part of contract and also entered a caveat through her counsel.

4-6.The plaintiff has always been ready and willing to perform her part of the contract in respect of the agreement for sale dated 25.03.2010 and has sent several letters to the defendant expressing her readiness and willingness on various dates, for which, the defendant has not chosen to give any reply. Only on 10.06.2014, the defendant for the first time refused to perform her part of the contract. Hence, the present suit has been filed by the plaintiff for the reliefs as stated supra.

4-7.Pending the suit, the plaintiff has also filed an application in O.A.No.666 of 2014 praying to grant an order of interim injunction, restraining the defendant, her men, agents, representatives or anyone claiming on her behalf, from alienating, encumbering or entering into any sale agreement in favour of any third party in respect of the suit schedule property.

5.This Court, by order 27.08.2014 in O.A.No.666 of 2014, has passed

an interim order of *status quo*.

6. On appearance, the defendant has filed the above application under Order VII Rule 11 of CPC, seeking to reject the plaint, contending as follows_

The agreement for sale was entered into between the defendant and the plaintiff on 25.03.2010. As per the terms of the said sale agreement, the defendant received an advance of Rs.1,00,000/- by cash and a further sum of Rs.1,00,000/- by cheque. The agreement further specifically stated that the plaintiff should pay the balance sale consideration of Rs.40,50,000/- on or before 25.08.2010. The time fixed in the agreement of sale for performance by the plaintiff i.e., payment of entire balance sale consideration is 25.08.2010. After entering into the agreement for sale, the plaintiff did not show any readiness or willingness to complete the transaction on or before 25.08.2010, but, started delaying the performance, by raising issues which were not contemplated in the agreement for sale. After the agreement for sale, the plaintiff wrote a letter dated 31.07.2010, stating as though she is ready and willing to complete the sale, provided the original title deeds for the suit property are made available by the defendant. After having written the letter on 31.07.2010, the plaintiff had chosen to keep quiet for a year and thereafter, wrote another letter dated 06.06.2011, followed by letters dated 21.12.2011, 06.03.2012, 04.06.2012, 25.07.2012, 30.11.2012 and 30.05.2014 to the same effect. The conduct of the plaintiff in writing the letters mentioned above was merely a ruse to delay payment of balance sale consideration, in as much as the plaintiff was not in

possession of funds for completing the sale transaction. Since the date for performance of the sale agreement has been fixed as 25.08.2010, the plaintiff ought to have approached the Court by way of a suit for specific performance, within a period of three years from 25.08.2010, ie., on or before 24.08.2013. However, the present plaint, which is dated 06.08.2014, has been filed only on 21.08.2014, which is much beyond the period of limitation. Without going into the merits of the matter, a mere perusal of the documents on record as filed by the plaintiff would clearly reveal that the suit is barred by limitation. Hence, the defendant sought for the rejection of the plaint.

7.It is the submission of the learned counsel for the applicant/defendant that the agreement for sale was entered into between the defendant and the plaintiff on 25.03.2010. As per the agreement, the time for performance of the sale agreement was fixed as 25.08.2010. Since the date was fixed for performance of the sale agreement, the plaintiff ought to have filed the suit within three years from the date fixed for performance of the sale agreement, as per Article 54 of the Limitation Act. The three years period expired on 25.08.2013; whereas the present suit has been filed only on 21.08.2014, much beyond the period of limitation. Thus, it is the submission of the learned counsel for the applicant/defendant that the plaint is liable to be rejected under Order VII Rule 11 of CPC. In this regard, the learned counsel for the applicant/defendant relied upon the following decisions_

- i)(2009) 5 SCC 462 (Ahmadsahab Abdul Mulla Vs. Bibijan)***
- ii)(2005)6 SCC 614 (Narne Rama Murthy Vs. Ravula Somasundaram)***
- iii)2013(4) CTC 175 (M.Banupriya Vs. M.Lakshmi and others).***

8.Per contra, the learned counsel for the respondent/plaintiff submitted that the plaintiff has always been ready and willing to perform her part of the contract; to complete the sale, the plaintiff had requested the defendant to make available the original deeds relating to the property for verification of her counsel, by various letters dated 31.07.2010, 06.06.2011, 21.12.2011, 06.03.2012, 04.06.2012, 25.07.2012, 30.11.2012 and 30.05.2014. But, none of these letters were replied by the the defendant. Finally, only on 10.06.2014, the defendant for the first time refused to perform her part of the contract. Hence, from the date of refusal by the defendant, the plaintiff is having time to file the suit within three years. Accordingly, the present suit has been filed by the plaintiff on 21.08.2014 ie., within three years from the date of refusal by the defendant on 10.06.2014. Hence, according to the learned counsel for the respondent/plaintiff, the suit is not barred by limitation. In this regard, the learned counsel for the respondent/plaintiff relied upon the judgment reported in ***2014 (6) CTC 333 (SC) [Rathnavathi & another Vs. Kavita Ganashamdass]*** and submitted that the plea of limitation is mixed question of facts and law and the question as whether the suit is hit by limitation or not, can be decided only during the course of trial and the same will not

serve as a ground to reject the plaint.

9.It is further submitted by the learned counsel for the respondent/plaintiff that while considering the application under Order VII Rule 11 of CPC to reject the plaint, the averments made in the plaint alone have to be taken into consideration. In the instant case, the averments in the plaint make out a clear cause of action to file a suit for a specific performance as against the defendant; under such circumstances, the other documents annexed with the plaint need not be looked into at this stage; therefore, the sale agreement dated 25.03.2010 cannot be taken into consideration for rejection of the plaint.

10.But, by way of reply, the learned counsel for the applicant/defendant submitted that the plaintiff has filed the suit only based on the sale agreement dated 25.03.2010; therefore, the contention in the sale agreement can be looked into for rejection of the plaint. In support of this contention, the learned counsel for the applicant/defendant relied upon the judgment reported in **1970 MLJ 400 (Nithayya Thevar Vs. Subramanian Ambalakarar)** and **2012(4) CTC 308 [The Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniamman Educational Trust (SC)]**.

11.I have carefully heard the submissions made on either side and perused the materials available on record.

12.The sale agreement was entered into between the plaintiff and defendant on 25.03.2010. In the sale agreement, the total sale consideration was fixed at Rs.42,50,000/-. The plaintiff has paid an advance amount of Rs.2,00,000/- to the defendant. The balance sale consideration of Rs.40,50,000/- was agreed to be paid by the plaintiff to the defendant on or before 25.08.2010. From a reading of the sale agreement, it could be seen that a specific date has been fixed for the performance of the sale agreement as 25.08.2013. It is the case of the plaintiff that though the plaintiff was ready and willing to perform her part of the contract, the defendant has not come forward to produce the original title deeds relating to the suit property, to complete the sale transaction. It is further case of the plaintiff that though several letters have been sent by the plaintiff to the defendant continuously, the defendant has not replied none of the letters; finally only on 10.06.2014, the defendant has refused to perform her part of the contract. Hence, according to the learned counsel for the plaintiff, the plaintiff has filed the suit within the three years' period from the date of refusal of the defendant.

13.But, in my considered opinion, since specific date has been fixed for performance of the contract under sale agreement, the plaintiff ought to have filed the suit within three years' period from the date of expiry of the date fixed for performance of the contract, as required under Article 54 of the Limitation Act. In this regard, it would be appropriate to extract Article

54 of the Limitation Act, which reads as follows_

54.	<i>For specific performance of a contract</i>	<i>Three years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused</i>
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A reading of Article 54 of the Limitation Act would show that if the date is fixed for performance of the agreement, then non-compliance of the agreement on the date would give a cause of action to file the suit for specific performance within three years from the date so fixed. If no such date is fixed, limitation of three years to file a suit for specific performance would begin only when the plaintiff has notice that the defendant has refused the performance of the agreement. In the instant case, since the specific date has been fixed under the agreement, the plaintiff ought to have filed the suit within three years from the date so fixed. But, the defendant has computed the limitation period only from the date of reply sent by the defendant i.e., 10.06.2014. The said reply itself has been sent by the defendant only after expiry of three years limitation period from the date fixed for performance under the agreement. Therefore, in my considered opinion, it is apparent from the records, the suit is clearly barred by limitation.

14. It is another submission of the learned counsel for the respondent/plaintiff that while considering the application under Order VII Rule 11 of CPC to reject the plaint, the documents filed along with the plaint

can not be looked into; only the averments made in the plaint alone have to be taken into consideration. But, I find that since the suit itself has been filed only based on the sale agreement, the said document has to be treated as part and parcel of the plaint. In this regard, a useful reference could be placed in the decision, relied upon by the learned counsel for the applicant/defendant, reported in **2012(4) CTC 308 [The Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniamman Educational Trust (SC)]**, wherein it has been held as follows_

“13.In the light of the controversy, we have gone through all the averments in the plaint. In paragraph 4 of the Plaint, it is alleged that the 2nd defendant as agreement holder of the 1st defendant and also as the registered Power of Attorney holder of the 1st defendant executed the Agreement of Sale. In spite of our best efforts, we could not find any particulars showing as to the documents which are referred to as 'agreement holder'. We are satisfied that neither the documents were filed along with the Plaint nor the terms thereof have been set out in the Plaint. The above mentioned two documents were to be treated as part of the Plaint as being the part of the cause of action. It is settled law that where a document is used upon and its terms are not set out in the plaint but referred to in the Plaint, the said document gets incorporated by reference in the plaint. This position has been reiterated in **U.S.Sasidharan Vs. K.Karunakaran and another, 1989 (4) SCC 482** and **Manohar Joshi Vs. Nitin Bhaurao Patil and another, 1996 (1) SCC 169.**”

In the judgment reported in **1970 MLJ 400 (Nithayya Thevar Vs. Subramanian Ambalakarar)**, it has been held by this Court as follows_

“Order 7, Rule 11, of the Civil Procedure Code provides that, where the suit appears from the statement in the plaint to be barred by any law, the plaint may be rejected and the contention of the learned Counsel is that the learned District Munsif ought to have held on the pleadings that there was a doubt about the actual date on which the promissory note was executed and should have relegated the question of limitation to be decided during the trial and that he was wrong in looking into the promissory note which admittedly bears only the Tamil date 27th Adi, Krodhi at that stage. The question whether the recitals made in the promissory note, which was admittedly filed by the petitioner along with the plaint, should be treated as part of the statement in the plaint, is not free from difficulty ; and it -does not appear that there is any direct decision on this point. One thing, however, is clear and it is that a document which is referred to in, forms the basis of and is 'filed along with the plaint should be treated as part of the plaint. It must be borne in mind that Order 7, Rule 14 (1) stipulates that the plaintiff shall produce in Court the document upon which he sues, when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint. In my view, it would be artificial to divorce the said document from the plaint and to contend that the said document which is admittedly filed along with and forms the basis of the plaint should not be looked into by the

Court and should not be regarded as part of the plaint while checking the plaint before filing the suit. Where the allegations in the plaint are at variance with the material recitals in the document which form the basis of the suit, it would be open to the Court to return the plaint for rectification; and in a case of this kind it appears to me clear that the Court would be perfectly justified in treating the recitals in such documents as part of the statement in the plaint for purposes of rejection under Order 7, Rule 11 of the Civil Procedure Code."

In the instant case, the sale agreement has to be treated as a part of the plaint as being a part of cause of action, since the suit has been filed only based on the sale agreement. Hence, in my considered opinion, when a particular document forms the basis of the plaint, the said document has to be treated as part of the plaint as being the part of cause of action. In such a circumstances, the contention of the said document can be looked into, for the purpose of deciding the application to reject the plaint.

15. It is another submission of the learned counsel for the respondent/plaintiff that the plea of limitation is mixed question of facts and law and as such, the plaint cannot be rejected at the threshold stage and the same can be decided only at the time of trial. But, I am of the opinion that when it is apparently clear from the averments of the plaint that the suit has been filed beyond the period of limitation, the plaint could be rejected even at the threshold stage. In this regard, a reference could be placed in the decision reported in **2013(4) CTC 175 (M.Banupriya Vs. M.Lakshmi**

and others), wherein it has been held as follows_

"37. But I am of the opinion that when it is apparently clear from the averments of the plaint that the suit has been filed beyond the period of limitation, then the plaint could be rejected even at the threshold stage. At this stage, it would be apt to rely on the judgment of the Hon'ble Apex Court reported in **Hardesh Ores Pvt.Ltd., and another .vs. Hede and Company ((2007) 5 MLJ 187 (SC)** gives a fitting answer for this issue and the relevant paragraphs are extracted hereunder:

"21. The language of Order VII Rule 11 C.P.C. is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr.Nariman did not dispute that "law" within the meaning of clause(d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the

language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in *Liverpool & London S.P.& I Association Ltd., .vs. M.V.Sea Success I and Another* (2004) 9 SCC 512 and *Popat and KotechaProperty v. State Bank of India Staff Association* (2005) 7 SCC 510".

38. A reading of the above paragraphs would show that when it is apparent from the averments made in the plaint and the materials that the suit is filed beyond the limitation period, then the same is liable to be rejected. As per the provisions under Order VII Rule 11(d), where the suit appears from the statement in the plaint to be barred by any law, then the plaint is liable to be rejected. The wordings 'any law' envisaged in Order VII Rule 11(d) includes law of limitation also. So far as the present case is concerned, as observed, the present suit has been filed after 11 years from the date on which she got knowledge about the purchase of 'C' schedule property by D3 from D2 as power agent of the plaintiff and seven years from the date on which D4 purchased 'B' schedule property from D1. Therefore, I am of the view that the suit is hopelessly barred by limitation. ... ' '

In the instant case, from the averments made in the plaint it is apparently clear that the suit filed by the plaintiff is hopelessly barred by limitation. Hence, the plaint is liable to be rejected under the provisions of Order VII Rule 11 of C.P.C.

In the result, the above application is allowed and the plaint is rejected. Consequently, O.A.No.666 of 2014 is also dismissed.

22.01.2015

Internet : Yes / No

Index : Yes / No

SSV

R.SUBBIAH, J.

(SSV)

Pre-delivery order
in

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in
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