IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.4789 of 2014
and
M.P.No.1 of 2014

T.Velayutham
No.26, Robbertson Lane,
Mandaveli, Madras 600 028 ... Petitioner

vs.

1. Niranjanadevi,
   W/o.Mr.Mohan
   No.50, Kasima Nagar, 2nd Street,
   Royapuram, Chennai 600 013

2. D.Poovazhagi
   W/o.Mr.Dillibabu,
   New No.170, Old No.20,
   Mannarswamy Koil Street,
   Royapuram, Chennai 600 013.

3. S.Megala
   W/o.Sekar
   No.764, 24th Block Nagoorar Thottam,
   Tondiarpet, Chennai 600 081.

4. S.Thulasi Lakshmi
   W/o.Shanthkumar
   No.16/13, East Mada Koil Street,
   8th Lane, Royapuram, Chennai 600 013.

5. K.Ramakrishnan,
S/o.Krishnaswamy Chettiar,
No.2, Amman Koil Street,
Royapuram, Chennai 600 013 ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 01.11.2014 in I.A.No.8268 of 2014 in O.S.No.5355 of 2013 on the file of IV Assistant City Civil Judge at Chennai.

For Petitioner : Mr.S.Sethuraman
For Respondents : Mr.M.S.Subramanian

ORDER

The sole defendant in the original suit O.S.No.5355 of 2013 on the file of IV Assistant Judge, City Civil Court, Chennai is the petitioner in the present revision.

2. The said suit came to be filed by the respondents 1 to 5 herein against the petitioner in the revision for rendition of account on the basis of a registered general power of attorney dated 06.01.1990 authorising him to manage the properties mentioned therein and sell the same. The said power of attorney came to be executed by one Subbulakshmi, the mother of the plaintiffs, and the respondents 1 to 3 herein and that while executing the said power of attorney, the mother

acted for herself and as guardian of the respondents 4 and 5 who were minors at that point of time. Rendition of accounts has been sought for on the premise that three sale deeds came to be executed by the petitioner herein as an agent of the respondents herein / plaintiffs. A clear averment has also been made in paragraph 11 of the plaint to the effect that the Power of Attorney given in favour of the petitioner herein / defendant was not terminated either explicitly or impliedly and that the Power of Attorney had not come to an end by efflux of time. Based on the said averment and also based on the demand made by the respondents 4 and 5 under a lawyer's notice dated 12.06.2011 demanding rendition of accounts, the suit came to be filed by all the respondents herein for a decree directing the petitioner herein / defendant to render true and correct accounts as per the deed of Power of Attorney and to pay the sum of Rs.1,00,000/- as damages.

3. The petitioner / defendant, on appearance, filed a petition in I.A.No.8268 of 2014 under Order VII Rule 11 CPC praying for an order rejecting the plaint on the ground that the relief sought for in the suit has been barred by limitation.

4. The said petition was resisted by the respondents herein and ultimately after hearing both sides, the learned trial Judge passed an order dated 01.11.2014, dismissing the said application I.A.No. 8268 of 2014 filed under order VII Rule 17 CPC. It is as against the said order of the learned trial Judge, the present Civil Revision Petition has been filed, not under Section 115 of the C.P.C but under Article 227 of the Constitution of India.

5. Notice before admission was served on the respondents and the respondents are also represented by Counsel. The arguments advanced by Mr.S.Sethuraman, learned counsel for the petitioner and by Mr.M.S.Subramanian, learned counsel for the respondents are heard. The grounds of revision, copy of the order of the trial Court which is challenged in the revision, copies of the documents produced in the form of typed set of papers are also produced.

6. First of all, the invocation of the power of superintendence over the Subordinate Courts under Article 227 of constitution of India when an effective and efficacious alternative remedy is available is not proper and this Court shall not grant the relief under Article 227 of

Constitution of India. The order sought to be challenged is one dismissing the application filed under Order VII Rule 11 C.P.C praying for the rejection of the plaint. The proviso to Section 115(1) of C.P.C. states that the High Court shall not, under the said section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings. The order passed in the application filed under order VII Rule 11 C.P.C is one of dismissal of petition which has not put an end to the litigation in this suit. Had it been made in favour of the petitioner herein then, it would have resulted in termination of the suit itself. Hence, the bar provided under the said proviso does not get attracted. As such there is a statutory remedy, which is an alternative, effective and efficacious remedy that could have been sought for by invoking the revisional powers of this Court under Section 115 of the Code of Civil Procedure.

7. Of course, a person cannot be non suited for a relief, if he is entitled to it, for the simple reason that a wrong provision has been cited as the provision under which the relief is sought for and the Court can treat the petition to be one under the proper provision and grant

the relief in appropriate cases. But the said principle will not be attracted when the nature of proceeding itself will be changed. A revision contemplated under Section 115 of the Code of Civil Procedure is not in the original jurisdiction of the High Court. It is a revisional jurisdiction which is equivalent to an appellate Court jurisdiction. On the other hand, a petition under Article 227 of the Constitution of India is a petition invoking the original jurisdiction of the High Court. Hence, the principle of treating the petition as one filed under a proper provision may not get attracted to the case on hand.

8. Even on the merits of the case, the petition is liable to be dismissed. There are umpteen number of decisions which go to show that the question of limitation raised by the defendant in the suit shall be a mixed question of law and fact, which has got to be raised as an issue, tried and decided based on the evidence to be adduced by the parties. To such a general rule that the question of limitation, being a mixed question of law will come under Sub Clause(d) of order VII Rule 11 C.P.C. is subject to an exception. The exception is, when the plaint averments themselves make it clear that the relief sought for in the plaint is barred by limitation, then no purpose will be served in relegating the parties to the trial of that issue and the bar of limitation,

which is explicit in the pleading of the plaint itself, shall attract order VII Rule 11 Sub Clause (d), namely, the relief being barred by a statutory provision.

9. In this regard, reference may be made to Section 3 of the Limitation Act, which reads as follows:-

> *3. Bar of limitation:-(1) Subject to the provisions contained in Sections 4 to 24(inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.*

The language used in Section (3) of the Limitation Act makes it clear that the suit or other proceeding shall be dismissed irrespective of the fact whether the question of limitation is raised as a plea of defence by the opposite party or not. Such a finding can be arrived at based on the plaint plea itself without seeking the aid of any other material. In such an event, order VII Rule 11 Clause (d) gets attracted. Sometimes such a decision may be arrived at in the course of trial based on the evidence adduced by the parties or the materials brought before the Court by the parties. In that event, the question of rejection of the plaint will not arise and it shall be proper for the Court

to dismiss the suit or the appeal as the case may be rendering a finding on the question of limitation based on evidence. In the case on hand, nothing can be discerned from the pleading made in the plaint to show that on the basis of the plaint averments themselves, the suit is barred by limitation.

10. The learned counsel for the petitioner submits that since the respondents 4 and 5/ plaintiffs 4 and 5 themselves in the pre-suit notice contended that the Power of Attorney executed in favour of the petitioner herein / defendant is null and void, the claim for rendition of accounts by them is not maintainable. But, a conjoint reading the plaint and the notice shall show that alternative pleas have been made to seek rendition of accounts from the petitioner / defendant. Alternative pleas being mutually exclusively cannot be the ground on which the plaint can be rejected. The only ground on which the petitioner / defendant has sought the rejection of the plaint is that the suit is barred by limitation. In an attempt to support the plea, learned counsel for the petitioner submits that sale deeds were executed based on the said deed of power of attorney in the year 1990 itself and hence, the claim made for rendition of accounts and damages after 23 years stands clearly barred by limitation.

11. On the other hand, it is the contention of the learned counsel for the respondents that when a deed of power of attorney is executed giving power to the agent to deal with the property, to sell the property and realise the sale proceeds, the said agency in respect of money realized by the sale of the property will be governed by Article 3 of the Limitation Act. According to the learned counsel for the respondents, since the agency has not been terminated either by accomplishment of the purpose for which the agency was created or by act of parties, the suit filed by the respondents cannot be said to be barred by limitation.

12. On the other hand, the learned counsel for the petitioner would rely on the very same article and submit that the limitation for seeking rendition of accounts would start running only from the date of demand and since no demand was made by the respondents 1 to 3 / plaintiffs 1 to 3 and on the other hand it was made only by the respondents 4 and 5/ plaintiffs 4 and 5 and all the respondents / plaintiffs have joined together and filed the suit, the same is not maintainable. The tenor of the said argument advanced by the learned counsel for the petitioner seems to be that a principal seeking

rendition of accounts from the agent cannot maintain a suit before making a pre-suit demand. In fact, Article 3 of the Limitation Act simply prescribes the period of limitation for a suit seeking rendition of accounts from the agency. It prescribes the period of limitation and also prescribes the starting point of limitation. During the continuance of the agency, the starting point of limitation for rendition of accounts shall the date of refusal after a demand for such rendition of accounts has been made. If there was no demand during the continuance of the agency, the starting point of limitation shall be the date on which the agency terminates.

13. As the said article prescribes the starting point of limitation, it does not mean that before the starting point of limitation one cannot file a suit. In fact, in the case on hand, the respondents 4 and 5 made a demand for rendition of accounts, the same was refused by reply notice. Within three years, thereafter, the suit came to be filed. So far as the other respondents are concerned, they are not only principals in the sense they have subscribed their signatures in the Power of Attorney but also they are the legal heirs of their mother, who was one of the principals. It is not in dispute that the mother of the respondents died in the year 2012. On the death of the mother of

the plaintiffs, so far as her right, apart from the rights of respondents 4 and 5 are concerned, the agency got terminated on her death. Within three years thereafter, the suit came to be filed. Hence, it cannot be contended that on the basis of the plaint averments themselves, the suit appears to be barred by limitation to attract order VII Rule 11 (d) C.P.C. The learned trial Judge has not committed any error or mistake correctable by this Court in exercise of his power or superintendence over the Subordinate Courts under Article 227 of Constitution of India.

14. There is no merit in the revision and the same deserves to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

18.02.2016

Index: Yes/No

Internet: yes/No

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To

The District Munsif, Tiruvallur,
Tiruvallur District.

P.R.SHIVAKUMAR.J

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