

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.708 of 2012

& MP Nos.1 of 2012 and 1 of 2015

Govindarajan Padayatchi

...Appellant/Plaintiff

Vs.

1.Premananda Vijayakumaran & Prem Anand
2. Jansi Rani ayal
3. Vijayarani Ayal
4. Rajarathinavalli Ayal
5. Roja Vairam ...Respondents 1 to 5/Defendants
6. Ilangovan
(sixth respondent impleaded as party respondent
vide order of Court dated 8.1.2013 made in M.P.No.2 of 2012)
..6th Respondent

Prayer:- Appeal suit filed under Section 96 of CPC r/w
Order 41 Rule 1 of CPC against the judgment and decree, dated
28.3.2012, passed by the Principal District and Sessions
Judge, Ariyalur made in O.S.No.16 of 2011.

For Appellant :Mrs.Chitra Sampath
Senior Counsel for
Mr.T.S.Baskaran

For Respondents : Mr.S.Parthasarathy, Senior Counsel
for Mr.S.Vijayakumar for R1 to R5
Mr.M.Venkatachalapathy, Senior Counsel
for Mr.M.Sriram for R6

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This appeal suit has been directed against the order
dated 28.03.2012 passed in O.S.No.16 of 2011, by the Principal
District and Sessions Court, Ariyalur.

2. The appellant herein, as plaintiff has filed O.S.No.16
of 2011 on the file of the Court below for the relief of
specific performance and perpetual injunction, wherein the
present respondents 1 to 5 have been shown as defendants.
During pendency of the same, the defendants, as petitioners,
have filed I.A.No.3 of 2012 under Order 7 Rule 11 of Civil
Procedure Code, 1908 praying to reject the plaint for the

reasons mentioned therein. The Court below, after considering the divergent contentions raised on either side, has allowed the petition and thereby rejected the plaint, which has been taken on file in O.S.No.16 of 2011. Against the order of rejection, the present Appeal Suit has been preferred at the instance of the plaintiff/respondent, as appellant.

3. Before contemplating the rival submissions made on either side, it would be more useful to look into the plaint filed in O.S.No.16 of 2011. In the plaint, it is averred that the defendants have jointly executed the suit sale agreement on 10.11.2005 in favour of the plaintiff and thereby agreed to sell the suit properties. Further, in the plaint, it is stated that cause of action for the suit has arisen after the disposal of the Second Appeal No.1844 of 1998 on 22.2.2011.

4. On the basis of the averments made in the plaint, the defendants, as petitioners, have filed I.A.No.3 of 2012. The Court below has come to a definite conclusion that the plaint is totally bereft of necessary particulars and further the same is barred by limitation and ultimately rejected the plaint.

5. The learned counsel appearing for the appellant/plaintiff has contended with great vehemence that the suit sale agreement has come into existence on 10.11.2005, wherein the defendants have clearly agreed to sell the property mentioned therein in favour of the plaintiff for the amount mentioned therein and further in the suit sale agreement, it is recited to the effect that the defendants are bound to execute a sale deed only after getting copies of judgment and decree passed in Second Appeal No.1844 of 1998 and the same has been disposed of on 15.2.2010. Under such circumstances, cause of action for the suit has arisen only from 15.2.2010 and the same has been instituted in the year 2011 and as per Article 54 of the Limitation Act, 1963, the suit has been filed well within the time and the court below, without considering the necessary averments made in the plaint, has erroneously rejected the same and further, earlier proceedings would not operate as res judicata to the present suit and therefore, the order passed by the court below is liable to be set aside.

6. Per contra, the learned senior counsel appearing for the respondents 1 to 5 has contended that even in the suit sale agreement, Second Appeal No.1194 of 1988 has been mentioned and the same has been disposed of as early as on 14.7.1997 and the present suit has been instituted in the year 2011, even though the agreement has come into existence in the year 2005 and therefore, the present suit is clearly barred by limitation and therefore, the plaint is totally bereft of all necessary particulars and the court below, after considering the lack of particulars in the plaint and also limitation, has rightly rejected the plaint and therefore, the order passed by

the Court below does not require any interference.

7. The short point that arises for consideration in the present Appeal Suit is as to whether O.S.No.16 of 2011 has been filed within the period of limitation?

8. It is an admitted fact that as per Section 54 of the Limitation Act, 1963, a suit for specific performance has to be instituted within a period of three years, if a specific period is mentioned and if there is no period, a suit has to be instituted within three years from the date of refusal on the part of the defendant.

9. The contention put forth on the side of the appellant/plaintiff is that the suit sale agreement has come into existence on 10.11.2005. In fact, this Court has closely perused the entire recital found in the suit sale agreement, wherein it has been specifically mentioned that after getting judgment and decree copies of Second Appeal No.1194 of 1988, the defendants are bound to execute a sale deed in favour of the plaintiff. Nowhere in the suit sale agreement, it has been stated that only after disposal of Second Appeal No.1844 of 1998, the defendants are bound to execute a sale deed in favour of the plaintiff. It is an admitted fact that Second Appeal No.1194 of 1988 has been disposed of as early as on 14.7.1997. Since Second Appeal No.1194 of 1988 has been disposed of as early as on 14.7.1997 and the same has not been disclosed in the plaint, the contentions urged on the side of appellant/plaintiff to the effect that soon after disposal of Second Appeal No.1844 of 1998, the defendants are bound to execute a Sale Deed in favour of the plaintiff, cannot be accepted.

10. It is also a settled principle of law that the plea of limitation is nothing but a question of law and facts, but however, the Court can very well reject a legal proceeding, if it is apparent on the face of the record that the same is barred by limitation. In the instant case, as rightly pointed out on the side of the respondents 1 to 5, no mention has been made with regard to disposal of Second Appeal No.1194 of 1988 and therefore, the plaintiff has schemingly suppressed the material facts in the plaint so as to institute the same within the period of limitation. Further, it is easily discernible that no cause of action has arisen to institute the present suit.

11. As per Order 7 Rule 11 of Civil Procedure Code, 1908, if a particular plaint does not disclose the cause of action, the same can be rejected. Therefore, it is quite clear that the court below, after considering the lack of materials in the suit and also after considering that the suit is not having cause of action, has rightly rejected the plaint and in view of the discussions made earlier, this Court has not found any force in the contentions put forth on the side of the

appellant/plaintiff, whereas the contentions put forth on the side of the respondents 1 to 5 are really having subsistence force and altogether the present appeal suit deserves to be dismissed.

In fine, this appeal suit is dismissed with cost. The order dated 28.03.2012 passed in O.S.No.16 of 2011, by the Principal District and Sessions Court, Ariyalur is confirmed. Consequently, the connected Miscellaneous Petitions are closed.
ajr

Sd/-
Asst.Registrar

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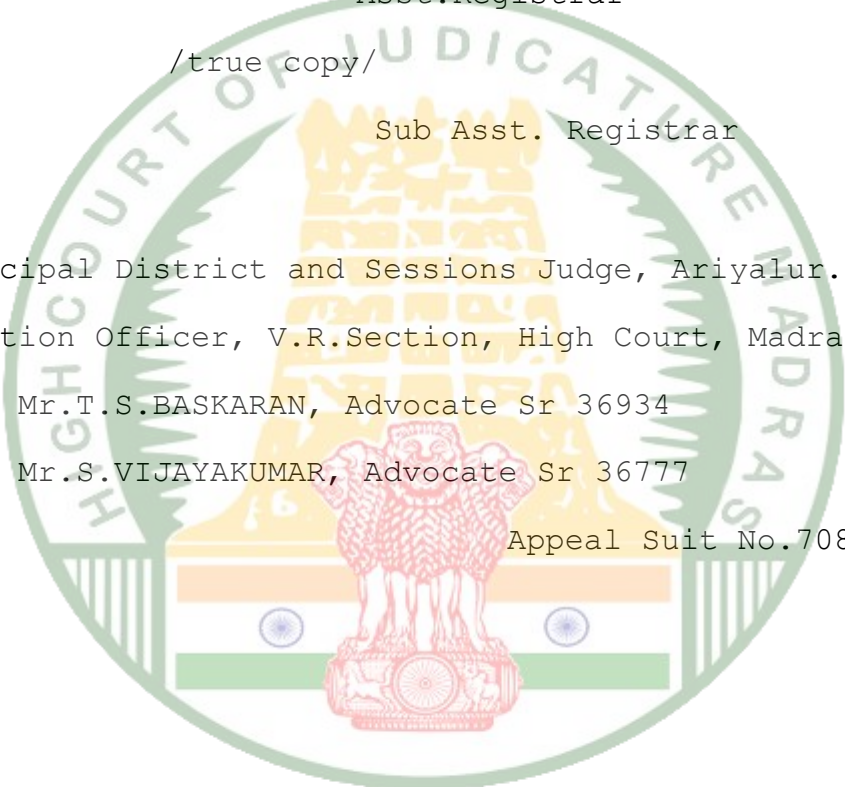
Sub Asst. Registrar

To

- 1.The Principal District and Sessions Judge, Ariyalur.
 2. The Section Officer, V.R.Section, High Court, Madras.
- + 2 ccs to Mr.T.S.BASKARAN, Advocate Sr 36934
+ 2 ccs to Mr.S.VIJAYAKUMAR, Advocate Sr 36777

KR/27/7/16

Appeal Suit No.708 of 2012

The seal of the High Court of Madras is a circular emblem. It features a central image of the Lion Capital of Ashoka, which is a four-lion capital carved from a single block of dark soapstone. The lions are facing the four cardinal directions. Below the capital is a frieze with four panels, each depicting a different animal: a galloping horse, a bull, a lion, and a galloping elephant. The entire seal is surrounded by a green border with the text 'HIGH COURT OF JUDICATURE MADRAS' in white capital letters. At the bottom of the seal, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

सत्यमेव जयते

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