

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.463 of 2016

&

C.M.P.No.2356 of 2016

M/s.NDA Property Development Pvt. Ltd  
represented by its Managing Director  
R.Rajkumar  
S/o Ramasamy

... Petitioner

vs

1.P.Saravanan @ Saravanakumar

2.Kalpana

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order passed in I.A.No.297/2013 in O.S.No.374 of 2013 dated 30.11.2015 on the file of I Additional District and Sessions Judge, Coimbatore.

|                 |   |                                       |
|-----------------|---|---------------------------------------|
| For Petitioner  | : | Mr.A.Arumugam<br>for Mr.K.S.Kaviarasu |
| For Respondents | : | Mr.S.Saravanan                        |

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**ORDER**

This revision challenges the order of learned I Additional District and Sessions Judge, Coimbatore, passed in I.A.No.297/2013 in O.S.No.374 of 2013

on 30.11.2015.

2. O.S.No.374 of 2013 on the file of I Additional District and Sessions Judge, Coimbatore has been filed by respondents/plaintiffs seeking the following reliefs:

*a) partition of suit properties and for declaration that sale deed, document No.4084/2000, dated 15.12.2000 executed by defendant 1 to 4 in favour of 5<sup>th</sup> and 6<sup>th</sup> defendant and the sale deed, document No.2288/2005, dated 15.04.2005 executed by 5<sup>th</sup> and 6<sup>th</sup> defendants in favour of the 7<sup>th</sup> defendant, besides that the sale deed document No.4911/2009 executed by the 7<sup>th</sup> defendant in favour of the 8<sup>th</sup> defendant as null and void and not binding on the plaintiffs.*

*b) permanent injunction restraining the defendant from alienating the plaintiff's share in the suit property*

*c) award costs of the suit”*

3. The 8<sup>th</sup> defendant moved I.A.No.297/2015 seeking rejection of the plaint contending that the plaintiffs were challenging sale deeds executed by their mother on her own behalf as also on behalf of the plaintiffs who were then minors. The suit had been preferred by the plaintiffs who were aged 26 and 24 as on the date of filing of the suit. As they have preferred the action beyond three years of the date of their attaining majority, the suit was barred under Article 60 of the Limitation Act. Court below has dismissed I.A.No.297/2013, inter alia on the reasoning that limitation was a mixed question of law and fact. Aggrieved, the petitioner/8<sup>th</sup> defendant filed the

present revision.

4. Heard learned counsel for petitioner and learned counsel for respondents.

5. The factual circumstances attending the case are as follows:

Defendants 1 to 4 had effected sale of properties to defendants 5 and 6 under a deed of sale dated 15.05.2000. Schedule I of the sale deed comprised of two items of properties while Schedule II comprised one. In executing such sale deed the 4<sup>th</sup> defendant had also represented her then minor children, the plaintiffs. Of the property purchased by them, defendants 5 and 6 sold the I schedule property comprising two items to 7<sup>th</sup> defendant on 15.04.2005. In turn the 7<sup>th</sup> defendant had sold the property purchased by him to the 8<sup>th</sup> defendant under a sale deed dated 22.04.2007.

6. Learned counsel for petitioner submitted that pursuant to the first sale deed, monies have been deposited in the names of the then minors/plaintiffs and they had also withdrawn the same. Learned counsel placed reliance on judgment of Hon'ble Apex Court in ***Prof. Sumer Chand v. Union of India, (1994) 1 SCC 64*** . He also placed reliance on the judgment of Delhi High Court in 2015 (5) R.C.R. (Civil) 942.

7. Learned counsel for respondents submitted that the contentions of plaintiffs having had the benefit of monies deposited in their names, they having withdrawn the same is incorrect. He submitted that the respondents/ plaintiffs had knowledge about the sale only in the year 2013. Hence the suit was not barred by limitation. He contended that Article 59 of the Limitation Act was applicable.

8. Article 59 and 60 of the Limitation Act reads as follows:

|                                                                                        |             |                                                                                                                                                    |
|----------------------------------------------------------------------------------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| 59. To cancel or set aside an instrument or decree or 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 |
| 60. To set aside a transfer of property made by the guardian of a ward                 | Three years | When the ward attains majority                                                                                                                     |
| (a) by the ward who has attained majority                                              |             |                                                                                                                                                    |
| (b) by the ward's legal representative                                                 | Three years | When the ward attains majority                                                                                                                     |
| (i) When the ward dies within three years from the date of attaining majority          | Three years | When the ward dies.                                                                                                                                |
| (ii) when the ward dies                                                                |             |                                                                                                                                                    |

|                     |           |  |  |
|---------------------|-----------|--|--|
| before<br>majority. | attaining |  |  |
|---------------------|-----------|--|--|

While Article 59 permits a particular period for moving an action ' from the date of knowledge', Article 60 does not.

9. In the instant case, there is no dispute that as on the date of the plaint the respondents/plaintiffs were well beyond a period of three years of attaining majority. In the decision in 2015 (5) R.C.R. (Civil) 942, the Delhi High Court has held as follows:

*“9. It is settled law that an issue of limitation is not always a mixed question of law and fact. Where a suit, from statement in the plaint, can be said to be barred by time, thus, a case for rejection under Order VII Rule 11 CPC is made out. The Supreme Court in N.V.Srinivasa Murthy v. Mariyamma, (2005) 5 SCC 548 has held that if on a critical examination of the plaint, the suit seems to be clearly barred on the facts stated in the plaint itself, the plaint is liable to be rejected. In Hardesh Ores Pvt Ltd. V Hede & Company, (2007) 5 SCC 614, it was held that plaint can be rejected on the ground of limitation where the suit appears from the statement in the plaint to be barred by any “law” which includes the law of limitation. The Division Bench of this Court in Sno white Apparels Ltd v. K.S.A. Technopak (I) Ltd., 121 (2205) DLT 351 also held that if reading of the averments in the plaint would admittedly establish that the suit is barred by any law which would include the Limitation Act also, the plaint would have to be rejected. ”*

The question of limitation in the instant case being one merely of fact i.e., whether respondents/plaintiffs have preferred the suit within three years of attaining majority and their answer thereto being that they have not, this revision is to be allowed.

The Civil Revision Petition, accordingly, shall stand allowed. The order of learned I Additional District and Sessions Judge, Coimbatore, passed in I.A.No.297 of 2013 in O.S.No.374 of 2013 on 30.11.2015 shall stand set aside. The suit in O.S.No.374 of 2013 shall stand struck off the file of learned I Additional District and Sessions Judge, Coimbatore. No costs. Connected miscellaneous petition is closed.

**13.07.2016**

Index:yes/no  
Internet:yes

To

The I Additional District and Sessions Judge, Coimbatore.

C.T.SELVAM, J

kpr

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**13.07.2016**