

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM:

THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN

A.S.No.459 of 2011

and

M.P No.1 of 2011

1. Parameswari Ammal [Deceased]
 2. B.Chandra Kumar
 3. B.Lakshminarayanan,
 4. B.Udaya Surian
 5. B.Mayura Priyan
 6. B.Prem Kumar
 7. B.Prameela
- [Appellants 2 to 7 impleaded as party appellants vide order of Court dated 15.06.2015 made in MP No.1 of 2015]
... Appellants/Petitioners

Vs

1. M.A.Rukmani
 2. M.A.Srinivasan
 3. M.A.Venkatakrishnan
 4. M.A.Narasimhan
 5. M.A.Parthasarathy
 6. D.C.Foundation (P) Ltd.,
Rep. by its Directors (1) V.Ramamoorthy,
(2) L.N.Javahar,
Basement, Gokul Arcade,
No.33, Sardar Patel Road, Adyar, Chennai-600 020.
 7. Somasundaram
- ... Respondents/Defendants

Prayer:-

This appeal has been filed under Section 96 of Code of Civil Procedure, against the Judgment and Decree in O.S.No.8721 of 2010 dated 26.07.2011, on the file of the Additional District and Sessions Judge, Fast Track Court No.IV, Chennai, pursuant to the order in I.A.No.99 of 2010 rejecting the suit.

APPEARANCE:

For Appellant : Mr.Perumbulavil Radhakrish

For Respondent: Mr.C.Ajith Kumar for R4
Mr.Thiagarajan for
M/s.Warran & Sairam for R7

J U D G M E N T

The plaintiff in O.S.No.872 of 2010 is the appellant. The said suit was originally filed in this Court as C.S.No.845 of 2009 and upon transfer to the City Civil Court, the same is renumbered as above. The plaintiff sought for the following reliefs in the suit:-

"a. Declaring that the sale deed dated 25.2.2005, registered as Document No.264 of 2005 in the Office of the Sub-Registrar, Adyar, executed by M.A.Narasimhan, conveying 6 grounds and 1446 sq. ft of land situated in Uroor Village, more fully and particularly described in the Schedule B hereunder, in favour of D.C. Foundations Pvt., Ltd., the Sixth Defendant as null and void, non-est and not binding upon the Plaintiff;

b. Declaring that the sale deed dated 9.8.2006, registered as Document No. 1717 of 2006 in the Office of the Sub-Registrar, Adyar, executed by D C Foundations Pvt., Ltd., the Sixth Defendant herein, conveying 6 grounds and 1446 sq. ft of land situated in Uroor village, more fully and particularly described in the Schedule C hereunder, in favour of Somasundaram, the Seventh Defendant herein, as null and void, non-est and not binding upon the plaintiff;

c. Permanent Injunction restraining the Defendants from in any manner transferring or alienating or in any manner encumbering the land measuring 6 grounds and 1446 sq. ft situated in Uroor village, more fully described in the Schedule B & C hereunder; and

d. Permanent injunction restraining the Defendants from in any manner putting up any construction or carrying on any activity upon and in and over land measuring 6 grounds and 1446 sq. ft situated in Uroor village, more fully described in the Schedule B & C hereunder;

e. Permanent Injunction restraining the Defendants, their men, servants and agents working under the

Defendants from in any manner interfering with the Plaintiff's possession and enjoyment of all that piece and parcel of land measuring 17 grounds and 400 sq.ft comprised in Survey No.64 and 66, TS no.2, Uroor village, within the Mylapore Triplicane Taluk which is more fully and particularly described in Schedule A hereunder."

2. According to the plaintiff, the suit property belongs to M.A.Srirangammal. In civil proceedings between her and her tenant one Subbadrammal, a compromise decree came to be passed. As per the compromise decree, the plaintiff's husband Balasubramaniyam was directed to pay a sum of Rs.87,168/- to Srirangammal, who, in turn would execute a sale deed either in his name or in favour of his nominee. Pursuant to the said compromise, M.A.Srirangammal sold and conveyed land measuring 59 grounds to M/s.Sakthivel Investments, a partnership firm. Since the plaintiff came to know that one of the sons of the Srirangammal viz., M.A.Narasimhan had sold and conveyed an extent of 6 grounds 1446 sq., ft of land in favour of sixth defendant D C Foundations Pvt. Ltd., the plaintiff has come forward with the above suit for declaration to declare that sale deeds as null and void, for permanent injunction restraining the defendants from either alienating the properties or putting up construction or interfering with the plaintiff's possession of the property. The defendants 6 and 7 upon entering appearance filed an application under Order VII Rule 11 of Code of Civil Procedure, seeking rejection of the plaint claiming that the suit is barred by limitation. The said application was renumbered as I.A.No.99 of 2010.

3. The learned trial Judge, upon hearing the parties, concluded that the suit is barred by limitation. On the said finding, the learned trial Judge rejected the plaint. In the course of a discussion, the learned trial Judge has also declared the title of M.A. Narasimhan viz., the predecessor in title of defendants 6 and 7. Aggrieved by the said order, plaintiff has come forward with the above appeal.

4. I have heard Mr.Perumbulavil Radhakrishnan, learned counsel for the appellants, Mr.Thiyagarajan, learned counsel for M/s.Waraon & Sai Rams appearing for 7th respondent and Mr.C.Ajit Kumar, learned counsel appearing for the 4th respondent. The other respondents though served have neither appeared through counsel nor in person.

5. Mr.Perumbulavil Radhakrishnan, learned counsel for the appellants would contend that the learned trial Judge was not justified in rejecting the plaint on the ground that the suit is barred by limitation. According to the learned counsel, the plaintiff not being a party to the alienations dated 25.02.2005 and 09.08.2006 was not bound for any declaration relating to the said documents. Therefore, the prayers "a" and "b" in the suit are really not very germane. Even without

a prayer for declaration, the plaintiff would have ignored the document and sought the injunctions in prayer "c", "d" and "e". Mr.Perumbulavil Radhakrishnan would also contend that the plaintiff has very clearly stated that she came to know about the alienations very recently. The learned trial Judge without looking into the said averment held that the plaintiff has not disclosed the exact date of knowledge to enable the Court to come to the conclusion as to whether the suit is in time?

6. Per contra, Mr.Thiyagarajan, learned counsel appearing for the 7th respondent and Mr.C.Ajit Kumar, learned counsel for the 4th respondent would vehemently contend that the trial Court was right in concluding that the suit is barred by limitation.

7. Upon hearing the learned counsel, the following point arises for determination in this appeal.

"whether the trial Court was right in rejecting the plaint on the ground that the plaintiff has not given the exact date on which she came to know of the alienations, which she seeks to set aside in prayers "a" and "b" of the plaint?.

8. It is well settled that in order to reject the plaint under Order VII Rule 11(d), it is only the allegations in the plaint that has to be opening to. Order VII Rule 11 (d) reads as follows:

"where the suit appears from the statement in the plaint to be barred by any law".

9. Therefore, in order to enable the Court to reject the plaint under Order VII Rule 11(d), it should be shown that the allegations in the plaint itself would show that the suit is barred by limitation. In Para 11, the plaintiff would state as follows:-

"When matters stood thus, the plaintiff was shocked and surprised to know that very recently that M.A.Narasimhan had sold and conveyed an extent of 6 grounds and 1446 sq.ft of land comprised in Survey No:64 and 66, T.S.No.2 of Uroor Village, which is set out in Schedule B hereunder, to and in favour of the 6th defendant D C Foundations Pvt. Ltd." (emphasis supplied).

10. Again in para 13, the plaintiff has alleged as follows:-

"The plaintiff further understands that the 6th defendant, D C Foundations Pvt. Ltd., after having purchased the land measuring 6 grounds and 1446 sq. ft., allegedly from M.A.Narasimhan had sold and conveyed the same in hot haste to and in favour of the

Seventh defendant under sale deed dated 9.8.2006 registered as document no:1717 of 2006 in the Office of the Sub Registrar, Adyar".

11. The fact that the plaintiff has not disclosed the actual date on which she came to know about the alienations has been pointed out as a ground for rejecting the plaint by the trial Court. In P.V.Guru Raj Reddy rep. by GPA Laxmi Narayan Reddy and another Vs. P.Neeradha Reddy and others [2015 (5) LW 905], the Hon'ble Supreme Court while dealing with the Law relating the rejection of plaint has observed as follows:-

5. Rejection of the plaint under Order VII rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."

12. In Surjit Kaur Gill and another Vs. Adarsh Kaur Gill and another [2014 (2) LW 915], the Hon'ble Supreme Court has observed as follows:-

9..... The issue of limitation is always a mixed question of facts and law, and therefore, it could not be held that no case was made out for proceeding for a trial.....
For deciding an application under Order 7 rule 11, one has to look at the plaint and decide whether it deserved to be rejected for the ground raised."

13. From the above observation of the Hon'ble Apex Court, it is clear that unless it is shown that the suit is hopelessly barred by limitation from the reading of the plaint, the suit cannot be rejected on the ground that it is barred by limitation.

14. In my considered opinion, the suit cannot be said to be barred by limitation on the basis of the pleas in the

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plaint. After all limitation is a mixed question of Law & fact. As already pointed out on the facts of the present case, it is not incumbent upon the plaintiff to seek to set aside, the alienations because she is not even a party to those alienations covered by prayer "a" and "b" in the plaint. I am therefore of the view that the trial Court had erred in rejecting the plaint on the ground that the suit is barred by limitation. Mr.Thiyagarajan, learned counsel for the seventh respondent would contend that several persons are claiming title to various portions of the property and several suits are pending. That is not the ground on which a plaint could be rejected. The learned trial Judge apart from rejecting the plaint have declared the tile of the predecessor in interest of the 6th defendant. This, in my opinion, is unwarranted. Therefore, I have no other option to set aside the order of the trial Court by rejecting the plaint.

15. In fine, the appeal is allowed, the order rejecting the plaint is set aside. The suit in O.S.No.8721 of 2010 is restored to file and the learned trial Judge is directed to dispose of the same as per law. The costs in this appeal will follow the result of the suit. Consequently, connected miscellaneous petition is also closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

kmi
To

1. The Additional District and Sessions Court,
Fast Track Court No.IV, Chennai.

2. The Section Officer,
V.R. Section, High Court, Madras.

+2cc to Mr.Perumbulavil Radhakrish,Advocate sr.12567

+1cc to M/s.Warran & sairam,Advocate sr.13808

A.S.No.459 of 2011

rj(co)
ss(5/4/2017)