

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2017

Coram

THE HON'BLE MR.JUSTICE **D. KRISHNAKUMAR**

C.R.P.(PD).No.3744 of 2017
and C.M.P.No.17424 of 2017

1. Gnanasambandam

2. Ravichandran

3. Arunagiri

...Petitioners

Vs.

1. Kannagi

2. Vasantha Devi

3. Dr.Malliga

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow the above C.R.P. and set aside the order and decretal order dated 17.08.2017 made in I.A.No.9 of 2017 (I.A.No.418 of 2016 on the file of Principal District Court, Namakkal) in O.S.No.164 of 2016 on the file of the Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioners : Mr.T.Dhanyakumar

ORDER

According to the petitioners, the first respondent herein has filed a suit in OS.No.164 of 2016 against the petitioners before the Principal District Court, Namakkal for partition and separate possession. The petitioners have filed an application in I.A.No.9 of 2017 under Order 7 Rule 11 read with Section 151 of the Civil Procedure Code to reject the plaint on the ground the suit is barred by limitation. The counter statement has been filed by the first respondent before the trial court by stating that the application is not maintainable as the suit is not barred by limitation. It is further stated that the first respondent had executed the release deed on 20.04.2012, but had knowledge only on 26.09.2016. Hence, the suit is not barred by limitation. Further, the limitation aspect is a mixed question of law and therefore, it is to be decided at the time of trial. The court below has considered the contention of both the parties and in view of the unreported Judgment in Application No.2239 of 2013 in CS.No.930 of 2010 in the case of *Hindustan Petroleum Corporation Ltd., Vs. Adithya Rao and another*, dismissed the application by holding that the contention raised by the petitioner therein, the suit is barred by limitation is the mixed question of law and the same can be decided during the trial. Hence, the petitioners have filed the present Civil

Revision Petition before this Court, challenging the order passed in IA.No.9 of 2017 dated 17.08.2017.

2. The learned counsel for the petitioners would submit that the first respondent/plaintiff has executed a release deed in favour of the petitioners and registered on 20.04.2012 and the present suit has been filed on 26.09.2016, which is clearly barred by limitation. Eventhough the first respondent has stated that the release deed said to be executed by the first respondent / plaintiff is misrepresentation, Hence, suit is barred by limitation under Article 59 of the Limitation Act (36 of 1963) as the time limit prescribed under the Act. Therefore, the suit is barred by limitation. Hence, the petition under Order 7 Rule 11 of the Civil Procedure Code filed by the petitioners. Challenging the dismissal order passed in the application, the revision petitioners have filed the present Civil Revision Petition before this Court.

3. The learned counsel for the revision petitioner would further submit that to cancel an instrument, suit has to be filed within three years, which runs from the date of execution and not from the date of knowledge. Therefore, the instant application filed under Order 7 Rule 11 of the Civil Procedure Code has been erroneously dismissed

by the court below and the same is liable to be set aside.

4. The learned counsel for the petitioner would submit that the aforesaid suit is barred by limitation and hence, there is no cause of action arises in the suit. Therefore, the same is hit by Order 7 Rule 11 of the Code of Civil Procedure. Without appreciating the case of the petitioner, the court below has erroneously dismissed the said application.

5. It is useful to read the provisions under Order 7 Rule 11 of the Civil Procedure Code as follows.

"Rejection of plaint – The plaint shall be rejected in the following cases:-

a) where it does not disclose a cause of action.

b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

c) where the relief claimed is properly valued

but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

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

(Provided that the time fixed by the Court for the correction of the valuation or supplying the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff)."

6. It is relevant to extract the decision rendered by the Hon'ble Supreme Court in the case of ***Kamala and Others Vs. K.T.Eshwara Sa and Others*** reported in ***(2008) 12 SCC 661***,

wherein it is held as follows:

“ 34. The only contention raised before the learned trial Judge was the applicability of the principles of *res judicata*. Even for the said purpose, questions of fact cannot be gone into. What can only be seen are the averments made in the plaint. What *inter alia* would be relevant is as to whether for the said purpose the properties were sold by reason of any arrangement entered into by and between the parties out of court; whether they had accepted the partition or whether separate possession preceded the actual sale; or whether the contention that a presumption must be drawn that for all practical purposes the parties were in separate possession, are again matters which would not fall for consideration of the court at this stage.

37. What would be its effect is again a question which cannot fall for determination

under Order 7 Rule 11 (d) of the Code. These facts require adjudication. The identity of the properties which were the subject-matter of the earlier suit vis-a-vis the properties which were subsequently acquired and the effect thereof is beyond the purview of Order 7 Rule 11 (d) of the Code.

45. The matter, however, was referred to a three-Judge Bench of this Court in Balasaria Construction (P) Ltd. (1) v. Hanuman Seva Trust. However, as no conflict of decisions of this Court was found, it was referred back to the two-Judge Bench again. A two-Judge Bench of this Court in Balasaria Construction (P) Ltd. (2) v. Hanuman Seva Trust held: (SCC p.661, para 8)

8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11 (d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as

barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11 (d) of the Code of Civil Procedure."

7. In view of the above decision, the contention of the petitioner cannot be accepted and the ground raised by the petitioner is liable to be rejected. So far as the other ground raised by the petitioner, the value of the suit is undervalued, under the provisions of the Tamil Nadu Court Fee and Suit Valuation Act, 1955, but the trial court has held that the suit property has been properly valued and the same has been accepted by the Court. If the suit property is

undervalued under Sections 37 (1) and (2) of the said Act, the petitioner can very well establish the same before the trial court. On this ground also, Order 7 Rule 11 would not attract at this stage, to reject the plaint.

8. On seeing the nature of relief as prayed for in the suit filed by the respondent herein for partition, mesne profit and permanent injunction and on perusing the provisions and the aforesaid decision, scope of Order 7 Rule 11 (b) of the Civil Procedure Code would not attract, at this stage, since the cause of action in the suit can be decided at the time of the trial. Therefore the said fact is mixed question of law and therefore, the same is required to be decided at the time of trial.

9. In the light of the above facts and circumstances of the case and the decision cited supra, this Court is not inclined to interfere with the orders passed by the trial court, as there is no error or illegality in the order passed by the court below. The Civil Revision Petition is liable to be dismissed.

10. On perusal of the order passed by the trial court, the

first respondent / plaintiff has specifically alleged that by misrepresentation the petitioners have obtained the release deed on 20.04.2012. The first respondent had the knowledge of the said execution only on 29.06.2016. The ground raised by the revision petitioner is a mixed question of law and the same can be decided at the time of trial. In the light of the facts and decision of the Hon'ble Supreme Court in the case of *Solaiammal (died) and Others Vs. Rajarathinam and Others* reported in **(2003) 3 MLJ 632**, there is no error or illegality in the order passed by the court below. Hence, the Civil Revision Petition is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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09.10.2017

Speaking/Non-speaking order

Index : yes/no

Internet: Yes/No

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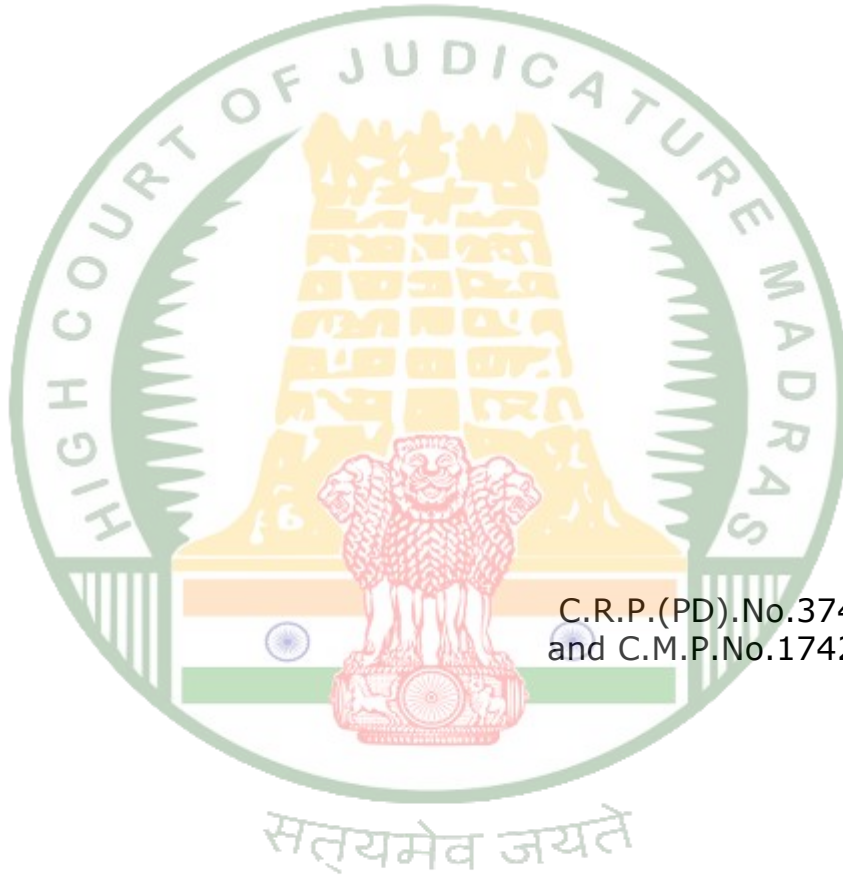
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D. KRISHNAKUMAR, J.

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