

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2017

CORAM:

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

O.S.A.No.122 of 2014

Hindustan Petroleum Corporation Ltd.,
No.861, Anna Road,
Chennai - 600 002.
Rep. by its Territory Manager-Retail. ... Appellant

... Vs ...

1. T.Aditya Rao
S/o. T.Gopinjatha Rao
Represented by his Power Agent
Mrs.S.P.Susheela Kumar
No.28, Pycrofts Gardens Road,
Chennai - 600 006.

2. M/s. MRK Agencies,
Plot No.9/8AL,
Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034. ... Respondents

Prayer: Original Side Appeal is filed under Order 36, Rule 1 of Original Side Rules read with Clause 15 of Letters Patent, against the judgment and decree dated 11.02.2014 passed by this Court in Application No.2239 of 2013 in C.S.No.930 of 2010, on the file of the Original Side of this Court.

For Appellant : Mr.O.R.Santhanakrishnan

For R-1 : Mr.R.Parthasarathy

For R-2 : Served. No Appearance

JUDGMENT

(Judgment of the Court was delivered
by M.M.SUNDRESH,J.,)

This appeal has been preferred by the appellant being the applicant/first defendant against the order passed by the learned Single Judge in dismissing the application filed under Order 7 Rule 11(d) of C.P.C.

2. The application has been filed on the ground of limitation contending that there was an earlier suit filed. The learned Single Judge dismissed the application on the ground that limitation is a mixed question of law and fact.

3. Learned counsel appearing for the appellant submits that the question of limitation would come under the purview of Order 7 Rule 11(d) of C.P.C. and therefore, the order of the learned Single Judge will have to be interfered with.

4. Learned counsel appearing for the first respondent submits that the trial has begun by filing the proof affidavit. Hence, no interference is called for. As rightly held by the learned Single Judge, the question of limitation is a mixed question of law and fact. Therefore, we are not inclined to interfere with the appeal at this stage, particularly, when the trial has begun. Accordingly, this Original Side Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Jr1

To

The Sub Asst. Registrar,
Original Side,
High Court, Madras.

+ 1 cc to M/s. Satish Parasaran, Advocate Sr.5676

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NRI (CO)
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