

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

O.S.A.Nos.98 & 38 of 2017
and C.M.P.No.3636 of 2017

1.Mr.B.Ugamaraj Mootha
2.Mrs.Amrat Kumari Mootha
3.Mr.H.B.Bijairaj Mootha and sons
(Partnership firm)

Rep. By its Partner,
No.30, Old No.24, Appavu Mudali Street,
Alandur, Chennai - 600 116.

... Appellant in O.S.A.No.98/2017/
Respondent in O.S.A.No.38/2017

vs.

Mr.M.Dhanesh Mootha

... Respondent in O.S.A.No.38/2017/
Appellant in O.S.A.No.98/2017

Original Side Appeals filed under Order 36 Rule 9 of
O.S.Rules r/w clause 15 of the letters patent against the Fair
and Decretal order dated 12.01.2017, made in application
No.5961/2010 in C.S.No.72/2010.

For Appellant in
O.S.A.No.98/2017
For Respondent in
O.S.A.No.38/2017

: Mr.T.Mohan for Mr.M.Murali

For Respondent
in O.S.A.No.98/2017
For appellant in
O.S.A.No.38/2017

: Mr.K.Harishankar

COMMON JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. These are the appeals against the judgment and order
dated 12.01.2017, passed by the learned single Judge in
application No.5961 of 2010 in C.S.No.72 of 2010.

1.1. This application was filed by defendants 2,8 and 9.

2. The records shows that not only the plaintiff, but also the defendants 2, 8 and 9, who have filed the aforementioned application, are aggrieved by the impugned judgment and order.

2.1. Accordingly, the plaintiff has preferred O.S.A.No.38 of 2017, whereas defendants 2, 8 and 9 have preferred O.S.A.No.98 of 2017.

2.2. The grievance of defendants 2, 8 and 9 is that they had filed the aforementioned application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short "CPC") for rejection of the plaint, principally, on three grounds. First, the suit was barred by limitation. Second, that the Court had no jurisdiction to try and adjudicate upon the matter, as all immovable properties, except one qua which partition were sought, were situate outside the territorial jurisdiction. The property which was located within the jurisdiction of this Court had been sold as far as back on 2003. Third, that the plaintiff had not paid the requisite court fee.

3. The learned counsel for defendants 2, 8 and 9 submits that while findings have been returned in the impugned judgment and order that the suit is barred by limitation and that the entire proceedings initiated by the plaintiff are a sham and amount to abuse of process of law, the learned single Judge has given time to the plaintiff to make good the deficiency qua Court fee.

3.1. Learned counsel says that, if, as held by the learned Single Judge, the suit was barred by limitation, the direction issued to make good the deficiency in respect of Court fee was uncalled for.

4. Likewise, counsel for the plaintiff says that, the two findings of the single Judge referred to above are in sense inconsistent, in as much as, once the Court held that the suit was barred by limitation, then, what purpose would be served in giving time to the plaintiff, to make good the deficiency vis-a-vis Court fee.

4.1. The counsel for the plaintiff further says that, limitation is a mixed question of fact and law and therefore, the finding reached by the learned single Judge in this regard was erroneous.

4.2. Furthermore, the counsel for the plaintiff, informs us, that, without prejudice to the rights of the plaintiff, deficit Court fee has been paid, since passing of the impugned judgment and/or during the pendency of the appeal.

4.3. The counsel, in effect, says that the plaintiff is aggrieved by the findings rendered by the learned single Judge,

qua, limitation as also with regard to the fact that the suit instituted amounted an abuse of process of law.

5. We heard the learned counsel for the parties and perused the records. We are of the view that the application requires a revisit. The reasons for the same is, if, the learned single Judge has reached a conclusion that the suit is barred by limitation, then, surely the application had to be allowed. Learned single Judge instead has granted time to the plaintiff to make good the deficit in court fee, which to our minds was really in one sense a superfluous given to the conclusion reached by the learned single Judge, qua, limitation.

5.1. Therefore, in our view, the impugned judgment and order cannot be sustained. It is, accordingly, set aside. The application will be heard by the learned single Judge and thereafter, disposed of in accordance with law.

6. The Appeals are, consequently, disposed of in the aforementioned terms. Resultantly, the connected pending application shall stand closed. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To:

1.The Sub Assistant Registrar,
Original Side,
High Court, Madras (Posting the Application)

+ 2 cc to M/s.Murali, Advocate, SR.53187,53188

+ 2 cc to M/s.K.Harishankar, Advocate, SR.52267,52268

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NR 21/08/2017

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