IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) No.3456 of 2013
and
M.P.No.1 of 2013

S.P.Srinivasan .. Petitioner

vs

1.A.T.Francis

2.A.T.Louis

3.A.T.John .. Respondents

Revision is filed under Article 227 of Constitution of India against the order passed in I.A.No.703 of 2012 in O.S.No.416 of 2011 dated 1.3.2013 on the file of the I Additional Subordinate Judge, Erode.

For Petitioners : Mr.M.Elango

For Respondents : Mr.N.Manoharan
for respondents 1 and 2
No Appearance (for R3)

ORDER

This Civil Revision Petition is directed against the order dated 01.3.2013 passed in I.A.No.703 of 2012 in O.S.No.416 of 2011 on the file of the I Additional Subordinate Judge, Erode, whereby the learned trial Judge, dismissed the petition filed by the petitioner under Order 7, Rule 11 of the Code of Civil Procedure, 1908. The petitioner is the first defendant. The respondents 1 and 2 are plaintiffs. The third respondent is the second defendant.

2. The plaintiffs have filed the suit to set aside the sale deed dated 27.4.2007 executed in favour of the first defendant as not true, genuine and not binding on the plaintiffs and the second defendant and also unenforceable.

3. In the suit, the plaintiffs have sought permanent injunction restraining the first defendant, his men and agents from trespassing into the suit properties or disturbing the peaceful possession and enjoyment by the plaintiffs and the second defendant and also permanent injunction restraining the

first defendant from alienating or encumbering the suit properties.

4. Pending suit, the petitioner has filed I.A.No.703 of 2012 under Order 7, Rule 11 (d) of the C.P.C. alleging that the suit is barred by limitation, as Article 59 of the Limitation Act provides three years period to cancel or set aside an instrument. But, in the case on hand, the suit has been filed 4 ½ years after the execution of the sale deed and therefore, the suit is barred by limitation.

5. It is alleged that the respondents 1 and 2, who are highly educated and knowledgeable and are doing business for several decades, ought to have demanded a copy of the document from the petitioner or should have immediately obtained the certified copy from the Sub Registrar Office and/or should have taken efforts to know about the contents of the document executed by them. When the respondents 1 and 2 diligently failed to do so, they will not be entitled to claim that the period of limitation starts from the date of knowledge.

According to the petitioner, the plaint has been drafted cleverly. Since the suit is barred by limitation, the petitioner prayed for rejection of the plaint.

6. Refuting the petition, the second respondent has filed the counter stating that he obtained the certified copy of the document only on 10.8.2011, thereby he came to know about the sale deed created by the petitioner and thereafter a suit has been filed within three years. It is also stated that petition to reject the plaint cannot be allowed on the ground that the suit is barred by limitation without knowing the facts and circumstances of the case. It is pleaded that the facts and law are to be considered together, since the same are mingled with each other. Only during the course of adducing evidence, the facts and law can be decided and prior to that, no one can decide the matter. There is no collusion between the plaintiffs and the second defendant and, therefore, this revision is to be dismissed.

7. Upon consideration of the rival submissions, the trial Court dismissed the petition filed by the petitioner observing that

the question involved in the instant case about the limitation is a mixed question of fact and law. Hence, the question of limitation cannot be decided without framing a proper issue and adducing evidence. Challenging the same, the petitioner has filed the present Civil Revision Petition.

8. I heard Mr.M.Elango, learned counsel appearing for the petitioner and Mr.N.Manokaran, learned counsel appearing for the respondents 1 and 2 and also perused the materials available on record. No representation on behalf of the 3rd respondent.

9. The learned counsel appearing for the petitioner submitted that the decision of the trial Court in dismissing the petition caused serious prejudice to the petitioner.

10. According to the learned counsel, the suit does not *prima facie* disclose any cause of action for the reliefs claimed. He submitted that the plaint pleadings do not disclose any fraud or misrepresentation.

11. The learned counsel argued that when respondents 1 and 2 pleaded knowledge of fraud or misrepresentation on 17.4.2007, they cannot plead again that they came to know about the sale deed only on 10.8.2011, which is a clever drafting to overcome the limitation and principles of constructive notice.

12. He also submitted that the trial Court erred in taking into consideration the title of the respondents 1 and 2 and the written statement of the third respondent in coming to conclusion.

13. In support of his submissions, the learned counsel relied upon the following decisions:

(i) N.V.Srinivasa Murthy and others v. Mariyamma (dead) by proposed Lrs and other, reported in (2005) 5 SCC 548.

(ii)Hardesh Ores Pvt. Ltd. v. M/s.Hede and Company, reported in (2007) 5 SCC 614.

(iii)Prem Singh and others v. Birbal and others, reported in (2006) 5 SCC 353.

(iv)Fatehji & Company and Ors. v. L.M.Nagpal and Ors., reported in 2015 (3) CTC 218.

(v)The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. Ponniamman Educational Trust, represented by the Chairperson/Managing Trustee, reported in 2012 (4) CTC 308.

(vi)Dr.L.Ramachandran and another v. K.Ramesh and others, reported in 2015-4-L.W. 585.

(vii)Appasamy Real Estates Ltd. rep. by its Director A.Ravi v. Neelayathatchi Ammal and others, reported in 2005-3-L.W. 152.

(viii)M.Banupriya v. M.Lakshmi and others, reported in 2013 (4) CTC 175.

(ix)N.A.Chinnasamy and another v. S.Vellingirinathan, reported in 2013 (6) CTC 809.

(x)*R.Ravichandran v. The State of Tamil Nadu and others, reported in 2002-2-L.W. 590.*

14. Per contra, the learned counsel appearing for respondents 1 and 2 submitted that respondents 1 and 2 came to know about the sale deed only after obtaining the certified copy of the document i.e., on 10.8.2011, and respondents 1 and 2

have filed the suit within three years from the date of knowledge and, therefore, the suit is not barred by limitation.

15. He submitted that the question of limitation is a mixed question of fact and law and it could be decided only by way of framing of issues and also after adducing evidence. To fortify his submissions, the learned counsel cited the decision in *C.Natrajan v. Ashim Bai and another, reported in (2007) 14 SCC 183.*

16. The points that arises for consideration is whether the trial Court was right in dismissing the petition filed by the petitioner under Order 7, Rule 11(d) of the C.P.C.

17. Respondents 1 and 2 filed a suit against the petitioner and the third respondent, who is the brother of the respondents 1 and 2 claiming, *inter alia*, the following reliefs:

> *"(a) setting aside the sale deed dated 27.4.2007 which is registered as document No.2176 of 2007 on the file of Sub-Registrar, Avalpoondurai*

executed in favour of the defendant is not true and genuine, not binding upon the plaintiffs and the 2nd defendant and unenforceable.

(b) restraining the 1st defendant, his men, agents etc. from in any way and in any manner either trespassing into the suit properties or disturbing their peaceful possession and enjoyment of the plaintiffs and the 2nd defendant over the same by means of permanent injunction.

(c) restraining the 1st defendant, his men, agents etc., from in any way and in any manner either alienating or encumbering the suit properties by means of permanent injunction.

(d) directing the defendants to pay the costs of the suit."

18. According to respondents 1 and 2, they borrowed a sum of Rs.5.00 lakhs from the petitioner as hand loan and respondents 1 and 2 have executed a promissory note besides handing over of signed cheque leaves and also signed stamp papers. The said respondents used to pay interest for the loan

availed by them. At one stage due to loss in business, respondents 1 and 2 were unable to pay interest to the petitioner and the petitioner demanded to execute a registered mortgage deed in his favour. Believing that the document executed was styled as mortgage deed, respondents 1 to 3 put their signatures in the document dated 27.4.2007 prepared and shown by the petitioner. Respondents 1 to 3 are not aware of the contents of the document.

19. According to respondents 1 and 2, they entered into sale agreements in respect of their immovable properties and on receipt of the advance amount, they approached the petitioner for discharge of the loan and requested him to cancel the mortgage deed. Though initially agreed by the petitioner, under one pretext or the other, he protracted cancellation of the mortgage deed. Suspecting the attitude of the petitioner, respondents 1 and 2 applied for the certified copy of the document dated 27.4.2007 before the Sub Registrar Office. On 10.8.2011, they received the certified copy of the document and on reading of the document, they came to know that the

petitioner has obtained sale deed on 27.4.2007 by misrepresentation and fraud from respondents 1 and 2 as well as respondent No.3.

20. The grievance of respondents 1 and 2 is that the sale deed dated 27.4.2007 is not true, genuine and no consideration passed on and also possession of the property was not delivered. Moreover, it was not acted upon. Therefore, the respondents have filed the suit to set aside the sale deed dated 27.4.2007 from the date of their knowledge and the same was not barred by limitation.

21. Order VII, Rule 11 of the C.P.C. provides as under:

*"**11. Rejection of plaint.-** The plaint shall be rejected in the following cases:—*
(a) ......
(b) ......
(c) ....
(d) where the suit appears from the statement in the plaint to be barred by any law;
(e) ......
(f) ......"

22. The petitioner has sought rejection of the plaint on the ground that the suit is barred by limitation by relying upon the provisions under Order 7, Rule 11(d) of the C.P.C. The petitioner has not examined any witness before the trial Court and also not marked any document to rebut the case of respondents 1 and 2.

23. An application for rejection of the plaint can be filed if the allegations made in the plaint, even if given face value and taken to be correct in their entirety, appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, the averments made in the plaint only are relevant.

24. In the case on hand, respondents 1 and 2 have pleaded misrepresentation and fraud said to have been committed by the petitioner in obtaining the sale deed dated 27.04.2007. But, the petitioner in his written statement stated

that the sale deed dated 27.4.2007 is true, genuine, valid and supported by proper consideration. He also pleaded that possession of the property was handed over to him. Apart from raising plea of barred by limitation, in his written statement, the petitioner has raised a plea that there is no cause of action for the suit.

25. On going through the pleadings, I find that at this stage, the Court would not be entitled to consider the case of the defence in the suit.

26. The main contention of the petitioner is that the suit is hopelessly barred by limitation as it was filed beyond 4½ years and the suit to set aside the sale ought to have been filed within three years. In their plaint, respondents 1 and 2 averred that only on 10.8.2011, they have knowledge about the execution of the sale deed when they obtained the copy of the sale deed. In order to show that respondents 1 and 2 had knowledge about the execution of the sale deed prior to 10.8.2011, the petitioner has not filed any documents.

27. As held by the Hon'ble Supreme Court, applicability of one or the other provision of Limitation Act *per se* cannot be decisive for the purpose of determining the question as to whether the suit is barred under one or the other Article contained in the Schedule appended to the Limitation Act.

28.In *Balasaria Construction (P) Ltd. v. Hanuman Seva Trust, (2006) 5 SCC 658,* the Hon'ble Supreme Court held as under:

> ***"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."

29. Referring to the decision in *Balasaria Construction,* supra, in *C.Natarajan v. Ashim Bai and another,* supra, the Hon'ble Supreme Court held as under:

***"13.** In the said decision, it may be placed on record, on the question as to whether Order 7 Rule 11(d) can be applied when a suit was filed on the premise that a suit is barred by limitation, this Court noticed: (Balasaria Construction case[(2006) 5 SCC 658]*

"4. This case was argued at length on 30-8-2005. Counsel appearing for the appellant had relied upon a judgment of this Court in N.V. Srinivasa Murthy v. Mariyamma [(2005) 5 SCC 548] for the proposition that a plaint could be rejected if the suit is ex facie barred by limitation. As against this, counsel for the respondents relied upon a later judgment of this Court in Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510 : (2005) 4 CTC 489] in respect of the proposition that Order 7 Rule

11(d) was not applicable in a case where a question has to be decided on the basis of fact that the suit was barred by limitation. The point as to whether the words 'barred by law' occurring in Order 7 Rule 11(d) CPC would include the suit being 'barred by limitation' was not specifically dealt with in either of these two judgments, cited above. But this point has been specifically dealt with by the different High Courts in Mohan Lal Sukhadia University v. Priya Soloman [AIR 1999 Raj 102] Khaja Quthubullah v. Govt. of A.P. [AIR 1995 AP 43] ,Vedapalli Suryanarayana v. Poosarla Venkata Sanker Suryanarayana [(1980) 1 An LT 488 : (1980) 1 APLJ 173 (HC)], Arjan Singh v. Union of India [AIR 1987 Del 165] wherein it has been held that the plaint under Order 7 Rule 11(d) cannot be rejected on the ground that it is barred by limitation. According to these judgments the suit has to be barred by a provision of law to come within the meaning of Order 7 Rule 11 CPC. A contrary view has been taken in Jugolinija Rajia Jugoslavija v. Fab Leathers Ltd. [AIR 1985 Cal 193] , National Insurance Co. Ltd. v. Navrom Constantza [AIR 1988 Cal 155], J. Patel & Co. v. National Federation of Industrial Coop. Ltd. [AIR

1996 Cal 253] and SBI Staff Assn. v. Popat & Kotecha Property [(2001) 2 Cal LT 34] . The last judgment was the subject-matter of challenge in Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510 : (2005) 4 CTC 489] This Court set aside the judgment and held in para 25 as under:

'25. When the averments in the plaint are considered in the background of the principles set out in Sopan Sukhdeo case [Sopan Sukhdeo Sable v. Asstt. Charity Commr., (2004) 3 SCC 137] the inevitable conclusion is that the Division Bench was not right in holding that Order 7 Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint

without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. This is not so in the present case."

30. In *C.Natarajan*, supra, the Hon'ble Supreme Court observed as under:

"19.*We have noticed herein before that the defendant, inter alia, on the plea of identification of the suit land vis-à-vis the deeds of sale, under which the plaintiff has claimed his title, claimed possession. The defendant did not accept that the plaintiff was in possession. An issue in this behalf is, therefore, required to be framed and the said question is, therefore, required to be gone into. Limitation would not commence unless there has been a clear and unequivocal threat to the right claimed by the plaintiff. In a situation of this nature, in our opinion, the application under Order 7 Rule 11(d) was not maintainable. The* *contentions raised by the learned counsel for the respondent may have to be gone into at a proper stage. Lest it may prejudice the contention of one party or the other at the trial, we resist from making any observations at this stage."*

31. Admittedly, in the case on hand, respondents 1 and 2 state that they never delivered possession to the petitioner. The petitioner in his written statement stated that possession of the property was delivered to him. When handing over of possession of the property itself is in dispute, an issue qua possession is also required to be considered in the suit.

32. It is settled that for deciding an application under Order 7, Rule 11 of the C.P.C., the relevant facts, which need to be looked into are the averments in the plaint and the plea taken by the defendant in the written statement would be irrelevant.

33. As stated supra, respondents 1 and 2 state that they have knowledge about the execution of the sale deed only on

10.08.2011. The averments in the plaint clearly show that the question involved in the case on hand qua limitation is a mixed question of fact and law. The question of limitation cannot be decided without framing an issue and also without adducing oral and documentary evidence. Therefore, I am of the considered view 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. On a reading of the plaint, it cannot be held that the suit is barred by time.

34. The trial Court was right in declining to reject the plaint under Order 7, Rule 11(d) of the C.P.C. There is no valid ground to interfere with the order of the trial Court. In view of the categoric finding as aforesaid based on the pleadings on record, I do not propose to delve into the various other decisions relied by the learned counsel for the petitioner.

35. In the result, the Civil Revision Petition is dismissed, by confirming the order and decretal order passed in I.A.No.703

of 2012 in O.S.No.416 of 2011, dated 01.03.2013 on the file of the I Additional Subordinate Judge, Erode. The learned I Additional Subordinate Judge, Erode, is hereby directed to dispose of the suit within a period of four months from the date of receipt of copy of this order, since the suit is of the year 2011. No costs. Consequently, M.P.No.1 of 2013 is closed.

14.06.2017

Note:Issue order copy on 08.06.2018
vs

Index : Yes
Internet : Yes

To
The I Additional Subordinate Judge,
Erode.

M.V.MURALIDARAN, J.

vs

Pre-delivery order made in
C.R.P.(PD) No.3456 of 2013
and
M.P.No.1 of 2013

14.06.2017