

IN THE HIGH Court OF JUDICATURE AT MADRAS

Dated: 07.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.3654 of 2012

and

M.P.No.1 of 2012

Dewan Bahadur M.O.
Parthasarathy Iyengar's Charities,
Rep. by its Secretary,
No.25, Peyalwar Koil Street,
Triplicane, Chennai-600 005.
.. Petitioner

Vs.

1.Rani Bala Kumari Nachiar

2.Usha Nandhini

3.Udaya Banu

4.Gayathri Devi

5.Durga Devi

6.Sevuga Pandian alias Vignesh
Respondents

..

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and Decreetal order dated 14.07.2011 in I.A.No.5908 of 2011 in O.S.No.11854 of 2010 on the file of the learned V Additional Judge, City Civil Court, Chennai.

For Respondents : Mr.S.Thiruvengkatasamy

ORDER

The defendant is the Revision Petitioner before this Court. The respondents herein as plaintiffs filed O.S.No.11864 of 2010 against the petitioner herein for declaration, to declare the sale deed executed by Gnanamani Nachiyar in favour of the defendant on 22.09.1915 and registered as document No.2516 of 1915 in S.R.O South Madras and the subsequent sale deed executed between the defendant and Swaminatha Mudhaliyar which is registered as document No.1033 of 1923 in S.R.O South Madras and also the alleged sale deed executed by the High Court in execution of the decree in C.S.No.479 of 1923, by this Hon'ble Court and it is registered as Document No.146 of 1926 with Madras Treasury are null and void and for permanent injunction restraining the defendant from alienating the suit property. The above said suit was originally filed before this Hon'ble Court in C.S.No.800 of 2008 and the same was transferred to the learned V Additional Judge, City Civil Court, Chennai on pecuniary jurisdiction.

2.The defendant filed written statement and denied all the allegations contained in the pliant. Further the defendant/revision

petitioner filed an application in I.A.No.5908 of 2011 to reject the plaint under Order 7, Rule 11 (a) (b) and (d) of CPC as there is no cause of action for the suit and the suit is barred by law.

3. According to the revision petitioner he is the Secretary of the defendant trust. The defendant charities is the absolute owner of the suit schedule property right from 1925 and the same was purchased in a public auction held on 23.09.1925 by the Official Referee of High Court Madras which was also confirmed by this Court on 27.10.1925 in C.S.No.479 of 1923. By virtue of the above said purchase the defendant trust is in continues possession and enjoyment over the suit property as absolute owner. It is further averred by the revision petitioner that the plaint does not disclose any cause of action to file the suit for the plaintiffs. The respondents herein are attempting to set aside a sale held on 23.09.1925 which was confirmed by this Hon'ble Court on 27.10.1925 after a lapse of more than 80 years. The above suit filed in the year 2008 to set aside the sale of the year 1925 is patently barred by limitation. Under Article 58 of the Limitation Act, 1963 the period prescribed to file a suit for declaration is 3 years commencing from the date when the right to sue accrues. Therefore, the present suit is barred by law as per Article 58 of Limitation Act, r/w explanation to Section 3 of the Transfer of Act.

4.The further contention of the revision petitioner is that the plaintiffs have deliberately undervalued the suit to grab the suit property from the defendant which is located in a prime area. The market value of the property in S.No.51/2 runs to Hundreds of Crores, but the plaintiffs have deliberately valued the suit at Rs.10 lakhs. The suit has not been valued properly in terms of Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act. Hence, the revision petitioner prayed to reject the plaint.

5.The respondent herein filed counter affidavit to the above said application and contented that the plaintiffs are having cause of action to file the suit and the Court fee paid by them is also correct. Further with regard to the objection made by the revision petitioner on the question of limitation and the Court fee, the plaintiffs contented that the above said objection were raised by this Court before numbering the suit and the plaintiffs have given clarification to the Registry of this Court by making necessary endorsements and after accepting the endorsement made by the plaintiffs, the suit was numbered by this Court. Therefore the revision petitioner once again cannot question the issue relating to limitation and Court fee. Further it is a settled position of law that the question of limitation is a mixed question of law and facts and

the same cannot be decided as preliminary issue. Therefore the respondents herein prayed to dismiss the application filed by the revision petitioner.

6.The trial Court after having elaborate discussion by order dated 14.07.2011 was pleased to dismiss the application filed under Order 7, Rule 11 CPC by the defendant. Being aggrieved over the same, the present Civil Revision Petition is filed by the revision petitioner.

7.I heard Mr.Shakespeare, learned counsel appearing for the petitioner and Mr.S.Thiruvankatasamy, learned counsel appearing for the respondents and I have carefully considered the rival submission on either side.

8.The arguments advanced by the learned counsel for the revision petitioner is that the sale deeds sought to be declared as null and void by the plaintiffs/respondents herein is way back to 1915 and 1925 and the same cannot be decided after a very long delay of more than 80 years. The present suit is of the year 2008. It is needless to say that a suit for declaration has to be filed within 3 years from the date of execution of document as per Article 58 of the Limitation Act. Hence the suit is barred by limitation and so, the

plaint is liable to be rejected as per Order 7, Rule 11 (d) of C.P.C.

9.The learned counsel further contented that the suit property is worth about more than 100 crores. However, the plaintiffs have given the market value of the property as Rs.10 lakhs and paid a Court fee of Rs.13,600.50 under section 25 (b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 r/w Appendix 1A of High Court Fees Rules, 1956. Therefore the learned counsel for the revision petitioner would contend that the suit is undervalued and therefore the plaint is liable to be rejected on the ground of undervaluation and non-payment of necessary Court fees as per order 7, Rule 11(b) of C.P.C.

10.In this regard, the learned counsel for the petitioner has relied upon the following judgment to support his case reported in **2013 (1) SCC 625** wherein it was held vide paras 9, 17, 18 as follows:

“9. Order 2, Rule 1 requires every suit to include the whole of the claim to which the plaintiff is entitled in respect of any particular cause of action. However, the plaintiff has an option to relinquish any part of his claim if he chooses to do so. Order 2 Rule 2 contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts,

Order 2 Rule 2 of CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order 2 Rule 2 (2) does not contemplate omission or relinquishment of any portion of the plaintiff's claim with the leave of the Court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the Court is contemplated by Order 2 Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave of the Court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order 2 Rule 2 (2) and (3) of the CPC that the aforesaid two sub-rules of Order 2 Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situations where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit provided that at the time of omission to claim the particular relief he had obtained leave of the Court in the first suit.

17. However, we are unable to agree with the same in view of the object behind the enactment of the provisions of Order II Rule 2 of the CPC as already discussed by us, namely, that Order II Rule 2 of the CPC seeks to avoid multiplicity of litigations on same cause of

action. If that is the true object of the law, on which we do not entertain any doubt, the same would not stand fully subserved by holding that the provisions of Order II Rule 2 of the CPC will apply only if the first suit is disposed of and not in a situation where the second suit has been filed during the pendency of the first suit. Rather, Order II, Rule 2 of the CPC will apply to both the aforesaid situations. Though direct judicial pronouncements on the issue are somewhat scarce, we find that a similar view had been taken in a decision of the High Court at Allahabad in *Murti v. Bhola Ram* [(1894) ILR 16 All 165] and by the Bombay High Court in *Krishnaji Ramachandra v. Raghunath Shankar*.

18. In the light of the above discussions we are of the view that the present appeals deserve to be allowed. Accordingly we allow the same and set aside the judgment and order dated 06.10.2009 passed by the High Court of Madras in C.R.P.(PD).Nos.3758 and 3759 of 2007. Consequently, we strike off the plaint in O.S.Nos.202 and 203 of 2007 on the file of District Judge, Thiruvallur". सत्यमेव जयते

11. The above decision referred by the revision petitioner, the Hon'ble Apex Court having elaborately dealt with Order 2, Rule 2 and 3, held that subsequent suit is impermissible, when the cause of action for latter suit is same as in an earlier suit. Here is the case, as discussed above, the plaintiffs laid the above suit for declaration to declare the sale deeds of the year 1915 and 1925 as null and

void and for the same cause of action put forth by the plaintiff is in year 2006 when the defendant lodged a police complaint before the Inspector of Police, Central Crime Branch, Egmore stating that the plaintiffs created a mortgage without possession in respect of suit properties owned by the defendant charity in S.No.51/2. Therefore the plaintiffs filed Anticipatory Bail petition in CrI.M.P.No.28476 of 2006 and in that the defendant filed impleading petition alleging that they are the absolute owner of the suit property. Thereafter only the plaintiffs got knowledge of the above transaction and deeds. Hence the finding of the lower Court that the plaintiffs are having cause of action and the suit is not barred by limitation does not call for any interference by this Court. Thus this Court finds that the facts involved in the case on hand and the judgment relied by the revision petitioner are totally different and hence the same is not applicable to revision petitioner's case.

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12.Per contra, the learned counsel appearing for the respondents herein would submit that the lower Court meticulously having dealt with all the averments made in the plaint and in account of the facts of the case has rendered a just and correct finding by holding that the relief sought for by the revision petitioner is unsustainable under law.

13.It is further contended that the trial Court has rightly come to a conclusion that the plaint averments disclose a cause of action and the question of limitation being a mixed question of law and facts and the same can be considered only during trial of the suit.

14.The learned counsel for the respondents would further contend that the lower Court after considering the nature of the averments mentioned at paragraphs 10 to 23 of the plaint and after extracting the same, has come to a conclusion that a plaint cannot be rejected on the averments made in the written statement and the averments mentioned in the plaint alone can be considered for deciding the issue relating to rejection of plaint, hence he prayed for dismissal of the Civil Revision Petition.

15.The learned counsel for the revision petitioner would also placed reliance on the following judgments:

1. **2009 (5) CTC 627 (The Ootacamund Club,
represented by its Secretary, Post
Box No.9, Ootacamund, The Nilgiris
v. H.S.Mehta)**
2. **2015 AIR (SC) 3357.**

16. Wherein it is held that a civil suit could not be dismissed under Order 7, Rule 11 (d) as barred by limitation without proper pleadings, and framing on issue on limitation and taking evidence. For question of limitation is a mixed question of fact and law and held that plaint averments alone are to be considered when a plea for rejection is raised.

17. In yet another Judgment reported in **2015 (5) CTC 45** in the case of ***Tim Boyd, International President v. Kesiraju Krishna Phani & Ors***, it is held as follows:

“It is also well settled that while considering the application under Order 7 Rule 11 CPC, the Court has to only go by the various averments made in the plaint to find out as to whether it discloses the cause of action or not, and not to judge the issue based on the rival contentions made by the defendant in his pleadings. In other words, the disclosure of cause of action by the plaintiff in the plaint, has to be found out from the point of view of the plaintiff as set out in the plaint, and not from the point of view of the defendant as projected by him in his defense”.

18. Now this Court has to consider the scope of rejection of plaint and it is useful to extract the provision of order 7, rule 7 C.P.C hereunder:

Order VII Rule XI:

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

19. It is noticed by this Court from the order of the lower Court that the plaint presented by the respondents herein was returned on two occasions on 15.04.2008 & 28.04.2008 by this Court by raising the issue of jurisdiction regarding Court fee and limitation for that detailed explanation was given by the learned counsel for the plaintiffs. After satisfying the explanation given by the plaintiff's counsel the registry of this Court has numbered the suit. The trial Court has extracted the returns and explanation at paragraph 19 of the impugned order and thereafter, after careful consideration of the case held that the plaintiffs are having cause of action to file the suit. The trial Court has elaborately discussed the issue relating to reject the plaint and has come to the conclusion that the plaint need not be rejected.

20.Regarding the question of limitation, the trial Court on a proper apprisel of facts and the decisions reported in **2007 (12) Scale 163** in the case of **C.Natarajan v. Ahimbai and Another, 2005 (7) SCC 510** in the case of **Popat and Koteche Property v. SBI Staff Association** and also **2006 (5) SCC 662** in the case of **Bala Saria Construction Pvt Ltd. v. Aanuman Seva Trust**, held that the objection as to limitation is a mixed question of fact and law and the plaint cannot be rejected under Order 7, Rule 11(d) of the Code of Civil Procedure.

21.The well considered order passed by the lower Court is not warranting interference by this Court. In fine, I do not filed any merits in this Civil Revision Petition and the same is deserves to be dismissed.

22.In the light of the above discussions and the decisions cited supra, when the impugned order is looked into, it is needless to say that the trial judge has rightly dismissed the revision petitioner's application for rejection of plaint. Therefore, this Court finds no illegality or infirmity over the impugned order.

23.In the result:

(a) this Civil Revision Petition stands dismissed and

the Order and decree dated 14.07.2011 made in I.A.No.5908 of 2011 in O.S.No.11864 of 2010, on the file of the learned V Additional Judge, City Civil Court, Chennai, is hereby confirmed;

(b) the learned V Additional Judge, City Civil Court, Chennai, is directed to take up the suit in O.S.No.11864 of 2010, on day to day basis, without giving any adjournments to either parties and dispose the same within a period of three months from the date of receipt of a copy of this order. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit as fixed by this Court. No costs. Consequently, connected miscellaneous petition is closed.

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07.12.2017

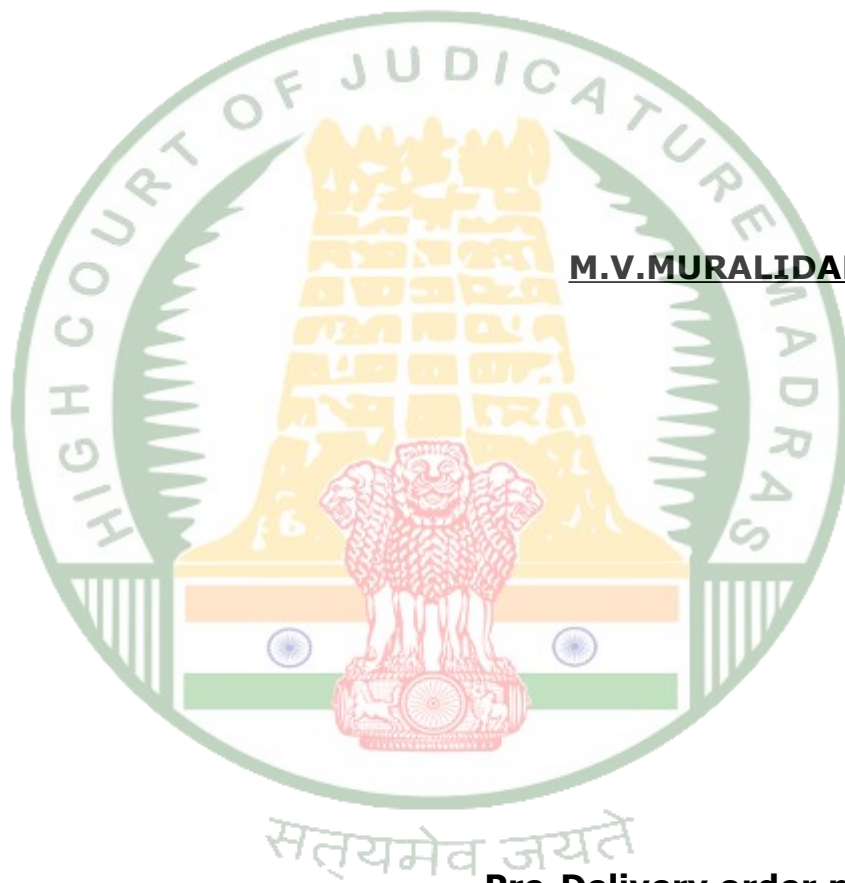
vs

Speaking Order
Index:Yes

To

The V Additional Judge,
City Civil Court, Chennai.

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M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(PD)No.3654 of 2012
and
M.P.No.1 of 2012

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C.R.P.No.3654 of 2012**M.V.MURALIDARAN, J.**

Today, the matter is listed under the caption "for clarification" at the instance of learned counsel for petitioner.

2. Heard learned counsel for the petitioner and learned counsel appearing for the respondents.

3. It is represented by the learned counsel for the petitioner that the matter has already been dismissed by this Court on 07.12.2017, by confirming the order passed in I.A.No.5908 of 2011, dated 14.07.2011, on the file of the learned V Additional Judge, City Civil Court, Chennai. However, in the order copy, the respondents 1 to 6 only have been shown as respondents but respondents 7 to 9 who were already impleaded under orders dated 02.03.2017 in M.P.Nos.1 and 2 of 2013 have not been shown as respondents in the main order.

4. Considering the submissions made by the learned counsel for the parties, this Court directs the Registry to carry out necessary corrections and issue fresh order copy.

22.02.2018

Note: Issue order copy on 02.03.2018

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M.V.MURALIDARAN,J.

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C.R.P.No.3654 of 2012

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