



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)No.2525 of 2014 (PD)
& M.P.(MD) No.1 of 2014

P.Musabukani

.. Petitioner/Defendant

Vs.

P.Kadhar Sulthan

.. Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 07.10.2014, passed in I.A.No.73 of 2014 in O.S.No.89 of 2013 by the learned District Munsif, Mudhukulathur, Ramanathapuram District.

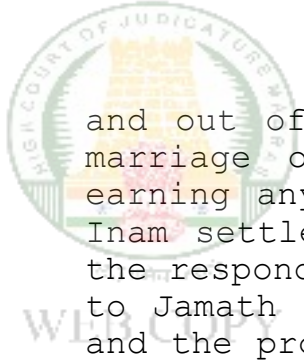
For Petitioner : Mr.C.Arul Vadivel @ Sekar
For Respondent : Mr.P.Mahendran

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 07.10.2014, passed in I.A.No.73 of 2014 in O.S.No.89 of 2013 by the learned District Munsif, Mudhukulathur, Ramanathapuram District.

2.The petitioner, who is the brother of the respondent, is the defendant and the respondent is the plaintiff in the suit in O.S.No.89 of 2013 on the file of the District Munsif Court, Mudhukulathur, Ramanathapuram District. The respondent filed the suit for recovery of possession. The petitioner filed I.A.No.73 of 2014 under Order VII Rule 11 C.P.C. to reject the plaint. According to the petitioner, his father and the respondent settled the property on him by Inam settlement on 05.04.1982 and from that date, the petitioner is in possession and enjoyment of the property. The entire revenue records stand in the name of their father only. The respondent did not file suit, when the father of the petitioner was alive. After 31 years, the respondent has filed the suit for recovery of possession. As per Article 65 of the Limitation Act, there is no cause of action arose for the suit.

3.The respondent/plaintiff has filed counter affidavit stating that he was working in Abroad and sent money to his father. From



and out of the said money, the respondent's father celebrated the marriage of his sisters and brothers. The petitioner was not earning any amount. By threatening his father, the petitioner got Inam settlement in his favour. On coming to know about the same, the respondent and other legal heirs of his father, gave a complaint to Jamath on 20.03.1983. The Jamath cancelled the Inam settlement and the property was partitioned among all the legal heirs of their father. The suit property was allotted to the respondent and he is the owner of the suit property and was in possession and enjoyment of the same. Within three years prior to filing of the suit, the petitioner trespassed into the suit property and the respondent has filed the suit for recovery of possession within 12 years prescribed by the Limitation Act.

4. The learned District Munsif, Mudhukulathur, considering the averments made in the plaint, affidavit and counter affidavit, dismissed the application holding that the application filed by the petitioner, is not maintainable and the contention of the petitioner can be decided only after evidence being let in by the parties.

5. Against the said order of dismissal, dated 07.10.2014, the petitioner has come out with the present Civil Revision Petition.

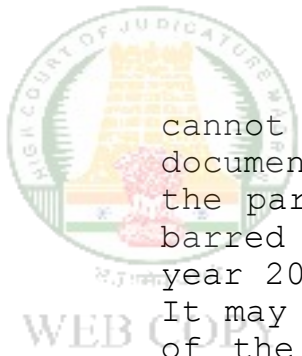
6. The learned counsel for the petitioner reiterated all the grounds raised in the Civil Revision Petition and submitted that no cause of action has arisen for the suit and the suit is barred by limitation. The Courts have inherent power to reject the vexatious litigation.

7. In support of his submissions, the learned counsel for the petitioner relied on the following judgments:

(i) **2011 (3) MLJ 21 [M.V. Jayavelu Vs. E. Umapathy]**, wherein at paragraphs 4 and 9, it has been held as follows:

"4. The learned Senior Counsel also relied upon the judgment in Nesammal and Another v. Edward and Another, 1998 (3) CTC 165, wherein this Court has held that the provisions of Order 7 Rule 11 are not exhaustive and the lower Court should reject the plaint when the allegations reveal abuse of process of law and also relied upon the judgment in A. Sreedevi v. Vicharapu Ramakrishna Gowd, 2006 (1) MLJ 116 : 2005 (5) CTC 748, wherein this Court has held that clever drafting should not confuse the mind of the Court and the Court has to find out whether any case has been made out in the plaint and therefore, submitted that lower court erred in dismissing the application in the rejection of plaint.

9. As regards the period of limitation is concerned, no doubt, as per the judgment of the Hon'ble Supreme Court rendered in the matter of Gunwantbhai Mulchand Shah and Others v. Anton Ellis Farel and Others, in AIR 2006 SCW 1377 : 2006 (2) MLJ 399 unless there is a refusal on the part of the other side, the limitation will not start in a suit for specific performance. In this case, the said judgment



cannot be applied as the plaintiff has not produced any document to prove that there was an agreement of sale between the parties. Further, the alternative prayer is also clearly barred by limitation as admittedly the amount was paid in the year 2000 and in the year 2008, the same cannot be recovered. It may be that the plaintiff is entitled to be in possession of the property till the defendants refund the amount but that is not a ground to maintain the present suit filed by the plaintiff. Therefore, according to me, the plaint does not disclose any cause of action for filing a suit for specific performance and the claim for refund of Rs.2,00,000/- is also barred by limitation. Hence, the plaint is liable to be rejected as held by this Court in the judgment in Palanisami, N. v. A. Palaniswamy, 1998 (2) MLJ 764 : 1998 (3) CTC 165 that the provisions of Order 7, Rule 11 is not exhaustive and the suit can be rejected when it is a clear case of abuse of process of law. Further, in the judgment of Palanisami, N. v. A. Palaniswamy (supra), it has been held as follows:

"8. ...The trial Court is also bound to see that the valuable time is not taken away by proceeding the trial in the vexatious litigation, which is clearly abuse of process of law. In fact, in the decision reported in T. Arivandandam v. T.V. Satyapal and Another, 1977 (4) SCC 467, the Honourable Supreme Court held that it is also duty bound not to take such cases. In para 7 of the judgment, Their Lordships held that,

"We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party more than regret the circumstances that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worth while disputes and avoiding the distraction of sham litigation such as the one we are disposing of Another moral of this unrighteous chain litigation is the gullible grant of ex-parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy."



9. In Azhar Hussain v. Rajiv Gandhi, AIR 1986 SC 1253 : 1986 (Supp) SCC 315, in Para 12, Their Lordships held that,

"Learned Counsel for the Petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substances, the argument is that the Court must proceed with the trial record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned Counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise the mind of the Respondent. The word of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law."

10. The same principle was followed in the very recent decision of Supreme Court in I.T.C. Limited v. Debts Recovery Appellate Tribunal, AIR 1998 SC 634 : 1998 (2) SCC 70 : 1998 (2) MLJ 79. In that case, Their Lordships followed the decision in Ashar Hussain v. Rajiv Gandhi, (1986) Supp. SCC 315.

11. In the event of all these decisions the argument of the counsel for the petitioners that unless the conditions are satisfied under Order 7 Rule 11 of Code of Civil Procedure, the plaint cannot be rejected is without any basis. The provisions of Order 7 Rule 11 are not exhaustive and the Court has got inherent powers to see that the vexatious litigations are not allowed to take or consume the time of the Court. In appropriate cases, directions can be given by this Court as well as the Court in which the suit is filed not to entertain the suit, if on reading the allegations in the plaint it reveals that the same is abuse of process of law.""



(ii) **1998 (III) CTC 165 [Nesammal and another Vs. Edward and another]**, wherein at paragraph 8, it has been held as follows:

"8. Apart from the above decisions, the trial Court is also bound to see that the valuable time is not taken away by proceeding the trial in the vexatious litigation, which is clearly abuse of process of Law."

8.The learned counsel for the respondent reiterated the averments made in the counter affidavit and submitted that the learned District Munsif has rightly dismissed the application and for considering the application to reject the plaint, the only averments made in the plaint are necessary.

9.In support of his submissions, the learned counsel for the respondent relied on the following judgments:

(i) **2008 (1) MLJ 1278 (SC) [C.Natarajan Vs. Ashim Bai and another]**, wherein at paragraphs 7 and 18, it has been held as follows:

"7. 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, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence. [See Popat and Kotecha Property v. State Bank of India Staff Association, 2005 (7) SCC 510].

18. We have noticed hereinbefore that the defendant, inter alia, on the plea of identification of the suit land 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 VII 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."

(ii) **2015 (1) MWN (Civil) 622 [Kolli Venkata Mohan Rao and another Vs. J.M.Patricia and others]**, wherein at paragraph 21, it has been held as follows:

"21. Further, the question of limitation was pressed into service also by contending that the impugned transactions were made in the year 2000 and 2003 and the suit was filed only in the year 2012 and therefore, it is barred by limitation. The discussion made by me supra, while



considering the limitation aspect, more particularly by considering the fact that the plaintiffs have already approached this Court as early as in the year 2005, is equally applicable to the above issue also. Even otherwise, it is to be noted that the question of limitation is not purely a question of law. On the other hand, it is a mixed question of law and fact. Therefore, the date of knowledge of the impugned transactions certainly plays a major role to decide as to whether the relief is barred by limitation or not. Such decision is possible only by allowing the parties to lead evidence by conducting trial, and therefore, such mixed question of law and fact cannot be considered and decided in an application filed under Order 7 Rule 11 CPC, especially when the plaint averments on the face of it, do not show that such exercise is unnecessary and the Court can come to the conclusion based on the plaint averments themselves. Therefore, on the question of limitation, the plaint cannot be rejected, as the averments made therein do not warrant such rejection."

(iii) **2015 (1) MWN (Civil) 459 [P.Thillai Selvan vs. Shyna Paul and another]**, wherein at paragraph 15, it has been held as follows:

"15. A perusal of the abovesaid decision would show that an executor or a legatee claiming under a Will can file a Suit or initiate action and however, the Court cannot pass a Decree or Final Order in such Suit or action in the absence of a Probate or a Letters of Administration in regard to such a Will. In this case, the question as to whether the action initiated by the Plaintiff is an action which can be initiated only when he gets a right or otherwise, is purely a question of fact that has to be gone into by the Court below during the time of trial to decide the question as to whether the Suit was filed within the period of limitation. The abovesaid decision of the Apex Court does not deal with the Application filed under Order 7, Rule 11, C.P.C. and on the other hand, it has dealt with the issue as to whether Section 213 of the Indian Succession Act, 1925, bars an executor or a legatee under a Will from establishing any right under a Will, unless Probate or Letters of Administration is obtained. Therefore, to apply the said decision to the present case, the facts and circumstances of the case supported by material evidence, have to be gone into by the Court below at the time of trial. Therefore, in my considered view, the said decision cannot be applied while deciding an Application under Order 7, Rule 11, C.P.C. seeking for rejection of the Plaint itself and hence, the abovesaid decision will not help the Petitioner herein, at this stage, in any manner. However, it is open for the Petitioner/Second Defendant to canvass the said issue by filing Written Statement and substantiate his stand during the time of trial. It is needless to say that the Trial Court will consider all those issues including the issue of payment of



Court-fee as well as the question of limitation, and give its finding on merits and in accordance with law, in all those issues."

10.I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record and the judgments relied on by the learned counsel for the parties.

11.The petitioner has filed the application to reject the plaint on the ground that the suit is barred by limitation and no cause of action has arisen. According to the respondent, Inam settlement, dated 05.04.1982, was cancelled by Jamath and the property was partitioned among the legal heirs and the suit property was allotted to the respondent on 20.08.1983. From that date, he was in possession and enjoyment of the suit property. The petitioner has trespassed into the suit property within three years from the date of filing of the suit. In view of such averments in the plaint, the learned District Munsif has rightly dismissed the application. The judgments relied on by the learned counsel for the petitioner are not applicable to the facts of the present case and the judgments relied on by the learned counsel for the respondent are applicable to the facts of the present case. There is no irregularity or illegality in the fair and decreetal order dated 07.10.2014, passed in I.A.No.73 of 2014 in O.S.No.89 of 2013, by the learned District Munsif, Mudhukulathur, warranting interference by this Court.

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

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Mudhukulathur,
Ramanathapuram District.

+ 1 CC TO Mr.P.MAHENDRAN, ADVOCATE IN SR No. 8789

+ 1 CC TO Mr.C.ARUL VADIVEL @ SEKAR, ADVOCATE IN SR No. 8746

SMN2

TE/MR : 27/02/2017 : 7P/4C

C.R.P. (MD) No.2525 of 2014 (PD)
& M.P. (MD) No.1 of 2014
16.02.2017