



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2017
(Reserved on 13.06.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (PD) (MD) Nos.1109 and 1110 of 2017

and

CMP (MD) No.4979 of 2017

S.V.Arunachalam

... Petitioner/Petitioner/
1st Defendant in both CRPs

vs.

- 1) S.V.Ramasamy
- 2) S.V.Pethaperumal
- 3) P.Yegammai
- 4) K.R.Sornavalli
- 5) Y.Muthulakshmi
- 6) L.Alagammai
- 7) V.Dhanalakshmi
- 8) Lakshmi Arun

... Respondents 2 to 8/ Respondents 2 to 8/
Defendant 2 to 8 in both CRPs

Prayer in CRP.1109/2017 : Petition filed under Article 227 of the Constitution of India, against the fair and Ex order dated 30.11.2016 made in plaint rejection in I.A.No.105 of 2016 in O.S.No.91 of 2009 on the file of the I Additional District Judge, Madurai.

Prayer in CRP.1110/2017 : Petition filed under Article 227 of the Constitution of India, against the fair and Ex order dated 24.04.2017 made in I.A.No.35 of 2017 in I.A.No.105 of 2016 in O.S.No.91 of 2009 on the file of the I Additional District Judge, Madurai.

For Petitioner : Mr.A.R.M.Ramesh

COMMON ORDER

These revision petitions are directed against the dismissal of the applications filed by the defendant to reject the plaint under Order 7 Rule 11(d) CPC and to review the said order of dismissal in I.A.No.105/2016 in O.S.No.91/2009 dated 30.11.2016.

2.The suit in O.S.No.91/2009 is laid by one S.V.Ramasamy. It is stated that his father A.R.Sevugan Chettiar started business in the name of M/s.Aruna Machine Tools which was converted into partnership firm involving himself and the defendants 1 and 2 as



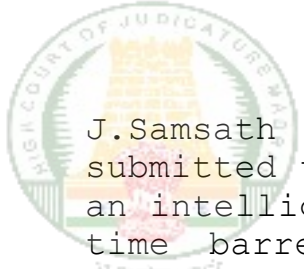
its partners. From the income of the partnership firm, several other commercial establishments were started involving his father Sevugan Chettiar himself and his brother defendants 1 and 2.

3. It is also averred in the plaint that there was memorandum of understanding entered into between them on 06.02.2003 and family arrangement on 28.07.2003. The said Sevugan Chettiar died intestate during the month of August 2004 leaving behind the plaintiff and defendants 1 and 2 as his legal heirs. Hence, they sought for preliminary decree of partition of 1/3rd share in the A schedule property and to allot B schedule property to the plaintiff as agreed by his father Late A.R. Sevugan Chettiar and to declare the memorandum of understanding dated 06.02.2003 and memorandum of family arrangement dated 28.07.2003 as non enforceable.

4. In the plaint, it is averred that A.R. Sevugan Chettiar while he was alive has agreed to hand over the absolute property described in B schedule to the plaintiff in lieu of amount of Rs.365 lakhs which was due from the defendants 1 and 2 and A.R. Sevugan Chettiar.

5. The revision petitioner herein has filed written statement. The Trial Court has framed issues and has also commenced the trial and examined the witnesses. At that juncture, the revision petitioner has filed I.A.No.105/2016 under Order 7 Rule 11(d) CPC for rejection of plaint on the ground that the plaint is couched in a manner that on a bare reading it appears to be a partition suit. But, in true spirit, it is only to enforce the alleged agreement of Late A.R. Sevugan Chettiar in respect of B schedule property. In the absence of details about payment of Rs.365 lakhs and promise of his father to allot B schedule property to him, the suit as framed is barred by limitation. It is also contended by the revision petitioner that both the prayers are hit by Articles 54 and 58 of the Limitation Act and therefore, the plaint has to be rejected.

6. The Trial Court after considering the plea and the submission made by the revision petitioner has passed a detailed order dismissing the petition on 30.11.2016. Unsatisfied with the order, the revision petitioner has preferred review and that review was taken up by the Trial Court and after detailed discussion about the scope of review in the light of the order sought to be reviewed, has dismissed the review petition. The 1st defendant unsatisfied with the order passed in I.A.No.105/2016 and in the review application I.A.No.35/2017 has preferred the present revision petitions.



J.Samsath Beevi reported in 2010 (3) CTC 310 vociferously submitted that it is not very difficult for a seasoned litigant or an intelligent lawyer to draft the plaint in such a manner to make time barred litigation appeared to be the case filed within limitation by couching the pleading to prima facie satisfy the Court. It is the duty and responsibility of the Court to scan the pleading and see whether cause of action survives and the suit is within the period of limitation prescribed.

8.He has also relied upon the judgment of the Hon'ble Supreme Court in The Church of Christ Charitable Trust & Educational Charitable Society vs. Ponnamman reported in 2012 (4) CTC 308, wherein, it is held that the plaint which is bereft of required materials as mandated in the statutory provisions is liable to be rejected as cause of action pleaded in the plaint vitiated. The power under Order 7 Rule 11 can be exercised at any stage of the suit either before registering the plaint or after issuance of summons to defendants or at any time before conclusion of the trial.

9.In Balasaria Construction (P) Ltd., vs. Hanuman Seva Trust and others reported in (2006) 5 SCC 658, the Hon'ble Supreme Court considering the importance whether the words ''barred by any law'' in Rule 11(d) would also include barred by the law of limitation, referred the matter to larger Bench. However, subsequently, the Apex Court consisting of Three Judges has disposed of the case with a direction to consider the issue in the light of the facts of each case.

10.Thus, the prime contention of the revision petitioner is that O.S.No.91/2009 is not a suit for partition though it appears so. It only seeks to enforce the alleged agreement of Late A.R.Sevugan Chettiar who died in the year 2004. Since the plaint has been presented three years after the death of Sevugan Chettiar, it is barred by limitation.

11.It is now settled principle of law that the question of limitation and question of rejecting the plaint on the ground of limitation being a mixed question of law and fact, suit cannot be dismissed without framing an issue on limitation and taking evidence.

12.The Apex Court in C.Natarajan vs. Ashim Bai and another reported in (2008) 1 MLJ 1278(SC), after referring to the earlier judgments including Balasaria Construction (P) Ltd's case(supra), has held that question of limitation is a mixed question of law and fact. Rejection of plaint on the ground of limitation without framing an issue on limitation and without recording evidence is contrary to law. It is relevant to extract paragraph 7 of the said judgment:-

<https://hcservices.ecourts.gov.in/hcservices/>

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.''

13.It is also a settled principle of law that while scanning the plaint in the light of application under Order.7 Rule.11(d), it should be scanned in toto and not in piecemeal. It is the understanding of the revision petitioner regarding the relief sought in the plaint that it is discretely couched in the manner as if it is a partition suit. But it is not so in true sense. The Trial Court has come to the contra conclusion since the foundation of the plaint is based on the relationship of the plaintiff with A.R.Sevugan Chettiar and with the defendants 1 and 2.

14.It is not denied or disputed by the 1st defendant/revision petitioner that suit properties are properties of A.R.Sevugan Chettiar. It is not denied by the revision petitioner that A.R.Sevugan Chettiar died intestate. It is also not denied by the revision petitioner that the plaintiff is one of the legal heirs who is otherwise entitled for a share in the estate of A.R.Sevugan Chettiar. Therefore, incidentally, pleas seeking exclusive right over certain property or challenging intermediary events such as, memorandum of understanding or memorandum of family arrangement will not totally eclipse the prime relief of partition sought in the suit. Whatever defence available to the revision petitioner as defence, it has to be pleaded and proved in the course of trial. This Court finds no illusionary pleading in the plaint to circumvent the law of limitation while seeking partition in the estate of the deceased father who allegedly died intestate. Therefore, the present petition filed after commencement of trial with unsustainable plea to be entertained under Order 7 Rule 11(d) is not maintainable.

Hence, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar.

To

The I Additional District Judge, Madurai.

+1CC to M/S.A.R.M.Ramesh, Advocate, SR.No. 60414

order made in
CRP(PD) (MD) Nos.1109 and 1110 of 2017
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