BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD).No.2595 of 2016
and
CMP(MD)No.12248 of 2016

K.M. Nusrudin : Petitioner

Vs.

1. S.M. Nakkiba
2. S. Fathima Nafla
3. S. Sulthana Nasmiya : Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order of rejection of the plaint dated 07.11.2016 made in un registered suit in O.S.No.Nil of 2016 on the file of the Principal District Court, Ramanathapuram.

For Petitioner : Mr. V. Sitharanjandas

ORDER

This Civil Revision Petition is filed to to set aside the order of rejection of the plaint dated 07.11.2016 made in un registered suit in O.S.No.Nil of 2016 on the file of the Principal District Court, Ramanathapuram.

2. The petitioner presented a plaint on 24.10.2016, for cancellation of gift deed, dated 18.05.2012, registered as Document No. 2106 of 2012 executed by him in favour of the first respondent and to declare the settlement deeds dated 01.03.2016 bearing Doc.Nos.475 and 476 of 2016, executed by the first respondent in favour of the second and third respondents respectively as null and void. The said plaint was returned on 25.10.2016 with an endorsement as to how the suit is filed within time, stating that plaintiff is also party to the document and document executed by him sham and nominal and how the suit is within the period of limitation.

3. The learned counsel for the petitioner re-presented the same with an endorsement that the petitioner was under un-due

influence of the first respondent till 03.10.2016 and did not know about the legal consequences of the gift deed executed by him. On 03.10.2016 only, the petitioner came out of undue influence of the first respondent and understood the legal consequences of the gift deed executed by him. The petitioner has filed suit for cancellation within three years from the date of knowledge and therefore, suit is in time as per the Article 59 of the Limitation Act.

4. The learned Judge considering the averments in the plaint and rejected the plaint stating that there is no averments in the plaint that by playing fraud and undue influence, the first respondent got the gift deed executed on 18.05.2012. There is no prima facie case made out that he came to know about the legal consequences of the gift deed executed by him only on 03.10.2016.

5. Against the said rejection, the present Civil Revision Petition has been filed.

6. The learned counsel appearing for the petitioner submitted that the learned Judge did not properly appreciate the difference between a suit for declaration of deed as null and void and suit for cancellation of deed. In respect of suit for cancellation, the limitation starts from the date of knowledge and as per Article 59 of the Limitation Act suit has to be filed within three years from the date of knowledge. The learned Judge failed to properly appreciate the facts that the petitioner has specifically stated that he came out of undue influence of first respondent and came to know about the legal consequences of gift deed executed by him. The learned Judge erred in rejecting the plaint on the ground that the petitioner did not make out any prima facie case of undue influence and fraud. The petitioner can establish undue influence and fraud only by letting in evidence.

7. The learned counsel appearing for the petitioner relied on the following Judgments to substantiate his claim:-

(i) In the Judgment reported in ***AIR 2004 Rajasthan 196 (Virendra Singh and others Vs. Kashiram)***, wherein, paragraph no. 17 it is held as follows:-

> *17. ..... Apart from the above facts, there are various important circumstances to show that the plaintiff did not execute the gift deed with free mind and the said gift deed on the face of it as well as on the evidence adduced appears to be unconscionable and thus the burden of proving that this gift deed was not executed under the undue influence or by fraud is upon the defendants who have misreably failed to prove as such. The various circumstances are that the plaintiff is an illiterate person and he was about 60 years of age at that time, that*

the plaintiff had got three daughters and his wife and one daughter was unmarried at that time; that the plaintiff was not related to the defendants and no reason has been pleaded and proved by the defendants as to why the plaintiff executed the Will as well as the gift deed transferring his entire agricultural land in favour of the defendant No.1.

(ii) In the Judgment reported in ***AIR 1972 Allahabad 446 (Chhedi Vs. Smt. Indrapati)***, wherein, paragraph no. 4, it is held as follows:-

4. ....Under Article 59 of the Limitation Act, 1963 a suit for cancellation or setting aside an instrument or decree is to be filed within three years of the date when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside first become known to him. In the instant case the plaintiff came to know of the institution of the suit and the passing of the compromise decree in the month of October, 1964 when the defendant wanted to interfere with her possession over the land in suit and she got the file of the case inspected. Thereafter in the month of November, 1964 she filed the suit which was obviously within time.

(iii) In the Judgment reported in ***2016(3) MWN (Civil) 531, (K.Chandralekha Vs. S. Ravikumar)***, wherein, paragraph nos. 16 and 19, it is held as follows:-

16. It is true that the plaintiff has come to the Court in the year 2012 challenging the sale made as early as in the year 1998 in the case of the appellant herein. Though it may appear from the above events, namely, the date of the sale and the date of filing of the suit, that the suit is barred by limitation, it cannot be as such decided only by taking note of these dates of events. On the other hand, the entire sequence of events as stated in the plaint commencing from the transfer of title to the suit property till the date of filing of the suit have to be considered as a whole to find out as to whether the plaint, as presented, is barred by limitation.

19. It is well settled that the plea of fraud, forgery, impersonation in respect of certain transactions which are put in question, will go to the root of the matter and if such plea is proved, any transaction made however long ago, becomes void abinitio and the person claiming under such fraudulent transaction cannot be permitted to hold such fraudulent title continuously merely because a technical plea of limitation would come to his rescue. Needless to say that the technical objections if any raised should be encouraged, considered and decided by the Courts only when such objection, if allowed, would *result in rendering the substantial justice between the parties and not subverting the justice.*

(iv) In the Judgment reported in ***AIR 1968 SC 956 (Ningawwa Vs. Byrappa Shiddappa)***, wherein, paragraph no. 6, it is held as follows:-

6) It was contended on behalf of the respondents that the terminus a quo for the limitation was the date of the execution of the gift deed and the claim of the appellant was therefore barred as the suit was filed more than three years after that date. We are unable to accept this argument as correct. Article 95 prescribes a period of limitation of three years from the time when the fraud becomes known to the party wronged. In the present case, the appellant stated that she did not come to know of the fraud committed by her husband in respect of plots 91 and 92 of Lingadahalli village till his death. The trial court has discussed the evidence on this point and reached the conclusion that the case of the appellant is true. The appellant lived with her husband on affectionate terms till the time of his death. Till then she had no reason to suspect that any fraud had been committed on her in respect of the two plots in Lingadahalli village. It is only after his death when his brothers and respondent No.4's brothers removed grain from the house against her wishes that the appellant came to know that the lands at Lingadahalli village were included in the gift deed by fraud. The suit was instituted by the appellant within a few days after she came to know of the fraud. We are therefore of the opinion that the suit was brought within time prescribed under Art.95 of the Indian Limitation Act so far as plots 91 and 92 of Lingadahalli village are concerned.

8. To decide the issue in this Civil Revision Petition, Order 7 Rule 6 of CPC and Article 59 of the Limitation Act, 1963 are to be considered. The *Order VII Rule 6 of CPC* reads as follows:-

Order VII Rule 6 of CPC

6. Grounds of exemption from limitation law:- Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is confirmed.

9. As per the order 7 Rule 6 of CPC, when the suit is instituted after the expiration of the period prescribed in Limitation Act, the plaint should show the ground, upon which, exemption is claimed. The provisio of said rule gives discretion

to the Court to permit the plaintiff to claim exemption with regard to Limitation on any ground not set out in the plaint. If such ground is not inconsistent with the grounds set out in the plaint. In the present case, the first respondent is sister of the petitioner. The petitioner is alleged that there is a matrimonial dispute between the petitioner and his wife.

10. According to the petitioner, the first respondent is taking advantage of the said dispute by undue influence made by the petitioner to execute the gift deed in her favour. So that, the petitioner's wife cannot claim any right over the said property. The first respondent agreed to reconvey the property to him. The first respondent without knowledge of the petitioner has taken possession of all the original documents and executed the settlement deed in favour of her daughters, who are respondents 2 and 3, by the settlement deed, dated 03.10.2016.

11. When the petitioner demanded for the cancellation of settlement deeds, both dated 01.03.2016 and for return of original documents of title, the first respondent refused to hand over the said documents. According to the petitioner, only on 03.10.2016, he came to know the knowledge of the undue influence and intention of the first respondent to grab the property. Immediately, he filed suit as per Article 59 of the Limitation Act. Suit to cancel the instruments has to be filed within three years, when the plaintiff came to know the facts entitled him to file the suit.

12. In the present case, according to the petitioner, he came to know about the undue influence of the first respondent only on 03.10.2016. In the Judgment referred to above, it has been held that the events commencing from the date of execution of the document till filing of the suit has to be considered by the Court. While deciding the question of Limitation, it was held that the suit is in time as per Article 59 of the Limitation Act, as claimed by the petitioner. The learned Judge without considering these aspects, erred in rejecting the plaint and held that the petitioner has not made out any prima facie case. The said order is liable to be set aside for the reasons stated above.

13. In the result, the Civil Revision Petition is allowed and the order of learned Principal District Judge, Ramanathapuram, passed on 07.11.2016, made in un registered suit in O.S.No.Nil of 2016, is set aside. The learned Judge is directed to number the plaint and decide the suit on merits. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

The Principal District Court, Ramanathapuram.

+1 cc to M/s.V.S.Sitharanjandas, Advocate in SR.No. 256

trp
CSL/PM-PN/01.03.2017 : 6P/3C

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