THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.1043 OF 2017

O R D E R

The defendants in O.S.No.690 of 2016 on the file of the learned I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, moved I.A.No.446 of 2016 therein seeking rejection of the plaint under Order 7 Rule 11 CPC. By order dated 25.11.2016, the trial Court dismissed the I.A. Aggrieved thereby, they preferred the present civil revision petition under Article 227 of the Constitution.

Notice was ordered to the respondent-plaintiff on 02.03.2017 and personal service by registered post with acknowledgment due was also permitted. Learned counsel for the petitioners-defendants thereupon filed Memo dated 21.03.2017 along with the returned envelope sent by registered post to the respondent-plaintiff bearing the endorsement 'Not claimed'. The respondent-plaintiff is therefore deemed to have been served.

Heard Sri G.Arun Kumar, learned counsel for the petitioners-defendants.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.690 of 2016 was filed for 'specific performance and cancellation of the gift deed'. The prayer therein was to direct the defendants to execute a registered sale deed in favour of the plaintiff in respect of the suit schedule property, admeasuring 232 square yards in the Gramakantam, Mailardevapally Village, Rajendranagar Municipality, Ranga Reddy District; to declare the gift settlement deed bearing Document No.2324 of 2011 dated 06.06.2011 executed by the first defendant in favour of the second defendant as null and void and not binding on the plaintiff; and to declare the gift settlement deed bearing Document No.2325 of 2011 dated 06.06.2011 executed by the first defendant in favour of the third defendant as null and void and not binding on the plaintiff.

Perusal of the plaint reflects that the case of the plaintiff was as under: The first defendant is the absolute owner and possessor of the suit schedule property and the same was sold to him under unregistered sale deed dated 27.10.1987. The entire sale consideration of Rs.9,280/- was paid and a receipt was issued by the first defendant acknowledging the same. The first defendant agreed to register the regular sale deed but failed to do so. The plaintiff was in constructive possession of the suit schedule property and time was not the essence of the contract as it was an unregistered sale deed. He demanded that the first defendant should execute a registered sale deed in his favour, but for reasons best known to him, the first defendant protracted on one pretext or the other. He approached the municipal authorities for securing permission to make construction basing on the unregistered sale deed and was denied permission on the ground that it was an unregistered document. He was advised to get the unregistered sale deed impounded and approached the District Registrar Office, Ranga Reddy District, in the month of March, 2016 for that purpose. He visited the suit schedule property thereafter and found that the defendants had grabbed his property and started digging operations. He again approached the Sub-Registrar's office and found that the first defendant, with a *malafide* intention and to cheat him, got registered gift settlement deeds in favour of the second and third defendants *vide* gift settlement deeds bearing Document Nos.2324 and 2325 of 2011 dated 06.06.2011. These defendants are none other than the wife and son of the first defendant. The gift settlement deeds are not binding upon him and have to be declared as null and void. The first defendant is bound to register a sale deed in his favour and also cancel the registered gift deeds executed in favour of the second and third defendants, as the first defendant already received the entire sale consideration. The unregistered sale deed has to be treated as an agreement of sale. The plaintiff has no alternative except to file the suit.

In the paragraph relating to cause of action, the plaintiff stated that the cause of action for the suit arose on 27.10.1987 when the first defendant executed the unregistered sale deed in his favour along with a receipt in proof of payment of the sale consideration, and again in March, 2016 when the registered sale deed was impounded. Reference was also made to the legal notice dated 17.04.2016 issued by him to the defendants and the reply thereto, dated 20.04.2016. In the paragraph relating to limitation, the plaintiff stated that the suit was well within limitation as he had paid the entire sale consideration and got executed an unregistered sale deed in his favour and was waiting for a regular sale deed. He again referred to impounding of the unregistered sale deed on 29.03.2016 and issuance of the legal notice dated 17.04.2016 to claim that the suit was within limitation.

Perusal of the affidavit filed in support of the subject I.A. reflects that the defendants admitted execution of a document in favour of the plaintiff. However, they claimed that the plaintiff was never in constructive possession of the suit schedule property by virtue thereof. Further, they specifically denied that under the alleged sale deed, time was not the essence of contract. Thereafter, the first defendant stated that he had executed an agreement of sale but the plaintiff approached him to take back the suit schedule property and to return the amount paid by him. According to him, the matter was then placed before the village elders and as per their advice; he paid the amount due along with additional amount to the plaintiff in the year 2004. At that time, the plaintiff handed over physical possession of the suit schedule property to him. He admitted execution of two gift settlement deeds in the year 2011 in favour of the second and third defendants. They were stated to have constructed a compound wall with gates apart from rooms and had also sunk a bore-well. He further stated that the second and third defendants were in physical possession of the suit schedule property and were paying property tax and electricity charges to the authorities concerned. He pointed out that the plaintiff admitted that he was not in physical possession of the suit schedule property and asserted that the plaintiff would have to prove his allegations with documentary evidence to convince the Court. He further claimed that the plaintiff had no *locus standi* to file the suit and that it was time barred as he had approached the Court after three decades.

The trial Court observed that the objections raised by the defendants regarding the validity of the agreement of sale, the aspect of limitation and the *locus standi* of the plaintiff to file the suit were issues which had to be decided in the main suit after a full-fledged trial. Adverting to the settled legal position that an application for rejection of the plaint has to be decided on the strength of the plaint averments alone, the trial Court opined that none of the contentions urged by the defendants would attract the provisions of Order 7 Rule 11 CPC. The trial Court accordingly dismissed the I.A.

Order 7 Rule 11(d) CPC empowers the trial Court to reject the plaint if it appears from the statements in the plaint that the suit is barred by any law. In ***HARDESH ORES (P) LTD. V/s. HEAD AND COMPANY***[1], the Supreme Court observed that 'law' within the meaning of Order 7 Rule 11(d) CPC includes the law of limitation.

However, for this purpose the person filing an application for rejection of the plaint has to satisfy the Court that the plaint does not disclose how the same is in time and a duty is cast upon the Court to verify the plaint averments before deciding the issue (***RAM PRAKASH GUPTA V/s. RAJIV KUMAR GUPTA***[2]). As pointed out in ***C.NATRAJAN V/s. ASHIM BAI***[3], the question whether a suit is barred by limitation or not would depend upon the facts and circumstances of each case. Significantly, in ***BALASARIA CONSTRUCTIONS (P) LTD. V/s. HANUMAN SEVA TRUST***[4], a two Judge Bench of the Supreme Court referred the question as to whether a plaint could be rejected on the ground that it was barred by limitation to a Larger Bench for consideration, taking into account the dichotomy of views on this aspect. However, the three Judge Bench, to which the matter was referred, did not go into the question as to whether the words 'barred by any law' in Order 7 Rule 11(d) CPC would also include 'barred by the law of limitation' in view of the statement of both the parties that the decision in the case would depend upon facts. The matter was again placed before a two Judge Bench and by the judgment reported in ***BALASARIA CONSTRUCTIONS (P) LTD. V/s. HANUMAN SEVA TRUST***[5], the two Judge Bench observed that the question of

[1] (2007) 5 SCC 614
[2] (2007) 10 SCC 59
[3] (2007) 14 SCC 183
[4] (2006) 5 SCC 662
[5] (2006) 5 SCC 658

limitation is a mixed question of law and fact and on a reading of the plaint in that case, it could not be held that the suit was barred by time. In ***POPAT AND KOTECHA PROPERTY V/s. STATE BANK OF INDIA STAFF ASSOCIATION***[6], it was held that disputed questions could not be decided at the time of considering an application filed under Order 7 Rule 11 CPC and Clause (d) thereof would apply in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute, shows that the suit is barred by any law in force.

The issue of limitation being a mixed question of law and fact, this Court is of the opinion that unless there remains not even an iota of doubt as to the suit being barred by limitation, such a ground cannot be pressed into service for rejection of the plaint. For this purpose only the contents of the plaint have to be examined.

In the present case, though the trial Court mentioned an agreement of sale having been executed by the defendants in favour of the plaintiff in the year 1987, the plaint averments only speak of an 'unregistered sale deed'. It was, in fact, the specific case of the plaintiff that he was under the *bonafide* impression that an unregistered sale deed could be registered at any point of time if required and that it is to be treated as an agreement of sale. When the plaintiff himself categorized the document as an 'unregistered sale deed', the trial Court ought not to have gone by the averments in the defendants' affidavit filed in support of the subject I.A. to identify it as an 'agreement of sale'. Going by the plaintiff's own case, once the basis for the suit is an unregistered sale deed dated 27.10.1987, Section 27 of the Limitation Act, 1963 would stand attracted. This

[6] (2005) 7 SCC 510

statutory provision speaks of extinguishment of the right to property and states to the effect that at the determination of the period thereby limited to any person for instituting a suit for possession of any property, his right to such property shall stand extinguished. In the present case, the plaintiff admits that he was not put in possession and claims only constructive possession. Therefore, on the strength of the unregistered sale deed dated 27.10.1987; he had the right to seek physical possession only within 12 years. Having failed to do so, his right to the suit schedule property stood extinguished. The plaint prayer with regard to his right to get a registered sale deed executed in his favour basing on the unregistered sale deed dated 27.10.1987 was therefore time barred.

As regards the latter part of the suit prayer relating to the declaration that the gift settlement deeds bearing Document Nos.2324 and 2325 of 2011 dated 06.06.2011 were null and void, it is relevant to note that this prayer is consequential to the main prayer whereby the plaintiff asserted rights under the unregistered sale deed dated 27.10.1987. Once the main relief stood barred by limitation, the question of allowing the plaintiff to maintain the suit only in relation to the latter part of his prayer would not arise.

On the aforestated analysis, this Court is of the opinion that the suit in O.S.No.690 of 2016 was barred by limitation on the face of it and the trial Court erred in overlooking this aspect by going into the contents of the affidavit filed by the defendants in support of the I.A. and coming to the opinion that the issues raised required to be addressed through a full-fledged trial.

The civil revision petition is allowed. The plaint in O.S.No.690 of 2016 is liable to be rejected under Order 7 Rule 11(d) CPC. The trial Court shall take action accordingly. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

16th JUNE, 2017

PGS