

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :30.11.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD).No.2795 of 2013
and
M.P.No.1 of 2013

A.Saranagan ... Petitioner / 1st Defendant

Vs.

1.G.Chandrasekaran
2.O.P.Srinivasan
3.O.P.Varadhan
4.G.Rukumani
5.T.Yasodha ... RR1 to 5/Plaintiffs 1 to 5

6.The Commissioner Corporation of Chennai
Rippon Building, Park Town,
Chennai - 600 003.

7.District Revenue Officer,
Land and Estate,
Corporation of Chennai,
Rippon Building, Park Town,
Chennai - 600 003.

8.The Zonal Officer,
Zone - IV,
Corporation of Chennai,
Andenson Road,
Ayanavaram, Chennai - 23.

9.The Asst. Engineer,
Ward No.59, Zone - IV,
Corporation of Chennai,
Andenson Road,
Ayanavaram, Chennai - 23.

... Respondents 6 to 9 /
Defendants 2 to 5

(6 to 9 formal parties Notice
Not Necessary)

Prayer :- The Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and final order dated 05.02.2013 made in I.A.No.6594 of 2008 in O.S.No.6418 of 2007 on the file of the XVI Assistant City Civil Court, Chennai.

For Petitioner : Mr.A.Thiyagarajan

For Respondents : Mr.D.Bharathy
Nos.1 to 5

Respondent Nos.6 to 9 : given up

ORDER

The instant revision petition has been filed challenging the dismissal of an application filed by the petitioner under Order VII Rule 11 CPC by order dated 05.02.2013 passed in I.A.No.6594 of 2008 in O.S.No.6418 of 2007 on the file of the XVI Assistant City Civil Court, Chennai.

Brief facts leading to the filing of the revision:

2.The petitioner is the first defendant in the suit O.S.No.6418 of 2007 filed by the respondents 1 to 5 before the XVI Assistant City Civil Court, Chennai. The suit was filed by the respondents 1 to 5 for mandatory injunction to remove the encroachment made by the petitioner in the suit schedule property. The respondents 1 to 5 in their plaint have averred in paragraph - 5 that the petitioner, who is the first defendant in the suit, had encroached the road and constructed an asbestos sheet roofed house on the southern side corner in 1983 and because of this, the public were disturbed. Further, in paragraph - 15 of the plaint, which is the cause of action paragraph, the respondents have averred that they had issued a notice to the petitioner on 03.03.2007 and the reply was also received from the petitioner on 28.03.2007 and thereafter, a complaint was also given to the Chief Minister Cell by the respondents on 03.04.2007 and the acknowledgement cards were returned on 08.05.2007 and 16.05.2007. Based on these averments, a suit was filed by the respondents No.1 to 5 for a mandatory injunction against the petitioner directing him to remove the encroachment and offending construction measuring 600 sq.ft. as per schedule in the plaint.

3.I.A.No.6594 of 2008 was filed by the first defendant in the suit, who is the petitioner herein, to reject the plaint under Order VII Rule 11 CPC on the ground that the suit is barred by limitation as well as on the ground that there is no cause of action against the petitioner. In his affidavit, the

petitioner has stated that he purchased the suit schedule property on 08.12.1982 and even according to the plaint averments, the alleged encroachment was made by the petitioner in 1983, but the suit was filed for mandatory injunction only on 08.10.2007. Further, in his affidavit, he has also stated that the cause of action as pleaded in the plaint in paragraph 15 is that notice was sent by the respondents on 03.03.2007 to the petitioner, which was also replied on 28.03.2007 and thereafter, complaint was also given by the respondents on 03.04.2007 to the Chief Minister Cell, which was acknowledged on 08.05.2007 and 16.05.2007. Since even according to the plaintiffs, the encroachment in the suit schedule property was made by the petitioner in 1983 itself, the suit filed by the respondents is barred by law of limitation and further, exchange of notice will not give rise to any cause of action against the petitioner, who is the first defendant in the suit. A counter was also filed by the respondents in I.A.No.6594 of 2008 before the trial Court, wherein, they have stated that the suit has not alone been filed against the petitioner but also against the Commissioner Corporation of Chennai and other public authorities and therefore, it has been filed for public interest. In the counter, they have stated that the petitioner has encroached the road after January 1998 and the encroached portion is a public road.

4.The trial Court, by its order dated 05.02.2013 in I.A. No.6594 of 2008 in O.S.No.6418 of 2007, dismissed the said application filed by the petitioner under Order VII Rule 11 CPC. Aggrieved by the dismissal of I.A.No.6594 of 2008 in O.S.No.6418 of 2007, the instant revision has been filed by the petitioner, who is the first defendant in the suit.

SUBMISSIONS OF THE LEARNED COUNSELS:

5.It is submitted by the learned counsel appearing for the petitioner that the suit filed by the respondents No. 1 to 5 against the petitioner is barred by limitation and there is no cause of action against the petitioner. He drew the attention of this Court to the plaint averments and he referred to paragraph - 5 of the plaint, which reads as follows:

" 5. The plaintiffs submit that the 1st Defendant Thiru.A.Sarangan had encroached the road and constructed an Asbestos Sheet Roofed house on the Southern side corner in 1983 because of this the public were disturbed. The road site was not sold to the 1st Defendant by the Society. But the 1st defendant created a forgery document in 1983. So considering the public's

disturbance Thiru.N.Vadivel Mudaliar filed a suit against the 1st defendant on the file of the 14th Asst.City Civil Judge at Chennai in O.S.No.1274/1983 and O.S.No.1276/1983. The suit was decreed against the 1st Defendant on 20.11.1986. Then the 1st Defendant has filed the appeal against the above two suits. A.No.380/88 on the file of the 6th Judge Incharge of the 2nd Addl.Judge City Civil Court at Chennai the Appeals were also dismissed on 26.04.1991. The above two suit's judgments & Decree and appeal's Judgements & Decrees has stated that the above suit property particularly belonged to the public. It was also clearly stated that the 1st Defendant had encroached the public property."

After referring to paragraph - 5, he submitted that even as per the plaint, the alleged encroachment was made by the petitioner in 1983 itself, but the suit was filed only on 08.10.2007 and therefore, the suit is hopelessly barred by law of limitation.

6.Further, the learned counsel appearing for the petitioner also drew the attention of this Court to paragraph - 15 of the plaint, which is the cause of action paragraph, which reads as follows:

"15.The cause of action for the suit arose at Chennai within this jurisdiction of this Hon'ble Court where the suit property is situated and when the plaintiffs are in the common street since the period of their fore fathers. The plaintiffs notice was given to the 1st defendant on 03.03.2007. The reply notice was given by the 1st defendant on 28.03.2007. The Chief Minister Cell petition was given on 03.04.2007. Acknowledgement returned on 08.05.2007 and 16.05.2007. But the officials of Chennai Corporation did not take any steps regarding the removal of encroachment of the street. Hence, 70 feet length and 20 feet breadth totally 1400 square feet of the street is necessary to the public for their use."

7. According to him, exchange of notices will not give rise to cause of action. The learned counsel also drew the attention of this Court to a judgment of a Division Bench of this Court in the case of Dr.L.Ramachandran and another Vs. K.Ramesh and others) reported in 2015 (5) CTC 629 and referred to paragraph - 26, which reads as follows:

"26. In terms of Order 7, Rule 11 (d), C.P.C., the plaint shall be rejected where the suit appears from the statement in the Plaint to be barred by any law. The scope of Rule 11 of Order 7, C.P.C. has been explained in various decisions and the legal principle deducible are that, if the Plaint does not disclose the cause of action or is barred by law; can be rejected where the litigation was utterly vexatious and abuse of process of Court; if any one of the conditions mentioned under the Rule were found to exist, thus saving the Defendants onerous and hazardous task of contesting a non-maintainable Suit during the course of protracted litigation and where the Suit was instituted without proper authority. Thus, the provision of Order 7, Rule 11, C.P.C., being procedural is designed and aimed to prevent vexatious and frivolous litigation. The Plaint is liable to be rejected on the ground of limitation only where the Suit appears from the statements in the Plaint to be barred by any law and the law within the meaning of Clause (d) of Order 7, Rule 11, C.P.C., shall include law of limitation as well."

8. Per contra, the learned counsel appearing for the respondents No.1 to 5 would submit that the suit has been filed not alone against the petitioner but also against other statutory authorities, who are the defendants 2 to 5 and respondents 6 to 9 herein. According to the respondents 1 to 5, having encroached a public road in public interest the suit is very much maintainable and is not barred by the law of limitation and there is also cause of action for filing the suit.

DISCUSSION:

9. An application under Order 7, Rule 11 CPC will have to be decided by the Court only based upon the plaint averments. In the instant case, even according to the respondents No.1 to 5,

who are the plaintiffs in the suit, they have pleaded in paragraph - 5 of the plaint that the alleged encroachment was made by the petitioner in 1983 and in the cause of action paragraph - 15 they have pleaded that a notice dated 03.03.2007 was issued to the petitioner as well as a reply dated 28.03.2007 was given by the petitioner and a complaint was given to the Chief Minister Cell on 03.04.2007 and acknowledgement was returned on 08.05.2007 and 16.05.2007.

10.I.A.No.6594 of 2008 in O.S.No.6418 of 2007 has been filed by the petitioner to reject the plaint filed by the respondents No.1 to 5 in O.S.No.6418 of 2007 on the ground that the suit is barred by limitation and there is no cause of action against the petitioner, who is the first defendant in the suit. As seen from the plaint averments, it is clear that even according to the respondents No.1 to 5 the alleged encroachment is said to have taken place in 1983, but the suit was filed only on 08.10.2007 after a gap of almost 24 years. Even in the counter filed by the respondents No.1 to 5 in I.A.No.6594 of 2008, they have not disputed the averments contained in the plaint nor have they filed any application to amend the plaint if according to them there was a typographical mistake. The plaint averments clearly establish that the suit is hopelessly barred by law of limitation and there is no cause of action against the petitioner. The trial Court in the impugned order has not considered the averment contained in paragraph - 5 of the plaint, wherein, the respondents have categorically stated that the alleged encroachment was made by the petitioner in 1983, but has only considered the cause of action paragraph contained in paragraph - 15 of the plaint. Exchange of notices without any admission by the petitioner will not give rise to any cause of action, but the trial Court has erroneously referred to the cause of action paragraph and has observed that the cause of action is a bundle of facts, which could be decided only at the conclusion of the trial and as far as the limitation is considered, it is a mixed question of fact and law and the question of limitation also could be decided only after an elaborate trial. In the instant case, on the face of the pleadings in the plaint, it is clear that the suit is hopelessly barred by law of limitation and there is no necessity for the Court to drive the petitioner to go for trial, when there is a clear admission made by the respondents in their plaint that the alleged encroachment was made in 1983 itself but the suit was filed only in 2007. From these observations, it can be conclusively held that the suit is hopelessly barred by the law of limitation and there is no cause of action against the petitioner.

CONCLUSION:

In the result, the trial Court ought to have allowed the application I.A.No.6594 of 2008 filed by the petitioner for rejection of plaint under Order 7 Rule 11 CPC. In the light of the above observation, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms

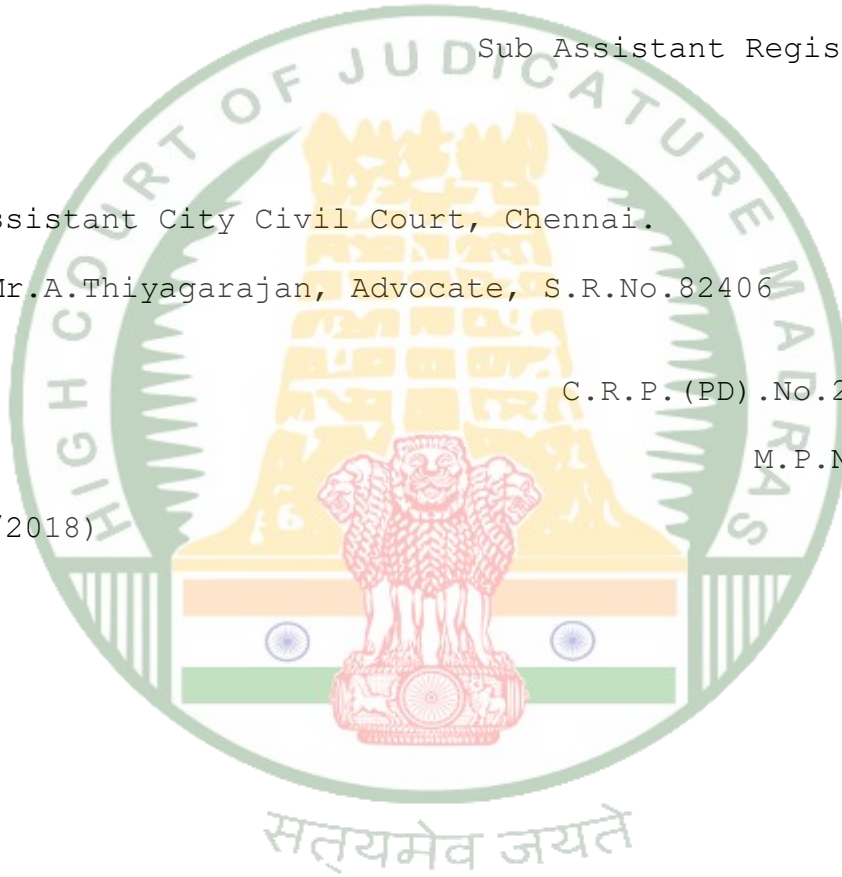
To

The XVI Assistant City Civil Court, Chennai.

+1 cc to Mr.A.Thiyagarajan, Advocate, S.R.No.82406

C.R.P.(PD).No.2795 of 2013
and
M.P.No.1 of 2013

RV(CO)
SSM(26/12/2018)



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