

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 01ST DAY OF AUGUST 2018

THE HON'BLE MR.JUSTICE N.SATHISHKUMAR

C.S.No. 272 of 2017

and

A.No.3059 of 2018

Mrs.B.Baleeshwari
W/o. Mr.Balachandran
Door No.10, Old No.60,
Jagannatha Nagar II Main Road,
Arumbakkam, Chennai 600 106. ... Plaintiff

Vs

1. Mr.Jawrilal Bafna,
S/o. Mr.Trilokchand Bafna

2. Mrs.J.Gunavathy Baby,
W/o. Mr.Jawrilal Bafna,
Both at A-3, Ray Serene Apartments,
Old No.27, New No.74/5,
Ritherdon Road, Vepery,
Chennai 600 007. :Defendants

Civil suit praying that this Hon'ble Court may be pleased to pass a decree and judgment against the 1st and 2nd defendants:-

(a) Declare the Sale Deed dated 25.01.2012 executed by the 1st defendant to and in favour of the 2nd defendant, registered as Document No.264 of 2012 on the file of the Sub-Registrar's Office, Kodambakkam as null and void, unenforceable in law; and the same is not binding on the plaintiff;

(b) Permanent injunction restraining the 2nd defendant from encumbering or alienating the suit schedule property.

(c) Directing the 1st and 2nd defendants to pay the costs of the suit to the plaintiff.

A.No.3059 of 2018:

Mrs.J.Gunavathy Baby,
A-3, Ray Serene Apartments,
Old No.27, New No.74/5,
Ritherdon Road, Vepery,
Chennai 600 007. :Applicant/Defendant

-vs.-

1. Mrs.B.Baleeshwari
Door No.10, Old No.60,
Jagannatha Nagar II Main Road,
Arumbakkam, Chennai 600 106. ... Plaintiff/Respondent

2. Mr.Jawrilal Bafna, (1st Defendant)
A-3, Ray Serene Apartments,
Old No.27, New No.74/5,
Ritherdon Road, Vepery,
Chennai 600 007. ...1st Defendant/Respondent

Application praying that this Hon'ble Court may be pleased to rejected by this Hon'ble Court as the suit as disclosed in the plaint is unsustainable in law and barred by limitation.

This Civil suit along with application coming on this day before this Court for hearing, the court made the following order:-

This application has been filed for rejection of plaint on the ground that the suit is barred by limitation and also the suit issue has already been decided in the earlier suit in C.S.No.365 of 2013.

2.It is the contention of the respondents in their

counter affidavit that the issue of resjudicata and limitation, is the mixed question of fact and law. Those things cannot be gone into at this stage. Further, the decree in C.S.No.365 of 2013 has not become final. Hence, they are opposing the application for rejecting the plaint.

3.The suit itself is filed for declaration, declaring the sale deed dated 25.01.2012 executed by the 1st defendant in favour of the 2nd defendant, registered as document No.264 of 2012 on the file of the Sub-Registrar's Office, Kodambakkam as null and void, unenforceable in law and not binding on the plaintiff and for permanent injunction.

4.The entire averment in the suit proceedings shows that during the year 2001-2002, the plaintiff and her husband availed loan from the 1st defendant. While availing such loan, the title deed of their residential house property was handed over to the 1st defendant for the financial transactions.

5.It is the further contention of the plaintiff that without knowing the contents of the documents, she put her signature and came to know that the 1st defendant has obtained a registered sale agreement and a General Power of

C.S.No.365 of 2015 in July 2014. On the basis of the Power of Attorney given at that time, the sale deed has to be executed. Therefore, to avoid such sale deed, the present suit is filed.

6.It is well settled that the suit can be rejected on any one of the grounds set out in Order VII Rule 11 of Civil Procedure Code, which is extracted hereunder:

"11.Rejection of plaint - The plaint shall be rejected in the following cases:-

a)where it does not disclose a cause of action.

b)where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

c)where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

d)where the suit appears from the statement in the plaint to be barred by any law.

e)where it is not filed in duplicate

f)where the plaintiff fails to comply with the provisions of rule 9."

7.Clause (d) of the Order 7 Rule 11 C.P.C. Clearly states that if the suit is barred by any law such suit can be rejected at threshold. Though the law of limitation is mixed question of law and facts when the statements and the documents of the plaintiff themselves show that the suit itself is barred by limitation, such suit can be rejected at an earlier stage.

8.It is to be noted that one of the documents filed by the plaintiff, i.e. Plaint document No.5, the reply issued by the plaintiff's advocate to the 2nd defendant's advocate dated 10.12.2012, clearly shows that the plaintiff is very much aware of the execution of the sale deed in the year 2012 itself. The execution of the sale deed was brought to the knowledge of the plaintiff as early as 10.12.2012 itself, though the plaintiff contends that those documents

are executed under undue influence. Certainly, she was aware of the existence of the sale deed in the year 2012 itself as early as 10.12.2012.

9.It is to be noted that to avoid such documents, limitation is three years from the date of the documents. Article 59 of the Limitation Act states that to cancel or set aside an instrument or decree or for the rescission of a contract, limitation is to run when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to the plaintiff.

10.Admittedly, in this case, the plaintiff is made known of the existence of the sale deed in the year 2012 itself. The same can be seen from the plaint documents. Yet another aspect cannot be lost sight of is that defendants in the suit have filed suit in C.S.No.635 of 2013 based on the sale deed for recovery of possession of the property before this Court.

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11.This Court by its judgment dated 13.10.2017 decreed the above suit. In the above suit is also, the defence was that those documents were executed for the purpose of loan transaction, specific issue was framed in this regard and ultimately the issue was held as against the plaintiff and

there is no material whatsoever is placed before this Court to show that the above decree and judgment are assailed in appeal.

12.Having regard to the fact that the plaintiff despite her knowledge of the sale deed in the year 2012 itself, has not filed the suit within three years. Whereas, the suit has been filed only on 03.04.2017, after a period of three years which is clearly barred by law of limitation and the facts and circumstances of the case squarely falls within the Order 7 Rule 11 (d) C.P.C. Hence, I am of the view that the plaint is liable to be rejected.

13.Accordingly, this application is allowed. In view of the order passed in this application, the plaint is rejected.

Sd/-N.S.K.J

01/08/2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER(O.S.)

JJ 22/01/19

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