



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.2575 of 2015
and M.P. (MD) No.1 of 2015

K.N.Allahbux

... Petitioner/Petitioner/1st Defendant

-vs-

1. K.N.Dawood Mohideen
2. K.N.Abdul Hai
3. K.N.Abdul Ali
4. Habib Gani
5. Asia Mariam
6. Sarammal
7. K.Alagar
8. Alimuthu Nisha

... Respondents/Respondents/
Plaintiffs 1 & 2 and Defendants 2 to 7

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to call for the records and set aside the order dated 08.07.2015 in I.A.No.386 of 2013 in O.S.No.62 of 2011 on the file of the Additional District Judge, Dindigul and allow this Civil Revision with costs throughout.

For Petitioner : Mr.H.Lakshmi Shankar

For R1 & R2 : Mr.S.Meenakshi Sundaram, Senior Counsel
For Mr.V.Perumal

For R3 : Mr.S.Muthal Raj

For R4, R5 & R8 : Given Up

For R6 & R7 : No Appearance

O R D E R

The revision petitioner is the 1st defendant in O.S.No.62 of 2011 on the file of the Additional District Judge, Dindigul and in the suit, the plaintiffs sought for partition among various other reliefs. During pendency of the suit, the 1st defendant filed an application in I.A.No.386 of 2013 for rejection of the plaint and the said application was dismissed, on the ground that no prima facie materials have been adduced in respect of the relief sought for in the application. Aggrieved by such finding, the revision petitioner/1st defendant is before this Court.



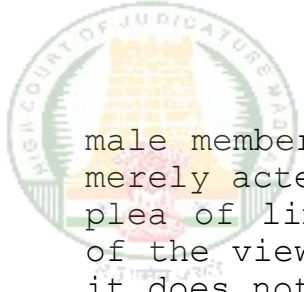
2. It is the case of the revision petitioner / 1st defendant that he had constructed a house in the year 1987 itself and the plaintiffs, instead of not raising objection at the threshold, has filed the civil suit now to defeat the interest of the defendants in the suit schedule property. Moreover, the period prescribed under the Indian Limitation Act, 1963 for claiming rendition of accounts is only three years and after the expiry of the said period, it cannot be claimed as a matter of right. It is the further case of the revision petitioner since the suit was filed after nearly 24 years from the date of construction of a house, it is clearly an abuse of process of law and therefore, the plaint is liable to be rejected on the said sole ground.

3. The revision petitioner states that the Trial Court, without considering the factual matrix involved in the case, has simply rejected the plea of the petitioner. Hence, it is prayed that the order of the Trial Court is liable to be set aside.

4. Learned Senior Counsel for the respondents 1 and 2 / plaintiffs has contended that since the plaint discloses certain averments and some cause of action, the true facts would be unfolded only after a full-fledged trial and the plaint cannot be struck down intermediately. Whether the suit is barred by limitation or not cannot be decided in an application filed for rejection, as the issue relating to limitation is a mixture of question of law and facts. It is further stated that it is settled proposition of law that disputed question of facts cannot be decided in an interlocutory application and therefore, it is prayed that the petition is to be dismissed *in limine*.

5. Heard learned counsel for the petitioner, learned Senior Counsel for the respondents 1 & 2 and the learned counsel appearing for R3. This Court also perused the material documents available on record.

6. From the reading of the averments in the plaint, it is seen that the petitioner/1st defendant is very particular about 'C' schedule property, claiming as his absolute property. According to the petitioner, one of the reliefs sought for by the plaintiffs is to furnish the rendition of accounts and the same cannot be provided, as his mother, who purchased the property in his name, had expired on 21.01.2001 and therefore, the Power of Attorney executed by his mother will also become standstill. This contention cannot be accepted, because, in order to read the plaint as a whole so as to ascertain its import, it should be read in entirety and likewise, the issue of limitation is a mixed question of law and facts and it cannot be decided in isolation. In addition, the plaint would reveal several disputed question of facts, which cannot be decided except the conduct of complete trial. As rightly submitted by the learned Senior Counsel for the petitioner, the petitioner, being the eldest



male member in the family, had purchased some properties and he has merely acted as a Trustee of other family members and therefore, the plea of limitation does not merit acceptance. Hence, this Court is of the view that the order of the Trial Court is perfectly valid and it does not warrant any interference by this Court.

7. In the result,

a) this civil revision petition is dismissed, thereby confirming the order dated 08.07.2015 passed in I.A.No.386 of 2013 in O.S.No.62 of 2011 by the learned Additional District Judge, Dindigul;

b) learned Additional District Judge, Dindigul is directed to dispose of the suit in O.S.No.62 of 2011 within a period of two months from the date of receipt of a copy of this order, without giving any adjournment to either parties and both the parties are directed to extend their fullest co-operation for early disposal of the suit within the time limit as specified by this Court, without being uninfluenced by anything stated herein-above and in I.A.No.386 of 2013.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-IV)

To:

1. The Additional District Judge,
Dindigul.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC To MR.H.LAKSHMI SHANKAR, Advocate SR. NO.76854
+1 CC To MR.NA.PALANIYANDI, Advocate SR. NO.76771
+1 CC To MR.V.PERUMAL, Advocate SR. NO. 76668

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