

HONOURABLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION NO.1214 OF 2018

Date: 31.07.2018

Between:

Md.Tajuddin (died per LRs)
Mumtazunnisa Begum w/o. late Mohd.Tajuddin,
Aged about 63 years, occu; Housewife,
r/o. H.No.16-2-739,44/3, Asmangad, Malakpet,
Hyderabad and others.

.....Revision Petitioners/petitioners/
defendants

and

Md.Nayeemuddin, s/o. late Mohd.Tajuddin,
Aged about 53 yeas, occu: Private Employee,
R/o. 4-8-150, Kumarpally, Hanamkonda,
Warangal.

.....Respondent/respondent/
Plaintiff



The Court made the following:

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ORDER:

Plaintiff filed O.S.No.1245 of 2008 pending on the file of V Additional Junior Civil Judge at Warangal, to grant decree to execute and register sale deed in favor of plaintiff in respect of suit schedule properties. According to plaintiff, in the year 1990, plaintiff, Mohd.Tajuddin (1st defendant), Mohd.Habeebuddin, Smt. Sadiqunnisa Begum decided to divide house bearing No.4-8-150 into four portions of 80 square yards each. In terms thereof, they have taken possession of their respective portions. Mr. Mohd. Habeebuddin sold the portion allotted to him to the 1st defendant. According to plaintiff, in June 1998, 1st defendant offered to sell two portions (one allotted to him and the other purchased from Mohd. Habeebuddin) and plaintiff agreed to purchase them for a sale consideration of 70,000/-; plaintiff paid 10,000/- on 05.06.1998, on which date agreement was executed. On 16.07.1998, plaintiff paid balance sale consideration of 60,000/- to the 1st defendant, who acknowledged the same. The plaintiff was put in actual possession of those two portions. Grievance of plaintiff is, 1st defendant has not executed and registered the sale deed though demanded on several occasions. As 1st defendant is his brother, he patiently waited for him to register the sale deed though entire sale consideration was paid. Finally on 16-4-2008 he gave notice calling upon the defendant to execute and register sale in his favor or to pay the amount due to him. Though notice was received but defendant did not reply. He therefore instituted instant suit.

2. Defendant No.1 filed I.A.No.312 of 2015 under Order VII Rule 11(d) of CPC to reject the plaint as barred by limitation. According to him as can be seen from the averments in the plaint the suit is barred by limitation as it was not filed within three years from the date of agreement and, therefore, plaint is liable to be rejected.

3. The said plea of defendants was opposed by the plaintiff. By order, against which this revision is filed, the trial Court dismissed I.A.No.312 of 2015.

4. According to learned counsel for petitioners, Article 54 of Limitation Act applies to a suit for specific performance and as cause of action arose in the year 1998 when agreement was entered, the suit ought to have been filed in the year 2001. The averments in paragraphs – 7, 8 and 9 of the plaint would make it clear that cause of action arose at least on 05.07.2000 when notice was published in Vaartha daily newspaper and reply was given by plaintiff on 04.08.2000 and, therefore, suit cannot be filed after three years from 04.08.2000. As averments in the plaint, on a plain reading would itself show that the suit is barred by limitation, the provision in Order VII Rule 11(d) of CPC is attracted and, therefore, suit ought to have been dismissed on that ground alone.

5. In support of his contention he placed reliance on the following decisions:

i) **Sanjay Kaushish v. D.C.Kaushish and others**¹, and

ii) **Venkappa Gurappa Hosur v. Kasawwa c/o. Rangappa Kulgod**².

¹ AIR 1992 Delhi 118

6. *Per contra*, learned counsel for plaintiff/respondent would submit that plaint cannot be rejected on the ground of limitation; that issue of delay is a mixed question of law and fact and that issue cannot be decided at the threshold. Further, as per Order VII Rule 11(d) CPC, plaint can be rejected only if conditions mentioned therein are satisfied. In the instant case, petitioners sought for rejection of plaint contending that it is attracting Rule 11 (d), whereas, Rule 11(d) has no application. In support of his contention, he placed reliance on the following decisions:

i) **Lambadi Halavath Bixapathi and others v. Data Educational Society, Secunderabad**³, and

ii) **Legand Estates Private Limited v. Mir Zaheer Mohammed Khan**⁴

7. Before appreciating the respective contentions, it is appropriate to note that provision in Order VII Rule 11 of CPC, particularly sub-rule (d). This rule mandates rejection of plaint, where the suit appears, from the statement in the plaint, to be barred by law. 'Barred by law' includes law of limitation. This provision vests discretion in the trial court to reject plaint at the threshold so that frivolous litigation need not be kept pending when it is apparent from the reading of the plaint that suit is not maintainable, and no useful purpose is served by keeping it pending.

8. However, a person who has a grievance against affecting his right to property is entitled to avail legal remedy to establish his

² AIR 1997 SC 2630

³ 2017 (2) ALD 210

⁴ 2018 (1) ALD 1

right and to seek appropriate relief. Such right cannot be extinguished at the threshold on mere asking of opposite party. Thus, the trial court ought to satisfy that reading of plaint averments would lead to irresistible conclusion that cause stood extinguished and no relief can be granted. The scrutiny to reject a plaint at the threshold must be strict and in a narrow compass as it would affect the right of a person to seek legal remedy on his claim to property even before trial is conducted. The court should lean in favor of plaintiff unless ex-facie the suit claim is held to be barred by law of limitation. It cannot be said that the opposite party is precluded in raising such plea during the trial.

9. In **Legand Estates Private Limited**, the learned single Judge of this Court reviewed the law on the subject. Learned Judge pleased to observe:

“38. In view of the recent judgment of the Apex Court referred supra, it is clear that the suit could not be dismissed as barred by limitation without proper pleadings, framing of issue on limitation and taking evidence, for question of limitation is a mixed question of fact and law and on ex-facie reading of the plaint it could not be held that the suit was barred by time. If, this principle is applied to the present facts of the case, based on the allegations made in the plaint, it is difficult to conclude that suit is barred by limitation to reject the plaint by exercising power under Order VII Rule 11(d) C.P.C. by this Court. The Apex considered the judgment of the larger Bench and concluded that limitation is a mixed question of fact and law, on the ground that the plaint is barred by limitation, the plaint cannot be rejected. Therefore, by following the principle laid down in *Vaish Aggarwal Panchayat v. Inder Kumar and others* (referred supra), the plaint cannot be rejected on the ground that it is barred by limitation.

10. This very issue was considered by the Supreme Court in **Hardesh Ores Pvt. Ltd. V. Hede and Company**⁵. Supreme Court held:

“14. An application was filed on behalf of the respondent under Order 7 Rule 11 of the Code of Civil Procedure submitting that there was absence of cause of action and also the plaint was barred by limitation. Subsequently, the plea of absence of cause of action was given up and only the plea of bar of limitation under the Limitation Act was pressed. It was submitted that Article 54 of the Limitation Act applied and that a suit for specific performance of the contract should have been filed within 3 years from the date the appellant-plaintiff had notice that the renewal of the agreement was refused by the respondent. In the instant case the refusal was communicated on 29-12-2001 and, therefore, the suit should have been filed within 3 years thereafter.

“25. The language of Order 7 Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr Nariman did not dispute that “law” within the meaning of clause (d) of Order 7 Rule 11 must include the law of limitation as well. ***It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent***

⁵ 2007 (4) ALD 89 (SC) = (2007) 5 SCC 614

grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I* [(2004) 9 SCC 512] and *Popat and Kotecha Property v. State Bank of India Staff Assn.* [(2005) 7 SCC 510].

[emphasis supplied]

11. *Prima facie*, on a plain reading of plaint averments, it cannot be said, *ex facie*, that the suit is barred by limitation to reject the plaint at the threshold. Further, while considering the issue of rejection of plaint each word or sentence cannot be seen in isolation but entire pleadings in the plaint need to be seen. The suit cannot be thrown out at the threshold on the ground of limitation by culling out a word or sentence here and there. The issue of limitation is a mixed question of law and fact. Whether, the averments made in the plaint are true and are supported by evidence that may be brought on record can be gone into when trial is conducted in the suit.

12. The trial Court observed that question of limitation would be decided after recording of evidence. In the facts of this case, I am of the opinion that there was no error committed by trial Court in exercising its discretion to reject prayer of petitioner to reject the plaint. The Civil Revision Petition is dismissed. It is made clear that there is no expression of opinion on merits and it is open to petitioner to raise all pleas as available to him in law in the suit. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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kkm

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