

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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|---------------|------------|
| Reserved On   | 20.03.2019 |
| Pronounced On | 05.04.2019 |

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

**C.R.P.(PD).No.1421 of 2015**  
**and**  
**M.P.No.1 of 2015**

1.M.Vijaya

2.R.Pushparaj

... Petitioners

Vs.

Dr.Ambedkar Nagar Co-operative  
Housing Building Society,  
No.1523, rep by its Secretary,  
Gugai, Salem -6.

... Respondent

PRAYER: Civil Revision petition is filed under Article 227 of Constitution of India, to set aside the fair and final Order dated 19.01.2015 passed in I.A.No.941 of 2013 in O.S.No.135 of 2012 on the file of the I Additional District Judge, Salem.

For Petitioners : Mr.Prabhakaran, senior counsel  
for Mr.R.Nalliyappan

For Respondent : Mr.M.S.Palaniswamy

**ORDER**

The present Civil Revision Petition is directed against the impugned fair and decretal order dated 19.1.2015 on the file of the First Additional District Judge, Salem I.A.No. 941 of 2013 in O.S.No. 135 2012.

2.By the impugned order the court has dismissed the application filed by the petitioners shall under Order 7 Rule 11 (a) and (d) of the Civil Procedure Code.

3.The above suit has been filed by the respondent to declare that the sale deeds executed in favour of the first three defendants by the fourth and fifth defendant's has unauthorised and not binding on the respondent/plaintiff and to direct the first three defendants to remove the constructions illegally put up by them and deliver possession of the suit properties.

4.The petitioners herein are the 2<sup>nd</sup> and the 3<sup>rd</sup> defendants in the above suit filed by the respondent /plaintiff. The 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants are not party to the present civil revision petition.

5.The plaintiff has alleged that the land meant for construction of a community Hall, overhead tank and an elementary school was illegally

sold in favour of the 1<sup>st</sup> defendant and 2<sup>nd</sup> and 3<sup>rd</sup> defendants /petitioners herein by the 4<sup>th</sup> and 5<sup>th</sup> defendant's.

6.The 4<sup>th</sup> and the 5<sup>th</sup> defendants were the secretary of the respondent/plaintiff and officer of the respondent on special duty deputed by the government of Tamil Nadu respectively. Allegations are that the 4<sup>th</sup> defendant fabricated the records of respondent/plaintiff society as if the petitioners herein and the 1<sup>st</sup> defendant were members of the respondent/plaintiff society and that resolution had been passed by the respondent/plaintiff society to sell the properties in their favour.

7.In the plaint there are also averment to the effect that G.O.MS 86 dated 3.6.2009 was also notified by the Registrar of Cooperative Societies (Housing) to take appropriate action against the 4th defendant for having fabricated records and for suppressing the truth and for having concealed material records and for having concealed a receipt of a sum of Rs.17,29,350 being the sale price of the three plots the first three defendants.

8.It has been further alleged that the Government has also directed the Registrar of Cooperative Societies (Housing) to take appropriate action and that a complaint has been filed and a case was

pending before the Chief Magistrate.

9.Paragraph 16 of the plaint which contains the case of action in the plaint reads as under:-

The cause of action for the suit arose on 05.05.2008 and 23.06.2008 when the 4<sup>th</sup> defendant has executed the sale deeds in favour of defendants 1 to 3 without any authority or right to do so, on 06.01.2009, plaintiff issued notice on 05.03.2009, when the defendants 1 and 2 sent a reply justifying the sales, on various dates when there was enquiry by the Registrar of Co-operative Societies (Housing) and on 03.06.2009 when G.O.Ms.86 dated 03.06.2009 was notified directing the Registrar of Co-operative Societies (Housing ) to take action after investigating the same through DGP, Chennai, on 03.12.2010 when the complaint has been filed to the Police Superintendent, Chennai by the deputy Registrar of Co-operative Housing Salem within the jurisdiction of this Court where the properties are situate.

10.It is the case of the petitioners that the suit was time-barred in as much as the cause of action for instituting the suit arose on 18.12.2008 when the respondent/plaintiff wrote a letter to the Registrar of Cooperative Societies at Chennai enquiring of as to whether any order has been passed pursuant to reply received from the petitioners herein.

11.According to the petitioners the above suit instituted on

23.12.2011 was barred by limitation by few days.

12. Appearing on behalf of the petitioner's, learned senior advocate Mr.S.Prabakararan made elaborate submission stating that the suit was beyond the period limitation and therefore without jurisdiction. Consequently, he submits that the court ought to have rejected the plaint. It has been further submitted that the plaint has been cleverly drafted to get over the limitation even though in para-8 of the plaint there are sufficient indications to show that The Registrar of Cooperative House Building Society, Chennai had confirmed that there was no order passed to permit sale of the land earmarked for building a community Hall, elementary school and overhead tank to the petitioners herein and the first defendant as early as 18.12.2008. Learned senior counsel therefore submitted that the limitation commenced with the issues of letter dated 18.12.2008 by the Registrar of Cooperative Societies at Chennai.

13. In this connection, the learned senior advocate first drew my attention to the decision rendered by this court in **Mrs Vasumathi H Shah vs Mrs.Pushpa Raju** 2015 3 LW 875 wherein the court referred to earlier decisions and observed that the court can look into the documents for determining the limitation. There the court referred to the decision of this court in **Nithayya Thevar vs Subramaniam Ambalakarar** 1970 MLJ 400.

14. In the last mentioned case, the court held that when the allegations in the plaint are at variance with material recitals in the document which forms the basis of the suit, it would be open to the court to return the plaint for rectifications and court would be perfectly justified in treating to recitals in such document as part of the statement in the plaint for the purpose of rejection of plaint under Order 7 Rule 11 of CPC.

15. The learned senior counsel thereafter referred to the decision of the Honourable Supreme Court in **V. Srinivasa Murthy and others vs Mariamma and others** (2005) 5 SCC 548 wherein while dealing with the case relating to specific performance of contract, it was held that plaint was rightly rejected on account of non disclosure of cause of action in view of clause (d) of Rule 11 of Order 7 of CPC as per which where it appears from the statement in the plaint to be clearly barred by law". There C.S.No 557 of 1990 was pending when the suit was filed. The court on specific facts of the case concluded that the plaint was liable to be rejected as there was material suppression while filing the second suit and therefore the plaint was liable to be rejected.

16. The learned senior counsel also referred to yet another decision rendered by a division bench of this court in **N Ravindran vs V Ramachandran** 2011 (3) CTC 153. In para-19, the court held that Order 7, Rule 11 clause (d) applies when the suit appears from the statement in

the plaint to be barred by any law. The court referred to the decision rendered in **C.Natarajan vs Ashim Bai** 2007 (14) SCC 183. However, the court held that limitation would not commence unless there was a clear and unequivocal threat to the right claimed by the plaintiff.

17.Learned senior counsel finally referred to another decision rendered by the Honourable Supreme Court recently in **Raghwendra Sharan Singh vs Ram Prassana Singh** in SLP (C) No. 20068 of 2013. There the Court held that the Munsif, Danapur rejected the said application to reject plaint on the ground that from the perusal of records and other documents, for determining the question of limitation, oral evidence are required to be taken into account. Therefore, the question is to be adjudicated only after the evidence are led by both the parties.

18. There Title Suit (Partition) Suit No.203 of 2001 had instituted. Thereafter another suit was filed in T.S.No.19 of 2003. Under these circumstances, the appellant filed an application under Order 7 Rule 11 r/w Order XIV, Rule 2 CPC for rejection of the plaint on the ground that the suit is clearly barred by law of limitation, as the deed of gift having been executed on 06.03.1981, the suit under [Article 59](#) of the [Limitation Act](#) ought to have been filed within three years of the deed of execution of the gift deed, whereas the same has been filed after more than 22 years of the execution of the deed.

19. There the Hon'ble Supreme Court observed as under:-

"Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in the case of T. Arivandandam (supra) and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 of the CPC.

7.1 At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial Court."

20. I have perused the documents and facts on record and the case laws on the subject cited. In the present case, the respondent/plaintiff filed the suit on 23.12.2011 to declare the three sale deeds dated 05.05.2008, 05.05.2008 and 23.6.2008 executed in favour of the first three defendant's in the said suit (petitioners being the second and the third defendant) not binding on them.

21. In the plaint, it has been also specifically stated that the cause of action arose on 05.02.2009 when the plaintiff issued notice to the defendants and on 05.03.2009 when the 1<sup>st</sup> and the 2<sup>nd</sup> defendant replied denying their liability. While rejecting the plaint, the court has merely gone by the averments in the plaint. Only where from the averment/statement in the plaint, it appears that the suit is barred by law, the court would be justified in rejecting the plaint under Order 7 Rule 11 (d) of the CPC. I do not find any averments to justify invocation of the aforesaid provisions to reject the plaint.

22. In the present case, the petitioners' attempt to reject the plaint is on the ground that the Registrar of Cooperative House Building Society by their reply dated 18.12.2008 informed the respondent/plaintiff regarding non-existence of any file authorising the sale of lands to the 1<sup>st</sup> to 3<sup>rd</sup> defendant. It cannot be therefore said that the limitation commenced from the said date and therefore the suit filed on 23.12.2011 was barred by limitation.

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23. In **Prem Singh v. Birbal**, (2006) 5 SCC 353 at page 357, the Honourable Supreme Court held that "*Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the*

*period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”*

24. Under Article 59 of the Limitation Act, a suit to cancel or set aside the instrument or decree, has to be filed within three years from the date when the facts entitling the plaintiff to set aside or cancel the instrument or decree became first known to him.

25. As per the decision of the Honourable Supreme Court in **Hari Shankar Singhania (2) vs Gaur Hari Singhania**, (2006) 4 SCC 658, as long as parties are in dialogue and even the differences would have surfaced, it cannot be asserted that a limitation under Article 137 has commenced. Such an interpretation will compel the parties to resort to litigation/arbitration even where there is serious hope of the parties themselves resolving the issues.

26. Limitation Act, 1963 prescribes time limit for all conceivable suits, appeals, etc. Section 2(j) of that Act defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. As per Section 3 of the Act every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed

even though limitation may not have been set up as a defence. Therefore, even if limitation has not been set as a defence, the Court can dismiss the case.

27. In ***Khatri Hotels (P) Ltd. vs Union of India***, (2011) 9 SCC 126, the Court observed that while enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". Thus, if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. The Court held that successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

28. In this case, the respondent/plaintiff has admittedly issued legal notice on 05.02.2009 for the first time asking the petitioners to surrender the sale deeds as the land was meant for other purposes. The 2<sup>nd</sup> petitioner and the first defendant replied to the said notice only on 05.03.2009 justifying their stand.

29. Thus, it is only after the receipt of the said reply, it can be said that the right to sue first accrued to the respondent/plaintiff and the

limitation commenced. Thus, it cannot be said that the suit instituted on 23.12.2011 was barred by limitation.

30. In view of the above conclusion on facts, I find no merits in the present Civil Revision Petition. Consequently, the present CRP is liable to be dismissed and is hereby dismissed.

31. It is noticed that the suit is of the year 2011 and is languishing for the last eight years. Therefore, the Trial court shall endeavour to complete the trial and pass judgement and decree on merits uninfluenced by observations contained in this order within a period of nine months from the date of receipt of a copy of this order.

32. It is made clear that the petitioners will be entitled to raise all defences including that of limitation after the conclusion of trial. The Civil Revision Petition is dismissed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

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Internet :Yes/No

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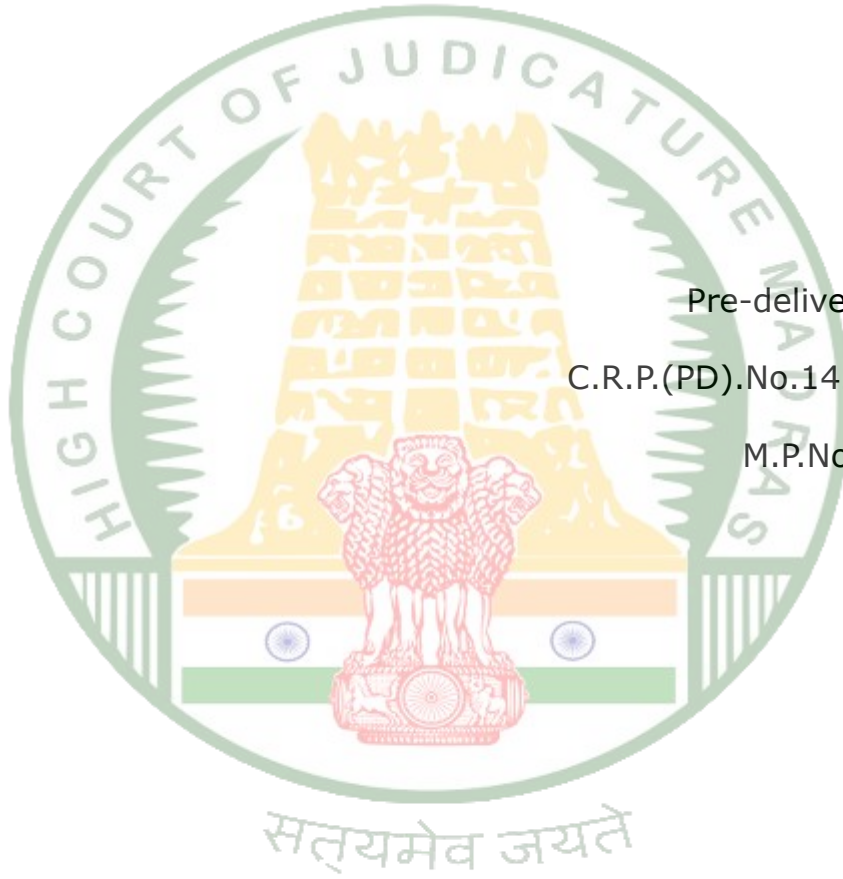
- 1.The District Judge, Salem.
- 2.The I Additional District Judge, Salem.
- 2.The Section Officer, VR Section,  
High Court, Madras.



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**C.SARAVANAN, J.**

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Pre-delivery order in  
C.R.P.(PD).No.1421 of 2015  
and  
M.P.No.1 of 2015

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