

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 26TH DAY OF FEBRUARY 2019

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A. No.6428 of 2018
in
C.S. No.968 of 2017

1. Dr.Daphne Dilip James,
W/o.Dilip Daniel James,
Arden Villa, St.Ann's Road,
Bandishola, Udagamandalam-643 001.
2. Dr.Karthik Selvakumaran,
S/o.Dr.E.Selvakumaran,
3. Dr.Sangeetha Selvakumaran,
D/o.Dr.E.Selvakumaran,
(Plaintiffs 2 & 3 residing at
Old No.26, New No.61, Moosa
Sait Street, D-3, Nandhini
Apartments, T.Nagar, Chennai-600 017. Plaintiffs

-Versus-

David Tyagaraj,
S/o.Muthusamy Masilamani Tyagaraj,
No.9/5, First Puliyur Main Road,
Trustpuram V Cross Street,
Kodambakkam, Chennai-600 024. ... Defendant

A. No.6428 of 2018:-

David Tyagaraj,
S/o.Muthusamy Masilamani Tyagaraj,
No.9/5, First Puliyur Main Road,
Trustpuram V Cross Street,
Kodambakkam, Chennai-600 024. ... Applicant/Defendant

-Versus-

1. Dr.Daphne Dilip James,
W/o.Dilip Daniel James,
Arden Villa, St.Ann's Road,
Bandishola, Udagamandalam-643 001.

2. Dr.Karthik Selvakumaran,
S/o.Dr.E.Selvakumaran,

3. Mrs.Sangeetha Selvakumaran,
D/o.Dr.E.Selvakumaran,
(Respondents/Plaintiffs 2 & 3 residing at
Old No.26, New No.61, Moosa
Sait Street, D-3, Nandhini
Apartments, T.Nagar,
Chennai-600 017. Respondents/Plaintiffs

Application praying that this Hon'ble Court be pleased to reject the plaint under Order VII Rule 11(a) and (d) of CPC.

This application coming on this day before this Court for hearing, the Court made the following order:-

The sole defendant in the suit for partition launched by sisters and children of his pre-deceased sister has come forward with this application seeking rejection of plaint on the ground that it is barred by limitation.

2. According to the learned counsel for the applicant, the suit ought to have been instituted within three(3) years from the date on which the defendant denied the right of the plaintiff to seek partition under Article 113 of the Limitation Act.

3. According to the learned counsel, the limitation for the suit commenced even 5 years prior to the issuance of notice and therefore, the suit filed beyond 3 years is barred by limitation. The said notice was issued on

defendant on 31.10.2017 denying the claim of the plaintiff. The suit came to be filed on 19.12.2017. Mr.V.S.Venkatesh, learned counsel appearing for the defendant would contend that in view of the averments made in Para 3 of the notice which reads as follows:

"You and our clients are living separately but the schedule mentioned property is jointly enjoyed by you and our clients after death of Catherine Dora Tyagaraj and her husband without any interruption. As there is a misunderstanding between you and our clients since five years to till date in respect of the division of the schedule of property, our clients have requested you to divide the said schedule mentioned property into three equal shares and allot one share to No.1 of our client and one share to No.2 & No.3 of our clients, as per the recital in the WILL."

The suit having been filed after five years is barred by limitation.

4. Per contra, Mr.C.Jagadish, learned counsel appearing for the respondents would contend that the averments in Para 3 cannot be construed as an admission on the part of the plaintiffs to the effect that the defendant had denied the rights of the plaintiffs. According to him, all that it signifies is that there has been some misunderstanding between the parties with respect to the partition. He would, therefore, submit that the suit cannot be said to be barred by limitation on the allegations in the plaint. A Division Bench judgment of this Court in **Dr.L.Ramachandran v. K.Ramesh and others**, reported in **2015 (5) CTC 629**, has held that a suit which is exfacie barred by limitation can be rejected invoking Order 7 Rule 11 of the Code of Civil Procedure, while doing so, the Division Bench has observed as follows:

"26. In terms of Order 7 Rule 11 (d) CPC, 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 CPC 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 bared 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 PC 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 CPC, shall include law of limitation as well. "

5. A three judge bench of the Hon'ble Supreme Court also while dealing with the question of rejection of plaint on the ground of limitation in **Chhotanben and another v. Kiritbhai Jalkurshnabhai Thakkar and others**, reported in **2018 (6) SCC 422**, has observed as follows:

"15. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any 14 application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the

registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellant-plaintiffs is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant 1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant 1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined

that it was a triable issue and declined to accept the application filed by respondent 1 -defendant No.5 for rejection of the plaint under Order VII Rule 11(d). That view commends to us.

20. In the above conspectus, we have no hesitation in reversing the view taken by the High Court and restoring the order of the Trial Court rejecting the application (Ext.21) filed by respondent 1 - defendant 5 under Order VII Rule 11(d) CPC. Consequently, the plaint will get restored to its original number on the file of the IVth Additional Civil Judge, Anand, for being proceeded further in accordance with law. We may additionally clarify that the Trial Court shall give effect to the order passed below Ext.17 dated 20.1.2016, reproduced in para 8 above, and take it to its logical end, if the same has remained unchallenged at the instance of any one of the defendants. Subject to that, the said order must be taken to its logical end in accordance with law."

6. In view of the above said categorical pronouncements, it is seen that the plaint cannot be rejected as barred by limitation unless it appears from the averments with the plaint that it is barred by limitation.

A reading of the plaint in the case on hand does not lead to the conclusion that the same is barred by limitation.

The contents of the reply notice cannot be looked into while dealing with an application under Order VII Rule 11. In view of the same, the application stands dismissed.

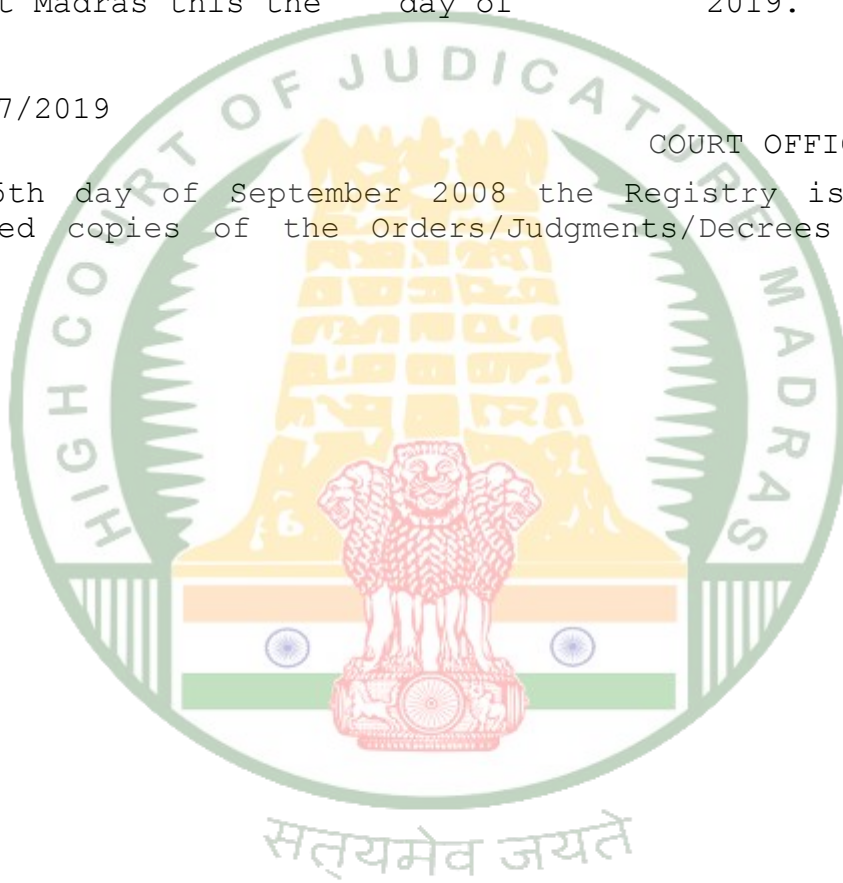
Sd./-R.S.M.J
26.02.2019

Certified to be true copy//
Dated at Madras this the day of 2019.

JJ 12/07/2019

COURT OFFICER(O.S.)

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