

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 14TH DAY OF AUGUST 2019

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.NO.6572 OF 2018

IN

C.S.NO.408 OF 2018

DILIP SANKAR REDDY
S/O.LATE DR.S.SANKAR REDDY,
41/21-1, 29TH CROSS, 7TH BLOCK JAYANAGAR,
BENGALURU 560 082. ..PLAINTIFF

-VS-

MRS.K.ANUSUYA
W/O.SHRI K.RAMANAIHAH,NO.15/7 KAVERI STREET,
RAJAJI NAGAR, VILLIVAKKAM,
CHENNAI 600 049. ..DEFENDANT

A.NO.6572 OF 2018:

MRS.K.ANUSUYA,
W/O.SHRI K.RAMANAIHAH,
NO.15/7 KAVERI STREET,
RAJAJI NAGAR, VILLIVAKKAM,
CHENNAI 600 049. ..Applicant/Defendant

-VS-

DILIP SANKAR REDDY
S/O.LATE DR.S.SANKAR REDDY,
41/21-1 29TH CROSS, 7TH BLOCK JAYANAGAR,
BENGALURU 560 082. ...Respondent/Plaintiff

Application praying that this court be pleased to
reject the plaint on the ground of being barred by law of
limitation.

This Application coming on this day before this
court for hearing the court made the following order:

This application has been filed seeking rejection of the plaint on the ground that the suit is barred by Limitation.

2. The suit has been filed for declaration that the sale deeds dated 10.05.1995 and 17.05.1995 executed by the father of the plaintiff during the minority of the plaintiff are null and void inasmuch as permission under Section 8 of the Hindu Minority and Guardianship Act has not been obtained.

3. It is the further contention of the plaintiff that the suit property belonged to one S.Venkataramana Reddy who died a bachelor on 10.04.1995 leaving a Will dated 06.10.1994. It is averred that the plaintiff is the universal legatee under the Will and the Will does not contain any schedule of property. The sisters of S.Venkataramana Reddy had filed a suit in the year 1997 seeking partition and separate possession of their share in O.S.No.60 of 1997 on the file of Senior Civil Judge, Madanapalle, Andhra Pradesh. The said suit came to be dismissed on 18.08.2003 upholding the Will. Appeal filed against the said judgment is said to be pending on the file of the High Court of Andhra Pradesh.

4. According to the plaintiff, he came to know about the very existence of the property and the sale deeds executed by the father only in March 2016 when the defendant approached him for ratification of deeds from the plaintiff.

Thereafter, the plaintiff has come forward with the present suit. Even prior to the filing of the suit, the plaintiff

had filed a Original Petition on 04.08.2017 which has been subsequently numbered as O.P.No.308 of 2019 seeking Letters of Administration in respect of the Will dated 06.10.1994. The said Original Petition is now pending.

5. In this back drop, the plaintiff would contend that the defendant cannot set up title in view of Section 213(1) and (2) of the Indian Succession Act, and seek the relief of declaration stated supra. The defendant had come forward with the application for rejection of the plaint solely on the ground that the suit is barred by limitation.

6. I have heard Mrs.J.Amritha Sarayoo, learned counsel appearing for applicant and Mr.S.R.Raghunathan, learned counsel appearing for the respondent.

7. Mrs.J.Amritha Sarayoo, learned counsel appearing for applicant would draw my attention to the judgment of the Hon'ble Supreme Court in **Raghwendra Sharan Singh Vs. Ram Prasanna Singh** reported in **2019 (3) MLJ 377**, wherein, the Hon'ble Supreme Court had held that the suit can be rejected under Order VII Rule 11 of the Code of Civil Procedure, if it is shown to be *exfacie* barred by limitation on a reading of the plaint. The position of law is not in dispute.

8. Mr.S.R.Raghunathan, learned counsel appearing for the respondent/ plaintiff would submit that in view of the fact that the Will has neither been Probated nor Letters of Administration has been obtained, the defendant cannot establish her right either as plaintiff or as defendant based on the said Will.

9. In support of his contention, he would rely upon the judgment of the Hon'ble Supreme Court in **Hem Nolini Judha (Since deceased) and after her legal representatives Mrs.Marlean Wilkinson Vs. Isolyne Sarojbashini Bose and others** reported in **AIR 1962 SC 1471**, wherein, the Hon'ble Supreme Court had held that a right under the Will cannot be sought to be enforced or established unless the court of competent jurisdiction has granted Probate or Letters of Administration to the Will.

10. Mr.S.R.Raghunathan, would also rely upon the judgment of the Division Bench of this Court in **M.Somasundaram and another Vs. V.Srinivasan and another** reported in **2009 (4) LW 785** to contend that the proper course for a person who wants to challenge the alienation should be to file a suit for declaration and if required, pray for stay of such proceedings in view of pendency of the probate proceedings. Therefore, according to Mr.S.R.Raghunathan he cannot wait till the disposal of the proceedings for grant of Letters of Administration, in order to file a suit for declaration.

11. The only question that is to be considered is as to whether the plaint could be rejected on the ground that it is barred by limitation on a reading of the plaint.

12. A wholesome reading of the plaint would show that the plaintiff has claimed that he was not aware of the existence of the very property till the year 2016 and the suit has been filed within two years from the date of knowledge.

13. The questions whether he would be entitled to file a suit within 3 years from the date of knowledge? whether the suit filed on 18.12.2017 is barred by limitation or not? are essentially mixed question of fact and law.

14. The plaintiff had in fact averred that the fact that he was not aware of the very existence of the property and the execution of the sale deeds by his father till 2016 to contend that the suit is within a period of 3 years as contemplated under Article 60 of the Limitation Act.

15. This question will have to be established by the plaintiff at trial in order to succeed in the suit. When the plaintiff seeks exemption from the applicability of law of limitation he should prove the fact that the time do not begin to run from the date of his attaining majority.

16. This question being question of fact will have to be decided only after the evidence is taken. I do not think that the plaint can be rejected on the ground that it is barred by limitation particularly in view of the fact that the plaintiff has set out certain facts in his plaint which will have to be proved before this court.

17. Though the learned counsel for the defendant/ applicant would invite me to the evidence available in the

form of documents produced along with the plaint to show that the defendant had knowledge of the existence of the property even earlier, I do not think I can go into the evidence in an application under Order VII Rule 11. Even the judgment relied upon by the counsel for the defendant in **Raghwendra Sharan Singh Vs. Ram Prasanna Singh** reported in **2019 (3) MLJ 377**, the Hon'ble Supreme Court had clearly hold that unless the suit is shown to be exfacie barred by limitation, the same cannot be rejected under Order VII Rule 11(d).

18. In view of the same, this application is **dismissed**. However, there shall be no order as to costs.

Sd/.R.S.M.J.

14.08.2019

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

su.09.09.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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