IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 12TH DAY OF JULY 2019

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A. No.4147 of 2019
in
C.S.No.291 of 2019

C.S.No.291 of 2019:

C.T.Sathyamurthy
S/o. C.S.Thirunavukarasu
residing at
Old No.46, New No.80,
Nainiappan Street,
Mannady, Chennai 600 001. :Plaintiff

Vs.

K.Prem Anand
S/o. C.T.Krishnamurthy
Residing at Old No.46
New No.80, Nainiappan Street,
Mannady, Chennai 600 001. :Defendant

A.No.4147 of 2019:

K.Prem Anand
S/o. C.T.Krishnamurthy
Old No.46
New No.80, Nainiappan Street,
Mannady, Chennai 600 001. :Applicant/Defendant

Vs.

C.T.Sathyamurthy
S/o. C.S.Thirunavukarasu
Old No.46, New No.80,
Nainiappan Street,
Mannady, Chennai 600 001. : Respondent/plaintiff

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Application praying that this Hon'ble Court be to reject the plaint in C.S.No.291 of 2019 pending on the file of this court.

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

This application has been filed by the sole defendant in the suit seeking to reject the plaint.

2. The substantial grounds on which the rejection of plaint is sought for are as follows:-

- *According to the applicant/ defendant, the suit is barred under Order II Rule 2 of the Code of Civil Procedure, in view of the fact that the plaintiff had already filed a suit in CS.No.290 of 2016 seeking partition and separate possession of his 1/3rd share in the joint family properties and for other declaratory reliefs.*

- *The second ground that is raised is that the suit is barred by limitation as regards the prayer for cancellation of settlement deed dated 06.05.2016 executed by C.S.Thirunavukarasu in favour of his grandson Prem Anand.*

- *The third contention is that the suit has not been valued properly.*

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3. The respondent/ plaintiff has filed a counter contending that the cause of action for the present suit as regards the cancellation of the settlement deed arose only on the death of C.S.Thirunavukarasu, who had a life estate in the properties, on 13.10.2018. Therefore, the reliefs sought for in this suit could not have been sought for while filing the suit in CS.No.290 of 2016. Therefore, according to the plaintiff/ respondent there was no cause of action for filing the present suit on the date on which CS.No.290 of 2016 was instituted.

4. As regards the question of limitation also the same plea is projected by the respondent/ plaintiff that the right to sue accrued only after the death of C.S.Thirunavukarasu i.e., on 13.10.2018 and the suit filed in the year 2019 i.e., on 25.04.2019 is well within time.

5. As regards the question of court fee it is contended that the provisions of Clauses (b) and (c) of Rule 11 of Order 7 of the Code of Civil Procedure do not apply to Chartered High Courts, in view of the provisions of Order XLIX Rule 3 of the Code of Civil Procedure. Therefore, according to the respondent/ plaintiff, the plaint cannot be rejected on the ground of insufficiency of court fee. One more ground that is raised was that the plaint was bad for non-joinder of necessary parties.

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6. Heard Mrs.Hema Sampath, learned Senior Counsel appearing for the petitioner/ defendant and Mr.K.Harishankar, learned counsel appearing for the respondent/ plaintiff.

7. Mrs.Hema Sampath, learned Senior Counsel appearing for the applicant/ defendant would vehemently contend that the suit is barred under Order II Rule 2 of the Code of Civil Procedure, inasmuch as the cause of action for seeking the prayer of declaration of title regarding 'A' and 'B' Schedule properties was available to the plaintiff even on the date when he filed a suit in CS.No.290 of 2016.

8. Contending contra, Mr.K.Harishankar, learned counsel appearing for the plaintiff/ respondent would submit that late C.S.Thirunavukarasu had life estate over the properties that were allotted to him under the settlement deed dated 17.09.1946 as well as the properties that were allotted to his brother C.S.Sundaram under the said settlement deed. Therefore, the right to sue accrued to the plaintiff only on the death of late C.S.Thirunavukarasu i.e., on 13.10.2018. Therefore, according to Mr.Harishankar, the cause of action for seeking the relief of declaration would accrue to him only from 13.10.2018.

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9. He would also draw my attention to Article 65 of the Limitation Act which provides a period of 12 years for recovery of possession of immovable property and in case of a suit by a remainder man, a reversioner. The possession of the property shall be deemed to become adverse only when the estate of the remainder man, reversioner, as the case may be, falls into his hands. Therefore, according to him he could not have filed a suit seeking declaration of title prior to the death of life estate holder C.S.Thirunavukarasu.

10. In view of the provisions of Article 65 of the Limitation Act which clearly set out the starting point of limitation i.e., the date on which the possession of the defendant becomes adverse to the plaintiff and the same is clarified by explanation to Article 65, I am of the considered opinion that the contention of the counsel for the applicant/ defendant to the effect that the cause of action for the suit was available even on the date of filing of the earlier suit in CS.No.290 of 2016 cannot be sustained.

11. The explanation to Article 65 prevents the reversioner, remainder man from claiming any right of life estate holder. I conclude that the plaintiff did not have

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the cause of action for filing the present suit in the year 2016 when the earlier suit came to be filed. Therefore, the bar under Order II Rule 2 of the Code of Civil Procedure will not be attracted.

12. The next contention of the applicant/ defendant is that the plaintiff has misread or misinterpreted the contents of the document viz., the settlement deed dated 17.09.1946. The plaintiff has come to the court seeking declaration of his title on a interpretation of the document. Whether the plaintiff's interpretation of the document is right or wrong has to be decided only on the basis of evidence after trial. Wrong interpretation of document, even assuming it to be correct, cannot be a ground for rejection of the plaint. Therefore, the contention that the suit must be rejected because it is based on a wrong interpretation of the document does not merit acceptance.

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13. The second ground based on which the plaint is sought to be rejected is on the ground of limitation. As already pointed out the cause of action for the reversioner commences only after the death of life estate holder. Admittedly, life estate hold died on 13.10.2018. This suit filed within 12 years from the date of death will be within time. Therefore, I do not think that the suit can be said

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to be barred by time.

14. The third contention that is raised is on the ground of valuation. Order XLIX Rule 3 of the Code of Civil Procedure makes Order VII Rule 11 Clause (b) and (c) inapplicable to original side of Chartered High Courts. Hence, the plaint cannot be rejected on the question of valuation and payment of deficit court fee.

15. As regards the contention that the suit is bad for non-joinder of necessary parties also, I do not find any substance in the contention of the counsel for the applicant/ defendant. Order I Rule 9 of the Code of Civil Procedure provides that no suit shall be defeated by the reason of misjoinder or non-joinder of parties.

16. In view of the above provision, it is clear that the plaint cannot be rejected on the ground of non-joinder or misjoinder of parties. If the court finds that a person is a necessary party, it is open to the court to require the plaintiff to take steps to implead the said party or exercise its powers under Order I Rule 10(2) to add parties even suo moto. Hence, the relief of rejection of plaint sought on the ground of non-joinder of necessary party should also fail.

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17. As regards the suit 'B' Schedule property, the applicant/ defendant would contend that the interpretation placed on the document by the plaintiff is wrong and the plaintiff had the cause of action to sue for partition or declaration of title regarding the 'B' Schedule property even when he filed a suit in CS.No.290 of 2016.

18. Here again I must point out that the plaint cannot be rejected on the interpretation of the documents. The court has to confine to the averments in the plaint, I cannot look into the defence or the contents of the evidence that is produced inorder to reject the plaint. Even assuming that the cause of action for the suit was available to the plaintiff on the date when he filed a suit in CS.No.290 of 2016 in respect of the 'B' Schedule property, the plaint cannot be rejected partially. The Hon'ble Supreme Court in the recent decision in ***Madhav Prasad Aggarwal and another Vs. Axis Bank Ltd., and another*** *had considered the question of rejection of the plaint in part and concluded as follows.*

> *"15. A fortiori, these appeals must succeed on the sole ground that the principal relief claimed in the notice of motion filed by respondent No.1 to reject the plaint only qua the said respondent and which commended to the High Court, is replete with jurisdictions error. Such a relief "cannot be entertained" in*

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exercise of power under Order 7 Rule 11(d) of CPC. That power is limited to rejection of the plaint as a whole or not at all. "

19. In view of the above pronouncement, I don't think that the applicant/ defendant has made out a case for rejection of the plaint. The application for rejection of the plaint is therefore dismissed.

Sd/.R.S.M.J.

12.07.2019

//Certified to be a true copy//

Dated this the day of 2019.

SU/23.07.2019

COURT OFFICER

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

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