IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.03.2019
Pronounced On	30.04.2019

CORAM

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

C.R.P.(PD).No.1912 of 2014
and
M.P.No.1 of 2014

Suresh Bafna ... Petitioner

vs.

1.K.Munusamy

2.Rajeswari

3.Segan

4.Velan

5.Dinesh jain ... Respondents

Prayer: Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.04.2014 made in I.A.No.149 of 2014 in O.S.No.265 of 2012 on the file of the Subordinate Judge, Poonamallee.

For Petitioner : Mr.R.Bharath Kumar

For Respondents : No appearance

O R D E R

Though notice has been served on the respondents, there is no representation on behalf of the respondents. Hence, the case was taken up for hearing.

2.The present Civil Revision Petition is directed against the fair and decretal order dated 10.04.2014 in I.A.No.149 of 2014 in O.S.No.265 of 2012 passed by the Subordinate Judge, Poonamallee.

3.By the impugned order dated 10.04.2014, the Sub Court, Poonamallee had dismissed I.A.No.149 of 2014 in O.S.No.265 of 2012 field by the Petitioner/1st defendant under Order 7 Rule 11 of CPC.

4.The petitioner was the 1st defendant in the above suit while the 5th respondent was the 2nd defendant in the suit.

5.The above suit was filed by the 1st to 4th respondents/plaintiffs for a declaration to declare the sale deeds in the name of the petitioner/ 1st defendant in respect of the schedule 'A' and 'B' properties were null and void.

6.Schedule ' A' and schedule ' B' properties are situated next to each other at No.86, Athipattu Village, Ambattur Taluk, Thiruvallur District comprised in S.No.165/2 and 169 part measuring to an extent of 36 and 30 cents respectively.

7.At some point of time, the respondents appear to have been represented by their counsel and the case was also argued. There is also an affidavit filed by the first respondent, wherein it was stated that the 1st respondent has filed R.C.O.P.No.19 of 2010 against the tenant of the respondents and gained legal control over the property and that the respondent have also filed an obstruction petition before the District Munsif Court at Ambattur.

8.There are disputed questions of facts. Keeping these in view, I shall proceed to narrate brief facts of the case to dispose the present Civil Revision Petition.

9.The respondents/plaintiffs have averred in the plaint that there were certain loan transaction with the petitioner/1st defendant herein during 1994 and 1996 when the petitioner/defendant obtained signature in blank cheques, pro-note, stamp paper, green sheet etc, from the 1st & 2nd respondents (1st & 2nd plaintiffs) in respect of 'A' Schedule Property and that the 1st respondent/plaintiff pledged title deed in respect of the properties with the 1st petitioner as a security for the loan.

10.The 1st respondent claimed to have given 5 signed blank stamp papers, 16 signed promissory notes, 10 signed blank cheques apart from 10 signed blank green sheets to the petitioner.

11.According to the respondents/plaintiffs, the petitioner failed to return some of the documents after the loan was discharged and they continued to be in possession of the properties.

12.In 1996, the respondents-plaintiffs wanted to sell 50 cents out of 70 cents of 'B' Schedule property standing in the name of the second respondent/2nd plaintiff to pay certain outstandings to their bankers.

13.According to the respondents/ plaintiffs, one Dakshinamurthy offered to buy the aforesaid 50 cents of land for a sum of Rs.10,00,000/-. However, since he was unable to arrange for sale consideration, the said Dakshnamurthy approached the petitioner for loan.

14.It is alleged in the plaint that the petitioner insisted the 1st and 2nd respondents (1st & 2nd plaintiffs) should execute a sale deed in favour of the said Dakshnamurthy which was complied. It is stated that the petitioner however released a partial amount of Rs.5,50,000/- to the first respondent/first plaintiff.

15.In the plaint, it has been averred that out of Rs.11,00,000/ only a sum of Rs.3,40,000/- was paid and later another sum of Rs.1,00,000/- was paid after deducting a sum of Rs.1,10,000/- towards interest for 10 ten months. The balance amount was to be transferred in due course. However, it was not paid.

16.It was alleged that taking advantage of the documents and signed papers retained the documents in respect of 'A' schedule property the petitioner appears to have misused the position and had got the documents registered in their name.

17.It was alleged that the petitioner transferred 'A' schedule property by using the blank signatures.

18.In respect of 'B' schedule property, the respondents averred that there has been re-conveyance of 15 + 15 cents of lands by Dakshnamurthy and his wife. Later the Power of Attorney executed in the year of 1996 in their favour was also cancelled by respondents/plaintiffs. According to them there has been re-conveyance of part of 'B' Schedule property.

19.The Plaint is detailed. The averment is not required to delineated further for the purpose of the present Civil Revision Petition. Suffice to state that the correctness of the averment cannot be decided here.

20.Instead of filing their written statement and proceeding with the trial, the defendant namely, the petitioner and the 5th respondent sought to short circuit the entire proceeding and filed a petition under Order 7 Rule 11(iv) of CPC on the ground that the above suit was barred by law has been filed beyond the period of limitation.

21.Thus, I.A.No.149 of 2014 in O.S.No.265 of 2012 was filed by the petitioner/1st defendant and 5th respondent/ 2nd defendant to reject the plaint under Order 7 Rule 11 of C.P.C. It was dismissed on 10.04.2011.

22.According to the petitioner/defendant the sale deed in respect of 'A' schedule property is dated 25.05.2000. Therefore, the suit for declaration should have been filed within three years from the date of document that is on or before 25.03.2003. However, the suit was filed in the year on 22.11.2012 after a lapse of 12 years. Therefore, the suit was time barred.

23. Similarly, in respect of two sale deeds dated 14.06.2000 in respect of 'B' schedule property, it was submitted that the relief

claimed was also time barred as the suit was filed in the year of 2013 i.e after a lapse of 13 years. The respondents/plaintiffs resisted the said I.A and filed a detailed counter before the lower Court.

24.The court below after considering the records and law concluded that the point of limitation is a mixed question of law and has to be decided only in the trial and therefore dismissed the application.The Court below has held as under :

> "In the present case, the issue is to be decided whether the limitation starts from the date of knowledge as per the encumbrance or the date from which the RCOP has been filed. The said issue can be gone into only by allowing the parties to let in oral and documentary evidence. On the facte of the plaint this Court could not come to any inclusion that the suit is barred by limitation. The starting point of the limitation is a mixed question of law and fact as far as the present case is concerned and hence this court is of the view that the present petition is liable to be dismissed."

25.The petitioner herein has thus preferred this Civil Revision Petition against the Fair and Decretal order dated 10.04.2014 in I.A.No.149 of 2014 in O.S.No.265 of 2012 on the file of the Sub Court, Poonamallee.

26.Assailing the impugned order, the learned counsel for the petitioner submits that the impugned order was liable to be set aside and relied on the certain decisions of the Court.

27.The petitioner has heavily relied on averment in paragraph 25 of the plaint which reads as under:-

> 25. It is humbly submitted that only in 01.07.2006 when even after having paid the entire money due to the 1st defendant and when the 1st defendant refused to return the documents to the plaintiff and later entertained doubts and applied for EC in respect of the 'A' Schedule property that the plaintiff came to know to his shock and dismay that the 1st defendant had created a sale deed in his favour in Document No.2620/2000 in the year 2000 itself on the file of SRO Ambattur in respect of that property. Because of their abundant repayments on the loan accounts the plaintiffs had the least suspicion that their properties would be documented by the 1st defendant and that too without their knowledge, clandestinely behind their back. Because the plaintiffs are in comfortale possession property of the 'A' schedule till date they have chosen to ignore the sale deed dated 25.05.2000 bearing No.2620/2000.

28.In this connection, the learned counsel for the petitioner drew his attention to the decision of the Hon'ble Supreme Court in **Khatri Hotels Private Limited and another vs. Union of India**

and another 2011 (9) SCC 126 wherein the Hon'ble Apex Court has brought out the distinction between Article 120 of the Schedule to the Limitation Act 1908 and Article 58 of the Limitation Act, 1963.

29.He further submitted that earlier under Article 120 of 1908 Act, limitation was six years **"when the right to sue and accrued**. However, after the new Act" came to force, the period of limitation to obtain a declaratory relief is three years from, **'when the right to sue first 'accrued'** He drew attention to para 30 of the said decision which reads as under:

> "30. 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" . This would mean that if a suit is based on multiple causes of action, the accrues. To put it differently, 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."

30.The learned counsel for the petitioner submitted that the right to sue first accrued long back and therefore the suit was time barred.

31.The learned counsel also submitted that the respondents/plaintiffs cannot amend the plaint at this distant point of time as the above suit was filed in the year 2012 and the amendment would to be barred under law in response to a question as to whether there was mortgage of schedule 'A' property.

32.In this connection, the learned counsel drew my attention to the decision of the Hon'ble Supreme Court in **L.C.Hanumanthappa** vs **H.B.Shivakumar** , (2016) 1 SCC 332. The said decision reiterated the principle laid down in the case of **Kahatri Hotels Private Limited and another** vs **Union of India and another** (2011) 9 SCC 126 while dealing with amendment to pleading under Order 6 Rule 17 of C.P.C.In para 13, the Court held as follows : -

> 13.It is not disputed that Article 58 of the Limitation Act would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already existing relief for grant of permanent injunction.

33.In Para 29 the Court on facts held as under:

> 29.Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement

itself dated 16-5-1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. A reading of an isolated paragraph in the written statement, namely, Para 2 by the trial court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28-3-2002 [*L.C. Hanumanthappa* v. *H.B. Shivakumar*, RFA No. 415 of 1999, decided on 28-3-2002 (KAR)] had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. There can be no doubt that on an application of *Khatri Hotels (P) Ltd.* [(2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484] , the right to sue for declaration of title first arose on the facts of the present case on 16-5-1990 when the original written statement clearly denied the plaintiff's title. By 16-5-1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary

> circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment [*H.B. Shivakumar* v. *L.C. Hanumanthappa*, 2015 SCC OnLine Kar 3860] of the High Court. The present appeal is accordingly dismissed.

34.The learned counsel also drew my attention to the decision of the Hon'ble Supreme Court in **Dr.L.Ramachandran and one another** vs **K.Ramesh and five others** 2015 (5) CTC 629. In para Nos.14 and 15 which read as under:-

> " 14.The question that would arise is whether the Suit was filed within the period of limitation. The learned single Judge opined that to decide the question as to whether the Suit is barred by limitation, evidence has to be looked into. In our view, this may not be the case in all matters and facts of each case are germane. When an Application is filed to dismiss the Suit, the endeavour of the Court should be to examine the admitted facts and then to consider as to whether the parties should face trial to decide the question of limitation. **The learned Judge in the impugned order has recorded the factual position that the Suit was filed much after the period of limitation had expired**. This finding has not been questioned by the plaintiffs either by way of separate Appeal or in a Cross Appeal. At this state, we may note the observations made in the impugned order in this regard, which reads as follows:
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> > 10...........No doubt, it is true that the ages were given in the plaint and on calculation of the ages of the plaintiffs, the youngest

> plaintiff namely 6th plaintiff attained the age of majority in the year 1992 and the time limit for questioning the transaction would expire by 1995....

15.The above factual position requires no further evidence to be recorded, as it has been admitted and the same has been culled out from the plaint averments. Thus, on the admitted facts, if the Court is convinced that a Judgment could be pronounced, it shall do so in terms of Order 15 Rule 1 CPC. In the opinion of the learned single Judge, the plaintiffs having stated that they have questioned the transaction after coming to know of the said fact, it would require evidence to be let in, which can be done only at the time of trial. In paragraph No.10 of the plaint, it has been stated that the plaintiffs have verified the transactions with the official records of the Sub-Registrar, Mylapore and were utterly shocked with disbelief when they came to know that the said property in which the plaintiffs also have a right were disposed of even during their minority without their knowledge. The alleged date of verification in the Office of the Sub-Registrar, Mylapore, has not been mentioned in the Plaint. Therefore, from the admitted averments it has to be seen as to whether the Suit was within time. In fact such an exercise was done by the learned single Judge and it was recorded that from the age of the parties given in the Plaint, the youngest plaintiff namely the 6th plaintiff, attained the age of majority in the year 1992 and the time limit for questioning the transaction expired by 1995. This finding is more than sufficient to hold that on the date when the plaintiffs sought permission to sue as indigent persons i.e. in the year 2000, the Suit was hopelessly barred by limitation against all plaintiffs as the limitation for filing the Suit by the 6th plaintiff expired in 1995 and in respect of other plaintiffs it expired much earlier."

35. I have considered the submissions of the learned counsel

for the petitioner. The plaint filed by the respondent is a detailed plaint. There are multiple money transactions between the parties starting from the year 1996.

36.It is the case of the respondents/plaintiffs in the suit that the petitioner had manipulated the documents to transfer the suit schedule properties standing in the name of the 1st and the 2nd respondent unfairly. The affidavit filed in support of the application merely states that the suit filed for declaring the sale deeds in the name of the petitioner as null and void and was time-barred. There are no other averments.

37.Merely because there is an averment in para-25 that after having paid the entire money due to the petitioner herein and the petitioner refused to return the documents to the 1st respondent /plaintiff and since latter had entertained a doubt and applied for encumbrance certificate in respect of the 'A' Schedule property and that the respondents/plaintiffs came to know that the petitioner/1st defendant had created a sale deed in his favour in Document No

2680/2000 in the year 2000 on the file of the SRO Ambatur by itself cannot mean that the respondents/plaintiffs were aware of the execution of the document in the year 2000. It can only mean that such a document was created in the year 2000. It cannot mean that the contesting respondents had knowledge of the same, unless there is an admission during the trial to that effect.

38.It has not been averred that they had the knowledge of the execution the sale deed in the year 2000. Therefore, such vital question of facts cannot be decided based on a skewed reading of the averments in the plaint to reject the plaint under Order 7 Rule 11 of CPC at the threshold. I my view, no prejudice will be caused to the petitioner if the petitioner defends the suit on merits by filing written statement and tenders evidence to dismiss the suit filed by the Respondents 1 to 4.

39.In my view, the petitioner has not made out a case to interfere with the order passed by the lower court. In fact, the petitioner could have filed written statement and perhaps could have got dismissed the suit by now if what has been argued here was properly pleaded and established in the trial.

40.Instead of meeting out the allegations in the plaint in a full-fledged trial, the petitioner has attempted to short circute the suit proceedings based on case-laws which are not applicable to the facts and circumstances of the case.

41.In my view, there are no admission that are discernible from the plaint to come to a conclusion that the suit was time-barred. Consequently, I am of the view that the above application has been rightly rejected by the court.

42.It is noticed that the suit is of year 2012. Therefore, the learned Subordinate Judge, Poonamallee shall dispose the suit on merits in accordance with law uninfluenced by observation contained in this order touching on the merits of the case within a

C.SARAVANAN, J.

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period of nine months from the date of receipt of a copy of this order.

43.The present civil revision petition is thus liable to be dismissed and is hereby dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

30.04.2019

Index :Yes/No
Internet :Yes/No

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To

1.The Subordinate Court,
Poonamallee.

2.The Section Officer,
V.R.Section, High Court, Madras.

Pre-delivery order in

C.R.P.(PD).No.1912 of 2014
and
M.P.No.1 of 2014