IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2019

DELIVERED ON : 11.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAISWAMY

C.R.P.(PD).No.2925 of 2012 and
M.P.No.1 of 2012

1. Thangadurai
2. S.Palaniappan ... Petitioners

v.

1. Nallayagounder
2. Rajamanickam
3. Ponnayammal
4. Nirmala Devi
5. Gopinath ... Respondents

Civil Revision Petition filed under section 115 of the Civil Procedure Code, against the order dated 26.04.2012 made in I.A.No.420 of 2011 in O.S.No.47 of 2011 on the file of Sub Court, Sankari.

For Petitioners : Mr.R. Marudhachalamurthy

For Respondents : Mr. N. Manokaran

ORDER

Challenging the fair and final order passed in I.A.No.420 of 2011 in O.S.No.47 of 2011 on the file of the Sub Court, Sankari, the defendants 2 and 3 have filed the above Civil Revision Petition.

2. The respondents-plaintiffs filed the suit in O.S.No.47 of 2011 for the following reliefs:-

(a) Declaring the sale dated 02.06.2005 registered as Document No.1032/2005 at Sub Registrar Office at Kumarapalayam as null and void ; and

(b) Granting permanent injunction against the defendants and their supporters restraining them from in any way interfering or disturbing the peaceful possession and enjoyment of the suit property by the plaintiff.

3. The plaintiffs filed the suit for the above reliefs contending that on 02.06.2005 the defendants coerced the plaintiffs and obtained a sale deed and on 10.10.2010 they tried to disturb the possession and enjoyment of the suit property. It would be relevant to extract the cause of action paragraph, which reads as follows:-

> " ... 13 The cause of action of this suit arose on 29.5.2002 when the plaintiffs 1 and 2 borrowed Rs.50,000/- by executing a mortgage deed and a power of attorney deed and on 02.06.2005 when the defendants coerced the plaintiffs and obtained a sale deed and on 10.10.2010 when the defendants tried to disturb the possession and enjoyment of the suit property by the plaintiffs and on all other subsequent dates at Pullagoundampatti Amani Village, Sankari Taluk, Salem District, within the Jurisdiction of this Hon'ble Court."

4.1 The petitioners-defendants filed an application in I.A.No.420 of 2011 under Order VII Rule 11(d) of the Civil Procedure Code to reject the plaint.

4.2 In the affidavit filed in support of the application, the defendants contended that the suit filed by the plaintiffs is barred by limitation under Article 59 of the Limitation Act.

4.3 The plaintiffs filed their counter and contested the application. In the counter filed by the plaintiffs they have stated that they came to know about the execution of the document only on 10.10.2010 and they have not stated that they came to know about the execution of the document on 02.06.2005 itself.

5. The Trial Court, after taking into consideration the case of both the parties, dismissed the application finding that the plaintiffs came to know about the execution of the sale deed dated 02.06.2005 only on 10.10.2010.

6.1 Mr.R. Marudhachalamurthy, learned counsel appearing for the petitioners-defendants submitted that the respondents-plaintiffs have specifically stated that they had knowledge about the execution of the sale deed on 02.06.2005 itself and therefore, they should have filed the suit on or before 01.05.2008, whereas, they have filed the suit only on 18.10.2010. The learned counsel appearing for the petitioners submitted that the suit filed by the respondents-plaintiffs is clearly barred by limitation under Article 59 of the Limitation Act.

6.2 The learned counsel appearing for the petitioners, in support of his contentions, relied upon a judgment reported in **2019(2) CTC 823 [Raghwendra Sharan Singh v. Ram Prasanna Singh (dead) by L.Rs],** wherein in para 6.4, Judgment of the case reported in **2012 (8) SCC 706 [Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust]** was relied upon, wherein, in para 13 it has been held as follows:-

> "... 13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain thematerials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff the right to relief against the Defendant. Every fact which is necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the

Defendant since in the absence of such an act no cause of action can possibly accrue. ..."

6.3 In the Judgment reported in **2019(2) CTC 823 (cited supra),** in para 6.5, the judgement of the Hon'ble Supreme Court reported in **1989 (2) SCC 163 [A.B.C. Laminart Pvt. Ltd., V. A.P. Agencies]** was relied upon, wherein in para 12 it has been held as follows:-

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

6.4 Further, in the Judgment reported in **2019(2) CTC 823 (cited supra),** in para 7, it has been held as follows:-

" ... 7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 of the CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the Courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 of the CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15.12.2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed – brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as defendant No. 10. It appears that the summon of the suit filed by the defendant being T.S. (Partition) Suit No. 203 of 2001 was served upon the defendant No.10 plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein original defendant and the mortgage deed was executed by the defendant. 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 Countering the submissions made by the learned counsel appearing for the petitioners, Mr.N.Manokaran, learned counsel appearing for the respondents submitted that the limitation for filing the suit would fall under Article 58 of the Limitation Act and therefore, the suit filed by the respondents-plaintiffs was within time. Further, the learned counsel submitted that the respondents came to know about the execution of the sale deed only on 10.10.2010, therefore, the suit filed by them is within the period of limitation.

7.2 The learned counsel appearing for the respondents, in support of his contentions, has relied upon the following judgments:-

(i) **2019(1) LW 559 [Urvashiben and another v. Krishnakant Manuprasad Trivedi]** wherein the Hon'ble Supreme Court held as follows:-

> " ... 12. From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under O.VII R.11, same is to be

considered from the facts of each case, looking at the averments made in the plaint, for the purpose of adjudicating such application. As averred in the plaint, it is the case of the plaintiff that even after payment of the entire consideration amount registration of the document was not made and prolonged on some grounds and ultimately when he had visited the site on 25.05.2017 he had come to know that the same land was sold to third parties and appellants have refused performance of contract. In such event, it is a matter for trial to record correctness or otherwise of such allegation made in the plaint. In the C.A.@ SLP(C)Nos.23062-63/18 suits for specific performance falling in the second limb of the Article, period of three years is to be counted from the date when it had come to the notice of the plaintiff that performance is refused by the defendants. For the purpose of cause of action and limitation when it is pleaded that when he had visited the site on 25.05.2017 he had come to know that the sale was made in favour of third parties and the appellants have refused to execute the Sale Deed in which event same is a case for adjudication after trial but not a case for rejection of plaint under O.VII R.11(d) of CPC.

15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. 14 (2009) 5 SCC 462 15 (2006) 5 SCC 658C.A.@ SLP(C)Nos.23062-63/18 Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC. ...”

(ii) **2018(4) CTC 206 [Chhotanben and anr. v. Kiritbhai Jalkrushnabhai Thakkar**] wherein the Hon'ble Supreme Court held as follows:-

“ ... 11. After having cogitated over the averments in the plaint and the reasons recorded by the Trial Court as well as the High Court, we have no manner of doubt that the High Court committed manifest error in reversing the view taken by the Trial Court that the factum of suit being barred by limitation, was a triable issue in the fact situation of the present case. We say so because the appellants (plaintiffs) have asserted that until 2013 they had no knowledge whatsoever about the execution of the registered sale deed concerning their ancestral property. Further, they have denied the thumb impressions on the registered sale deed as belonging to them and have alleged forgery and impersonation. In the context of totality of averments in the plaint and the reliefs claimed, which of the Articles from amongst Articles 56, 58, 59, 65 or 110 or any other Article of the Limitation Act will apply to the facts of the present case, may have to be considered at the appropriate stage.

" ... 12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), 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 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 appellants (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 Nos.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 Nos.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 No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.

(iii) **2014(2) CTC 199 [Surjit Kaur Gill and Anr. v. Adarsh Kaur Gill and Anr.]** wherein the Hon'ble Supreme Court held as follows:-

" ... 9. With respect to these submission, Mr. Diwan pointed out that in fact there is a clear writing of the respondent No.1 herein executed on 12.2.91 which clearly states, amongst others, in paragraph (d) that she will not claim any tenancy right or charge on the above referred property. In paragraph (b) of that writing she agreed to render the accounts with respect to the rental income received from 1.1.80 to 30.11.90. In paragraph (c) of that writing she states that with respect to the two mortgages redeemed in her name, she will not claim any charge as the amounts paid for redeeming the said mortgages were paid from the estaste of Smt. Abnash Kaur. Mr. Diwan states that after executing this writing, the disputes between the parties were supposed to get settled, but then unfortunately it did not happen. The respondent No.1 started construction on the particular property in her own right. This having happened in 1992, the original plaintiff was constrained to file the suit for the partition of the property belonging to Smt.Abnash Kaur. Smt. Abnash Kaur having made a Will about her property, the original plaintiff had to see to it as the administrator of the will that the property is distributed in accordance therewith. This being the position, in his submission it is Article 58 which is the relevant Article for all these prayers, which provides for a period of 3 years when the right to sue first accrues. In the present case, it will be when the dispute arose because of the conduct of the respondent No.1 herein. The issue of limitation is always a mixed question of facts and law, and therefore, it could not be held that no case was made out for proceeding for a trial. Mr. C.A. Sundaram submitted that the respondent No.1 disputed the writing dated 12.2.1991, and it had to be forensically tested. This submission all the more justifies that the trial had to proceed. For deciding an application under Order 7 rule 11, one has to look at the plaint and decide whether it deserved to be rejected for the ground raised. In our view, the view taken by the Division Bench is clearly erroneous. The appeal is therefore allowed and the judgment and order of the Division Bench is set aside. The application made under Order 7 Rule 11 moved by the respondent No.1 herein will stand rejected. We may however clarify that all the observations herein are only for the purpose of deciding this appeal. ..."

(iv) **2013(5) CTC 849 [M. Thillaikkarasi v. Kalavathi and anr.]** wherein this Court held as follows:-

" ... 8. From a reading of the above section, it shall be obvious that the bar of limitation provided therein is made subject to the provisions contained in Sections 4 to 24 of the Limitation Act, which includes part III containing exclusion of certain periods for the computation of period of limitation. Section 3 of the Limitation Act does not say that the plaint filed after the expiry of period of limitation is liable to be rejected. On the other hand, it simply says that the suit instituted, appeal preferred or the application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. Of course, the said section has been interpreted by the Supreme Court in Lachman Singh v. Hazara Singh reported in (2008) 5 SCC 444 to the effect that Section 3 puts an embargo on the court to entertain a suit, if it is found to be barred by limitation. The court cannot conduct a rowing enquiry to find out whether the averments made in the plaint claiming how the suit was in time, are true or false. On the other hand, on the very basis of the averment made in the plaint, it should be apparent that suit shall be barred by limitation to bring the plaint within the ambit of clause (d) of Rule 11 of Order VII CPC. What clause (d) of Rule 11 of Order VII CPC says is that it must appear from the statements made in the plaint itself that the suit is barred by law. Suppose the plaint averments indicate the date of commencement of the period of limitation and it is found that the suit has been filed beyond the period of limitation without any averment claiming exclusion of certain period and thus pleading that the suit is not barred by limitation, we can say that the same would come under clause (d) of Rule 11 of Order VII CPC. ..."

8. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side , it could be seen that the issue involved in this Civil Revision Petition is whether the suit filed by the respondent is barred by limitation.

9. It is not in dispute that the respondents executed a sale deed dated 02.06.2005 and filed a Suit in O.S.No.47 of 2011 to declare the sale deed as null and void on 18.10.2010.

10. The petitioners contended that the respondents-plaintiffs had knowledge about the sale deed dated 02.06.2005 on the date of execution itself, therefore, they should have filed the suit on or before 01.05.2008. However, the respondents-plaintiffs contended that they came to know about the execution of the sale deed dated 02.06.2005 only on 10.10.2010, therefore, the suit filed by them is within time.

11. As per Article 59 of the Limitation Act, the period fixed for filing a suit to set aside a decree or instrument is 3 years from the date on which the execution of the document first become known the plaintiffs. Therefore, the case on hand would fall only under Article 59 of the Limitation Act.

12. On a reading of the plaint, it is clear that the plaintiffs had knowledge about the execution of the sale deed dated 02.06.2005 on the very same day and not on 10.10.2010 as contended by them. In the cause of action paragraph, which is extracted above, they have stated that "the cause of action for filing the suit arose on 02.06.2005 when

the defendants coerced the plaintiffs and obtained a sale deed". When the plaintiffs themselves have stated that on 02.06.2005 the defendants coerced them and obtained the sale deed, that means, they had full knowledge about the execution of the sale deed on 02.06.2005 itself. In spite of stating so in the plaint, the plaintiffs choose to file the suit only on 18.10.2010, which is beyond 3 years period of limitation prescribed under Article 59 of the Limitation Act.

13. Contrary to the averments stated in the plaint, the plaintiffs, in their counter, have taken a false stand by stating that they came to know about the execution of the sale deed dated 02.06.2005 only on 10.10.2010 and further stated that they have not stated that they came to know about the execution of the document on 02.06.2005 itself. From the above, it is clear that the respondents-plaintiffs have deliberately stated a false statement in the counter.

14. Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned counsel appearing for the respondents, since the facts and circumstances of the case on hand is

totally different, the same are not applicable.

15. No doubt, the issue of limitation is a mixed question of law and facts, but, in the case on hand, when the plaintiffs themselves specifically stated that they knew about the execution of the sale deed on 02.06.2005 itself, they should have filed the suit within 3 years from the said date under Article 59 of the Limitation Act. Since the suit was filed only on 18.10.2010, the suit filed by the respondents is barred by limitation.

16. The ratio laid down in the judgement relied upon by the learned counsel appearing for the petitioners squarely applies to the present case.

17. For the reasons stated above, I am of the considered view that the suit filed by the respondents-plaintiffs is clearly barred by limitation under Article 59 of the Limitation Act. The Trial Court should have rejected the plaint and allowed the application in I.A.No.420 of 2011.

18. In these circumstances, the fair and decreetal order passed in I.A.No.420 of 2011 are set aside. The application in I.A.No.420 of 2011 stands allowed. The suit in O.S.No.47 of 2011 stands rejected. The Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

11.11.2019

Index : Yes / No
Speaking order / Non Speaking Order
Rj

To

The Sub Court,
Sankari.

M.DURAISWAMY, J.

Rj

Order in
C.R.P.(PD)No.2925 of 2012 and
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11 .11.2019

Pre-delivery Order in
C.R.P.(PD)No.2925 of 2012 and
M.P.No.1 of 2012

To
THE HON'BLE MR. JUSTICE M.DURAISWAMY

Most Respectfully Submitted
R.Jeyanthi