

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 2804 of 2019

and

C.M.P. No. 18359 of 2019

Jayalakshmi ... Petitioner

-Vs-

Narayanasamy (died)

Kannan (died)

Ganesan

Ravidran (died)

... Respondent

Prayer : Petition filed under Article 227 of the Constitution of India against the order and decree dated 25.07.2019 in I.A. No. 532 of 2019 in O.S. No. 1934 of 2018 on the file of Principal District Munsif, Pondicherry.

For Petitioner

: Mr. R. Rajarajan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order made in I.A. No. 532 of 2019 in O.S. No. 1934 of 2018 on the file of the Principal District Munsif, Pondicherry, by order dated 25.07.2019.

2. Before the trial Court, respondents 1 to 3 had laid a suit for declaration and consequential relief. The first defendant in whose favour the alleged settlement deed was made and the second defendant is the Power of Attorney of the first defendant.

3. During the pendency of the suit, the first and second plaintiffs died and the third plaintiff alone is maintaining the suit as of now.

4. The present application i.e., I.A. No. 532 of 2019 was filed by the first defendant invoking Order VII Rule 11 of Civil Procedure Code to reject the plaint.

5. The main ground alleged by the petitioner / first defendant before the Court below in the I.A. for the reason of rejecting the plaint is that, the suit is barred by limitation.

6. In support of the said contention, it is a case, as projected by the first defendant / petitioner before the trial Court that, one

Arunachala Gounder is the father of the first defendant and all the three plaintiffs were born through him, in other words, the first defendant and plaintiffs are sisters and brothers. The said Arunachala Gounder settled the suit property in favour of the first defendant on 05.01.1973, with the knowledge of P1, P2 and P3 and having known the said fact that, the property having been bequeathed by way of settlement by the father of the plaintiffs, who are the brothers of the first defendant as early in the year 1973, had not acted upon for several years and ultimately the suit has been filed in the year 1998 for such relief.

7. The learned counsel appearing for the petitioner would submit that, in so far as the limitation issue is concerned, which comes under Article 59 of the Limitation Act, 1963, under which to cancel or set aside an instrument or decree or for the rescission of a contract, the limitation is three years, from the date, where the fact first become known to plaintiff.

8. In this context, he would further submit that, being the brothers of the first defendant and the sons of the Arunachala Gounder who executed the settlement in favour of the first defendant, all the three plaintiffs including P1 and P2, who are no more, had every knowledge about the settlement and therefore, having not acted upon for several years, they again at this stage i.e., in the year 1988, i.e., after 25 years, filed the suit with the present prayer, which is definitely hit by the said Article 59 of the Limitation Act, therefore, on that ground itself, the plaint should have been rejected by the trial Court.

9. It is also the submission made by the learned counsel for the revision petitioner that, apart from the ground of limitation, during the pendency of the suit, P1 and P2 died, the legal heirs of the P1 and P2 should have been brought in, however the surviving plaintiff i.e., P3 have not taken any steps to bring the LR's whereby, he cleverly orchestrates the scheme to grab the suit property from the first defendant.

10. In this context, the learned counsel appearing for the petitioner has relied upon the recent decision of the Hon'ble Apex Court made in *SLP (C) No. 20068 of 2013 and Civil Appeal No. 2960 of 2019 in the matter of Raghwendra Sharan Singh vs Ram Prasanna Singh (Dead) by LRs* by order dated 13.03.2019.

11. In the said judgment, the learned counsel relied upon the following paragraphs which are extracted here under:

"7.1. At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial Court.

8. Now, so far as the application on behalf of the original plaintiff and even the observations made by

*the learned trial Court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence is concerned, as observed and held by this Court in the cases of **Sham Lal alias Kuldip** (supra); **N.V. Srinivas Murthy** (supra) as well as in the case of **Ram Prakash Gupta** (supra), considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) of the CPC.*

9. In view of the above and for the reasons stated above, we are of the opinion that both the High Court as well as the learned trial Court have erred in not exercising the powers under Order 7 Rule 11 of the CPC and in not rejecting the plaint in exercise of powers under Order 7 Rule 11 of the CPC. For the reasons stated above, the impugned judgment and order passed by the High Court as well as the trial Court cannot be sustained and the same deserve to be quashed and set aside. Consequently, the impugned judgment and order passed by the High Court dated 12.03.2013 as well as the order passed by the Munsif, Danapur rejecting the Order 7 Rule 11 application filed by the original defendant are hereby set aside.

Consequently, the application submitted by the appellant herein-original defendant to reject the plaint under Order 7 Rule 11 of the CPC is hereby allowed and the plaint, being Title Suit No. 19 of 2003 is hereby rejected. The present appeal is allowed accordingly in terms of the above. No costs."

12. By relying upon the aforesaid decision, he would submit that, the careful drafting of the pleadings would not save the limitations, particularly under Article 59 of the Limitation Act. If the said principle laid down in the said judgment of the Hon'ble Apex Court is applied to the facts of this case, certainly, the prayer sought for by the revision petitioner / defendant before the trial Court ought to have been allowed. Therefore, the learned counsel would submit that, the trial Court since rejected the said plea of rejection of plaint, it requires interference from this Court.

13. I have considered the said submission made by the learned counsel for the revision petitioner and have gone through the materials placed before this Court.

14. Even according to the revision petitioner / defendant, the property in question had been settled as early as on 05.01.1973, in favour of the first defendant / revision petitioner and though the plaintiffs are the brothers of first defendant, there is no direct evidence to show that, they have knowledge about such settlement dated 05.01.1973. It is an admitted fact that, the plaintiffs are the major at the time of the execution of settlement deed dated 05.01.1973. It is not known, at this juncture that, whether the property in question, which was allegedly settled in favour of first defendant, is an ancestral property or self acquired property of Arunachala Gounder.

15. Be that as it may, if at all the plaintiffs being the three sons of the deceased Arunachala Gounder, who made the settlement, definitely the plaintiffs could have been put under knowledge and in this regard, at least a witness signature could have been obtained in the said settlement deed dated 05.01.1973.

16. There is no such case as projected by the learned counsel

for the revision petitioner / defendant before this Court.

17. In absence of any such plea to that effect, as has been discussed, the case was projected by the learned counsel for the respondents / plaintiffs before the trial Court in the plaint that, unless and untill after receipt of suit summons in the suit filed by the defendants against the plaintiffs in O.S. No. 567 of 1998, they had no knowledge about the transaction. Therefore, *prima facie*, this Court feels that, the said factor narrated by the plaintiffs in the plaint cannot be said to be a careful drafting without any narration of fact, of course, the said factor is to be proved only at the time of trial.

18. In that view of the matter, the law laid down by the Honb'le Supreme Court as has been amplified in the said judgment cited supra by the learned counsel appearing for the revision petitioner cannot be made applicable to the present facts of the case. Therefore, the said submission would not advance the case of the revision petitioner.

19. These aspects are considered in proper perspective by the learned Judge of the trial Court and this has been reflected in the

impugned order. Therefore, this Court feels that, the said impugned order cannot be construed as an order with any perversity or infirmity and hence this Court also feels that, it does not require any interference from this Court.

20. Whatever be the reasons, circumstances projected by the revision petitioner before this Court, of course before the trial Court in the said application which is questioned now, can very well be agitated before the trial Court at the time of the trial, therefore, instead of facing the trial, the petitioner cannot seek for remedy under Order VII Rule 11 of Civil Procedure Code, in the present facts and circumstances of the case. Hence this Court has no hesitation to hold that, the impugned order is sustainable and therefore does not require any interference from this Court.

21. Hence, this Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

03.10.2019

Index : Yes
Speaking order
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To

The Principal District Munsif,
Pondicherry.



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R.SURESH KUMAR, J.

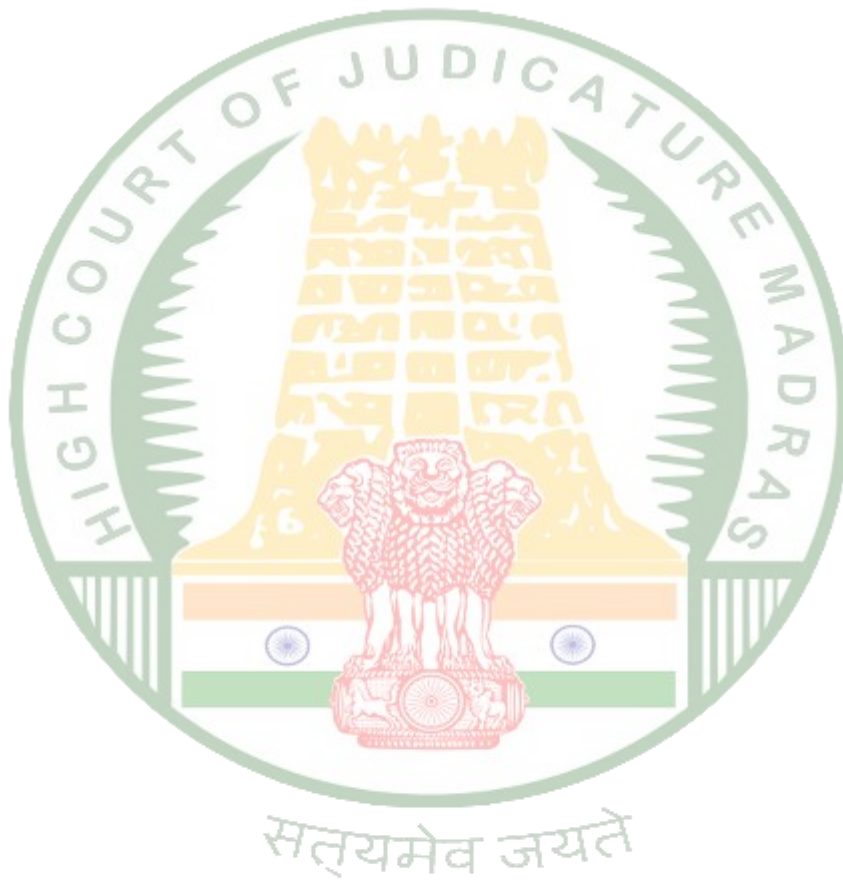
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