

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.03.2019

Delivered on: 04.06.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHAC.R.P(PD).No.3811 of 2017

and

CMP.No.17813 of 2017

M.L.Sampath Kumaran

...Petitioner

Vs

Sri Sathya Sai Mandali Private Trust
Represented by its Managing Trustee,
S. Ravindrakumar,
93, Mount Road,
Chennai-32.

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order and decretal order dated 17.08.2017 made in I.A.No.15599 of 2015 in O.S.No.5122 of 2015 on the file of the IV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr. A.R. L. Sundaresan, SC
for Mr. C. Sakthimanikandan
For Respondent : Mr. R. Bharath Kumar

ORDER

The defendant in a suit for declaration and injunction is before this Court challenging the order dismissing his application in I.A.No.15599 of 2015 to reject the plaint in O.S.No.5122 of 2015.

2. It is necessary to briefly allude to the circumstances that have culminated in the filing of the above Civil Revision Petition. The parties to the proceedings are referred to in the same litigative status as in the suit.

The plaintiff claiming to be a Private Trust has filed the suit O.S.No.5122 of 2015 on the file of the IV Assistant City Civil Court, Chennai for the following reliefs:

"a) For a declaration declaring that the settlement Deed dated 12.07.1961 registered as Doc.No.1747 of 1961 at S.R.O. Saidapet in the registration district of Madras Chengalpet, Chennai as null and void and not binding upon the plaintiff and consequently declaring all the transactions on the basis of forged power of attorney as null and void and not binding upon the plaintiff.

b) Granting Permanent injunction restraining the defendants, their men, agents, person or persons claiming through or under them from interfering with plaintiff peaceful possession and enjoyment of the Suit Schedule Property.

c) Granting Permanent injunction restraining the defendant, their men, agents, person or persons claiming through or under them from alienating the Suit Schedule Property to any prospective third parties."

3. The Private Trust is represented by its Managing Trustee S.Ravindrakumar. It is the plaintiff's case that they were founded in the year 1949 by one M.J.Loganatha Mudaliar, the defendant's father. Under a registered gift deed dated 3.02.1949, M.J.Loganathan Mudaliar gifted the suit property and the other properties comprised in S.No.4, 5 and 6 to the Private Trust.

4. In the beginning the Trust consisted of nine Members and the Founder Trustee was M.J.Loganatha Mudaliar and his daughter M.L.Leela was also a Trustee. The Trust was primarily created to

maintain the Sri Shirdi Sai Baba Temple constructed in the above land so as to enable his worship. The properties were gifted only for the purpose of utilising the money earned out of them for the above object of the Trust. On 23.10.1962, M.J.Loganatha Mudaliar died and his younger brother M.L.Ramakrishnan had taken charge.

5.It is the case of the plaintiff that all communications in respect of the suit property was received only in the name of the Trust. That apart, the defendant had also written letters to the Income Tax Officer stating that his father M.J.Loganatha Mudaliar had not left behind any property in his name. Further in a memo filed in the suit O.S.No.5508 of 2008, the defendant had stated that he is neither the owner nor in possession of the suit property.

6.The petitioner further contended that the defendant had filed a suit O.S.No.3484 of 2015 on the file of the VII Assistant City Court, Chennai for an injunction against Sai Swarna and others. It is only when this suit was filed that the existence of the settlement deed dated 12.07.1961 was known. It is the case of the Private Trust that this deed is a fabricated deed and further after gifting all his properties

to the Trust, M.J.Loganatha Mudaliar had nothing left to gift to the defendant. Therefore, the Private Trust has come forward with the above suit.

7. On receiving summons in the above suit, the defendant has come forward to file I.A.No.15599 of 2015 to reject the plaint. This application was filed on three grounds:

a) That the person filing the suit on behalf of the plaintiff had no locus standi to file the suit as this Court by orders in O.S.A.No.447 and 448 of 2009 had appointed an interim Committee for the management and administration of the Trust and the present suit is not filed by this Committee.

b) The property covered under the settlement deed does not belong to the Trust.

c) The settlement deed which is now sought to be declared as null and void was executed as early as in the year 1961 and 54 years later the suit is filed and is therefore clearly barred by limitation.

8. The plaintiff had filed a counter inter alia refuting the allegations made in the affidavit filed in support of the petition to

reject the plaint. They would contend that the interim committee has been appointed by this Court only to manage the Trust and the day to day affairs of the Temple and the Trust continues to vest with the Trustees. Mr. Ravindrakumar, who had been appointed as the Managing Director was competent to file the above suit.

9. They would further contend that the suit property was part of the property gifted by M.J.Loganatha Mudaliar to the Plaintiff Trust and there was no question to the same being a separate property. As regards limitation they would contend that knowledge about the existence of the settlement deed was known to the plaintiff only when the defendant had filed in the suit O.S.No.3484 of 2015. As soon as they came to know about the same they had taken steps to implead themselves a party defendant in O.S.No.3484 of 2015 and they had simultaneously filed the instant suit and therefore there is no question of the suit being barred by limitation.

10. The learned IV Assistant, City Civil Judge, Chennai by his order dated 17.08.2017 was pleased to dismiss the said petition and it is challenging this order that the defendant is before this Court.

11. Mr. A.R.L. Sundaresan, learned Senior Advocate arguing on behalf of the counsel for the defendant/Revision petitioner would reiterate the contentions raised before the learned IV Assistant, City Civil Judge, Chennai and draw the attention of this Court to an unreported Judgment of the Hon'ble Supreme Court **[Civil Appeal.No.2960 of 2019, Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs]** and relied on the following passage in paragraph 7 of the said judgment:

" 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."

12. Per contra, Mr. R. Bharath Kumar, learned counsel appearing on behalf of the Plaintiff Trust would argue that while considering a petition filed invoking the provisions of Order VII Rule 11 of the Code of Civil Procedure, the Court should only consider the averments contained in Plaint and shall not be swayed not by the contents of the written statements or the petition seeking to reject the plaint.

13. He would further produce a xerox copy of the minutes of the plaintiff Trust dated 23.05.2008, where the 2nd resolution relates to the appointment of the said S.Ravindrakumar as the Managing Director of the Plaintiff Trust. He would further argue that the title to the property has to be proved through trial and a plaint cannot be rejected on the ground that the plaintiff had no right to the property. In support of this argument he had relied on the judgment of this Court [**reported in 2013(5) Mad LJ 791 of P. Rajkumar and others Vs. Mary Saroja and Others**] where this Court has held that the issue as to who has got title to property can be deduced only after a full fledged Trial.

14. As regards limitation, the learned counsel would argue that the existence of the settlement deed had come to their knowledge only when the suit O.S.No.3484 of 2015 was filed by the defendant against Sai Swarna (the wife of S. Ravindrakumar) and others and immediately this suit has been filed.

15. He would further contend that the defendant had not pleaded as to how the suit is barred by limitation especially when the plaintiff had pleaded that the knowledge of the existence of the settlement deed was known only in the year 2005. He would also rely on the Judgment of the Hon'ble Supreme Court [**reported in (2018) 6 SCC 422, Chhotanben and another Vs. Kiritbhai Jalkrushnabhai Thakkar and others**] to buttress his arguments that the plaint has to be read as a whole while considering an application filed under Order VII Rule 11, Civil Procedure Code. This judgment was also relied in support of the proposition that the plea of limitation is a triable issue since in the instant case the plaintiff has come forward with the specific case that the knowledge about the settlement deed was only in the year 2015, which has been refuted by the defendants and therefore a triable issue which cannot be rejected at the threshold.

16. Heard the counsels on either side and perused the papers. The Private Trust has come forward with a specific case that the suit

property had been gifted to them by the Founder Trustee in the year 1949 along with other properties and thereafter no property was left with the Founder Trustee to further gift and therefore the settlement deed dated 12.07.1961 has to be declared as null and void and that knowledge of its existence was only when the defendant had filed the suit O.S.No.3484 of 2015.

17. The defendants response to the above is that the suit property is distinct and different from the property gifted by the Founder Trustee. A perusal of the schedule to the settlement deed dated 12.07.1961 and the Trust deed of the year 1949 does not throw clarity and further the schedule of property as described in the suit also does not clarify the portion. Therefore this is an issue which has to be proved by either party during trial by letting in evidence.

18. As regards the locus standi of S. Ravichandrakumar to file the suit, the learned counsel for the petitioner has produced a xerox copy of the minutes dated 23.05.2008. Once again the legality or otherwise of the resolution in the light of the interim Committee being appointed by orders of this Court in OSA.Nos.447 and 448 of 2009 is

yet another factor that has to be argued and proved by either party.

19. Though at first blush, the argument that the suit is barred by limitation would appear attractive, however on a reading of the plaint, it is seen that the plaintiff Trust has specifically pleaded that only in the year 2015, when the suit O.S.No.3484 of 2015 was filed that the plaintiff Trust has come to know about the existence of the settlement deed. They have also pleaded that in earlier proceedings, the defendant had clearly stated that he received no property from his father, the founder trustee of the Plaintiff Trust. The defendant has not come forward with any document or pleading to disprove this statement and show that even prior to 2015, the plaintiff Trust was aware of the settlement deed and this once again becomes a mixed question of fact and law requiring proof.

20. As held by the Hon'ble Supreme Court in the Judgment in **(2018)6 SCC 422** supra, the Honourable Supreme Court observed that the Court while considering a petition to reject the plaint is solely bound by the contents of the plaint. The facts of the case cited by the defendant/petitioner stand on a different footing and does not apply to the fact of the case on hand.

21. As discussed above, a perusal of the pleadings in the plaint in O.S.No.5122 of 2015 makes out a triable issue and the Court below has rightly dismissed I.A.No.15599 of 2015. I do not find any infirmity in the order of the Court below and consequently the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

04.06.2019

mrn

Index : Yes/No
Speaking order/non-speaking order

To,

1. The IV Assistant Judge,
City Civil Court,
Chennai



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P.T.ASHA, J.,

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Pre-Delivery order in
C.R.P(PD).No.3811 of 2017 &
CMP.No.17813 of 2017

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