IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 14THDAY OF AUGUST 2020

THE HON'BLE THIRU. JUSTICE M.GOVINDARAJ

A.Nos.3931 OF 2015 AND 3944 of 2013
in
C.S.No.716 of 2011

1.P.Varada Reddy (Deceased) **(*)**

2.Mrs..Prashanthi Reddy,
No.20, Rutland Gate, 4th Street,
Nungambakkam, Chennai 600 034.

3.Shri Dodla Sesha Reddy,
No.10, Wallace Garden,
1st Street, Nungambakkam,
Chennai 600 034.
Rep. by his Power Agent P.Varada Reddy, the
1st Plaintiff herein.

4.Shri Dodla Sunil Reddy,
No.10, Wallace Garden,
1st Street, Nungambakkam,
Chennai 600 034.
Rep. by his Power Agent
Mrs.Prashanthi Reddy, the 2nd
Plaintiff herein.

5.Mrs.P.Smitha Reddy **(*)**
D/o.P.Varadha Reddy (Deceased)

6.Smt.P.Shruthi Reddy **(*)**
D/o.P.Varadha Reddy (Deceased)

Both are residing at
No.20, Rutland Gate, IV Street,
Nungambakkam,
Chennai 600 006. ..Plaintiffs

(*)Plaintiffs 5 & 6 brought on record as LRs of the Deceased 1st Plaintiff as per order dated 13.03.2018 in A.Nos.2180 & 2181 of 2018)

-Versus-

1.M/s.Accord Finance & Properties (Pvt.) Ltd.,
Old No.51, New No.111, G.N.Chetty Road,
T.Nagar, Chennai 600 017.

2.Mr.R.Ramakrishna
Flat No.B-8, Atandra,
No.15, Thirumalai Pillai Road,
T.Nagar, Chennai 600 017.

3.M/s.Besser Concrete Systems Ltd.,
No.1/208 Kaliamman Koil Street,
Kelambakkam, Kancheepuram District
Pin code.603103.

4.Mr.Mohideen Sheikh Uduman,
Old No.58/2, No.63, 2nd Cross Street,
CIT Nagar East, Chennai 600 035.

5.Mr.Sheikh Mohammed,
Old No.58/2, No.63, 2nd Cross Street,
CIT Nagar east, Chennai 600 035.

6.ASuganthi
W/o.R.S.Angamuthu,
Sayani Complex, F-12, 1st Floor,
No.96, Konnur High Road,
Ayanavaram, Chennai 600 023.

7.M/s.ICICI Bank Ltd.,
Rep. by its Manager / Authorised Signatory,
having office at ICICI Towers, East Wing,
9th Floor, Santhome High Road,
Chennai 600 028. ..Defendants

A.No.3931 of 2015:

1.M/s.Accord Finance & Properties (Pvt.) Ltd.,
Old No.51, New No.111, G.N.Chetty Road,
T.Nagar, Chennai 600 017.

2.Mr.R.Ramakrishna
Flat No.B-8, Atandra,
No.15, Thirumalai Pillai Road,
T.Nagar, Chennai 600 017. ..Applicants/Defendants 1 & 2

-Versus-

1.P.Varada Reddy
S/o.late P.Raghava Reddy,
No.20, Rutland Gate, 4th Street,
Nungambakkam, Chennai 600 034.

2.Mrs..Prashanthi Reddy,
No.20, Rutland Gate, 4th Street,
Nungambakkam, Chennai 600 034.

3.Shri Dodla Sesha Reddy,
No.10, Wallace Garden,
1st Street, Nungambakkam,
Chennai 600 034.
Rep. by his Power Agent P.Varada Reddy, the
1st Plaintiff.

4.Shri Dodla Sunil Reddy,
No.10, Wallace Garden,
1st Street, Nungambakkam,
Chennai 600 034.
Rep. by his Power Agent
Mrs.Prashanthi Reddy, the 2nd
Plaintiff. ..Respondents 1 to 4 /Plaintiffs 1 to 4

5.M/s.Besser Concrete Systems ltd.,
No.1/208 Kaliamman Koil Street,
Kelambakkam, Kancheepuram District
Pin Code.603 103.

6.Mr.Mohideen Sheikh Uduman,
Old No.58/2, No.63, 2nd Cross Street,
CIT Nagar East, Chennai 600 035.

7.Mr.Sheikh Mohammed,
Old No.58/2, No.63, 2nd Cross Street,
CIT Nagar east, Chennai 600 035.

8.A.Suganthi
W/o.R.S.Angamuthu,
Sayani Complex, F-12, 1st Floor,
No.96, Konnur High Road,
Ayanavaram, Chennai 600 023.

9.M/s.ICICI Bank Ltd.,
Rep. by its Manager / Authorised Signatory,
having office at ICICI Towers, East Wing,
9th Floor, Santhome High Road,
Chennai 600 028. ..Respondents 5 to 9 / Defendants 3 to 7

Application praying that this Hon'ble Court be pleased to reject the plaint in suit C.S.No.716 of 2011.

A.No.3944 of 2013:

Besser Concrete Systems Ltd.,
No.1/208 Kaliamman Koil Street,
Kelambakkam,
Kancheepuram District 603 103. ..Applicant/3rd Defendant

-Versus-

1.P.Varada Reddy
Son of late P.Raghava Reddy,
No.20, Rutland Gate, 4th Street,
Nungambakkam, Chennai 600 034.

2.Mrs..Prashanthi Reddy,
No.20, Rutland Gate, 4th Street,
Nungambakkam, Chennai 600 034.

3.Shri Dodla Sesha Reddy,
No.10, Wallace Garden,
1st Street, Nungambakkam,
Chennai 600 034.
Rep. by his Power Agent P.Varada Reddy,

4.Shri Dodla Sunil Reddy,
No.10, Wallace Garden,
1st street, Nungambakkam,
Chennai 600 034.
Rep. by his Power Agent
Mrs.Prashanthi Reddy,

..Plaintiffs/Respondents

5.Accord Finance & Properties (Pvt.) Ltd.,
Old No.51, New No.111, G.N.Chetty Road,
T.Nagar, Chennai 600 017.

6.Mr.R.Ramakrishna
Flat No.B-8, Atandra,
No.15, Thirumalai Pillai Road,
T.Nagar, Chennai 600 017.

7.Mr.Mohideen Sheikh Uduman,
Old No.58/2, No.63, 2nd Cross Street,
CIT Nagar East, Chennai 600 035.

8.Mr.Sheikh Mohammed,
Old No.58/2, No.63, 2nd Cross Street,
CIT Nagar east, Chennai 600 035.

9.ASuganthi
W/o.R.S.Angamuthu,
Sayani Complex, F-12, 1st Floor,
No.96, Konnur High Road,
Ayanavaram, Chennai 600 023.

10.M/s.ICICI Bank Ltd.,
Rep. by its Manager / Authorised Signatory,
having office at ICICI Towers, East Wing,
9th Floor, Santhome High Road,
Chennai 600 028. ..Respondents / Defendants

Application praying that this Hon'ble Court be pleased to delete the Applicant Company from the array of Defendants and reject the plaint in so far as the Applicant/Defendant Company is concerned.

These Applications coming on this day before this Court for hearing, the Court made the following order:

This application has been preferred by the first and second defendants in the suit for rejection of Plaint Under Order VII Rule 11(d) of C.P.C. on the ground that it is barred by Law of Limitation.

2. According to the applicants the suit is filed for recovery of a sum of Rs.3,95,97,448/ with future interest @24% per annum on Rs.1,83,32,328/- from the date of plaint till the date of realization and also for damages for Rs.15,00,000/- against the defendants 1 &2 . The cause of action for

institution of the suit as stated in the plaint arose on the date of sale of 1/7th undivided share out of 6.98 Acres, took place on 16.08.1999. Due to the fraud committed by the defendants 1 & 2, the plaintiffs had to deposit a sum of Rs. 1,83,32,328/- to avert the disaster sale by ICICI Bank in D.R.C.No.39 of 2006. The plaintiffs paid the money 8.11.2006, 20.10.2006 and 5.12.2006. Since the suit being of money claim, it ought to have been filed within three years i.e., on or before 07.11.2009 or 19.10.2009 or 04.12.2009. The proceedings before the DRT, DRAT, High Court and Hon'ble Supreme Court dealt with the issue as to whom the original documents of the property were to be returned and not with regard to the money claim of the Plaintiffs in the above suit. Those proceedings did not in any manner bar the recovery proceedings. The reference to those proceedings for saving limitation is untenable and unsustainable. Merely because the proceedings have been initiated for return of documents, it would not enlarge the period of limitation. As per Art.27, 19,20,21,22,23,24 and 25 three years is the period of limitation. Whereas the suit was filed on 08.11.2011. Therefore, the claim, on the face of it, is barred by limitation and it shall be thrown out on the threshold itself. The suit is an abuse of process of court and law and has been filed with the sole objective of harassing the applicants. A claim which is frivolous, vexatious and speculative and barred by limitation does not entitle equitable consideration.

3. The learned counsel for the applicants would vehemently contend

that the suit being a simple suit for recovery of money valued under Sec 22 of TNCF&SV Act, it would attract Art.27, 19,20,21,22,23,24 and 25 of Limitation Act, which is three years. The claim of the plaintiffs that the suit is based on indemnity and Charge cannot be accepted, since there is no assignment of debt by ICICI Bank in their favour. If it is a mortgage suit, it ought to have been laid under Order XXXIV Rule 2 CPC. It is not also laid under Order XXXVII Rule 3 of O.S.Rules and Form 84 Order XXXVII Rules 2 & 3read with Order XXXIV Rules 2& 3 for foreclosure and sale of personal decree for the deficit. Admittedly the suit has not been laid as mortgage suit , the claim of the plaintiffs has to be negatived, Further if it is a suit for charge over the property, it would arise only when there is an agreement for sale and consideration not returned or refunded. But the claim of the plaintiffs is for damages based on sale deed dated 16.08.1999, Art.62 of the Limitation Act will not apply as it has no foundation. He would rely on the following judgments in support of his arguments.

1. K.Shanmugam and Another vs C.Samiappan and Others, (2013) 7 MLJ 670

2. T.Arivandandam vs. T.V. Satyapal and Another, 1977 4 SCC 467

3. I.T.C. Limited vs. Debts Recovery Appellate Tribunal and Others, 1998 2 SCC 70

4. Raptakos Brett and Company Pvt Ltd vs. Modi Business Centre (Pvt) Ltd, 2006 2 CTC 799

5. M/. Subhash Pradhan & Co vs. Vasant Balu Mhatre of Raigad & Others, CDJ 2009 BHC 1763

6. Chandrakant Kantilal Jhaveri & another vs. Madhruiben Gautambhai & Another, CDJ 2010 GHC 057

7. Punjab National Bank, rep. By its Manager vs. J.Samsath Beevi and Others, 2010 3 CTC 310

8. M.V.Jayavelu vs. E.Umapathy, 2010 5 L.W. 748

9. Lakshmi & Others vs. Prasanna Mani and Others, 2011 (2) MWN (Civil) 363

10. N.Ravindran vs. V.Ramachandran, 2011 (3) CTC 153

11. RamRameshwari Devi and Others vs. Nirmala Devi and Others, (2011) 8 SCC 249.

4. The learned counsel for the respondent/ Plaintiff would contend that the defendants 1 & 2 have sold the suit properties suppressing the fact that they were mortgaged to Bank of Madura now merged with ICICI Bank and leased out to 3rd defendant. To their shock the properties were brought to auction sale in DRT proceedings. In order to avert the sale they had to sell their personal properties and borrowed money on high interest rate and

discharged the mortgage debt. Since they have discharged the debt, they stepped in to the shoes of mortgagee and they are entitled to recover the amount from defendants 1 & 2. However, their claim to get the original title deeds were negatived by the DRT and affirmed by the Hon'ble Supreme Court, they have to file a suit for recovery of money. Since fraud is played upon and since they were taking continuous efforts, the suit is not barred by limitation. The question of Limitation being a mixed question of fact and law, the plaint is not liable to be rejected. In support of his contention, the learned counsel for respondent would rely on the following judgments.

1. Maria Margarida Sequeria Fernandes and Ors V. Erasmo Jack de Sequeria (dead), 2012 AIR SCW 2162

2. K.Chandralekha vs. S.Ravikumar & Ors, 2016-II-MCC-265

3. Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner and others, AIR 2004 SC 1801

4. Himachal Pradesh Financial Corporation vs. Pawna and Others, (2015) 5 SCC 617

5. Chhotanben and Another vs. Kiritbhai Jalkrushnabhai Thakkar and Ors, 2018 (4) CTC 206

6. Saleem Bhai and Others vs. State of Maharashtra and Others, 2003 1 SCC 557

7. Ramesh B. Desai & Others vs. Bipin Vadilal Mehta & Ors, AIR 2006 SC 3672

8. Kamala & Others vs. K.T. Eshwara Sa & Ors, AIR 2008 SC 3174

9. Girija Shankar vs. State of U.P, AIR 2007 SC 1808

10. Thirugnanasambandam vs. Venkatrama Pillai, order dated 07.11.2016 in S.A.No.280 of 2011

11. K.Savithiri & another vs. L.Ramaamy and others, order dated 03.05.2017 in A.S.No.538 of 2012

12. Raptakos Brett and Company Ltd vs. Ganesh Property, 1998 7 SCC 184

13. Saleem Bhai and Others vs. State of Maharashtra and others, 2003 1 SCC 557

14.Deepak Bhandari vs. Himachal Pradesh State Industrial Development Corporation Limited, 2015 5 SCC 518.

5. Heard the submissions.

6. The Plaintiffs originally purchased 4/7th undivided shares of land measuring an extent of 6.98 acres of land out of total extent of 12.14 acres along with defendants 4-6, who purchased the remaining 3/7 undivided shares in the year 1999. The 7th defendant Bank initiated recovery proceedings and brought the property for auction in DRC proceedings. The total debt due and payable was RS.1,83,32,228/- The Plaintiffs paid the amount and averted the distress sale and protected the property. Before DRT

they claimed that on discharging the debt due by the Mortgagor, they stepped into the shoes of the Mortgagee and therefore they are entitled to get back the original title deeds. The defendants resisted the claim on the ground that the extent of the property mortgaged is huge and the plaintiffs have purchased a smaller extent only. Further the value of the property was more than 50 crores and the upset price fixed by the bank itself was Rs.19,00,00,000/- (Nineteen crores only) . By paying 1.83 crores, without any request from the defendants on their own and without getting any assignment of mortgage, the plaintiffs are not entitled to the claim. It was also contended that the action of the plaintiffs was speculative and not bonafide and hence the documents shall be returned to the person deposited the title deeds and none else. The Debt Recovery Tribunal had held that the Plaintiffs has no right to claim the title deeds and directed release of deeds in favour of defendants 1 & 2. On appeal DRAT had directed the Bank to withhold the documents till a decision taken by the Civil Court in the pending suit instituted by the Plaintiffs. On Challenge the High Court found that there being no suit pending, set-aside the order of the appellate tribunal and directed release of documents n favour of defendants 1 & 2. The Hon'ble Supreme Court dismissed the SLP preferred by the Plaintiffs. Having lost the battle the Plaintiffs filed the above suit for recovery of the money deposited for discharge of mortgage debt along with interest and damages.

7. In the above said background, it has to be seen as to whether the plaint is liable to be rejected under Order VII Rule 11 (d) CPC as one barred by law of limitation.

8. It is no doubt that for rejection of plaint the averments made in the plaint are germane. It is also true that a suit for recovery of money shall be filed within three years. Admittedly the money was deposited by the Plaintiffs on 5.12.2006 and was realized by the bank on 7.12.2006. The sale was cancelled and the property of the plaintiffs and defendants 4-6 was protected. A simple suit for recovery of money should have been filed within three years i.e., before 2009. But it was filed only in the year 2011. The judgments relied on by the learned counsel for petitioner for the legal principles with regard to the rejection of the plaint and to strike out the plaint for abuse of process of law are absolutely correct and rule the field. But those judgments apply to the cases where it is apparent on the face of the pleadings that it is barred by law of limitation. But the case on hand will not fall under that category.

9. Though the money suit shall be filed within three years, the pendency of the proceedings, initiated for return of documents, whether would enlarge the period of limitation or not is a question of fact in view of

Sec 92 of the Transfer of Property Act, 1883. Even in the absence of any privity of contract, a party having interest over the immovable property, who discharges the debt, in view of common equity steps into the shoes of the mortgagee. Thereby he is entitled to the rights of a mortgagee and gets a charge over the immovable property. The plaint averments raise a pleading that the efforts taken continuously in this direction before the courts would expand the limitation period. Whether the cause of action arose only after the date of judgment of Hon'ble Supreme Court or not? is again a triable issue on question of law and fact, which can be decided only after trial. The plaintiffs having paid the sale consideration for the properties and got it registered in their favour do have a right to protect their title, for which they have deposited a huge amount for discharge of the debt for the whole extent of the property. After having protected the entire property, they have issued a legal notice for return of that money. The impact of the order passed by the Recovery Tribunals and High Court, as contended by the applicants/Defendants 1 & 2 is only with regard to the return of the originals of title deeds deposited with the bank. Whether it creates any statutory charge over the property in view of Sec 92 of the Transfer of Property Act, 1883 were not the issues before it. There is a clear pleading in the plaint that the plaintiff stepped into the shows of the mortgagee. Though return of title deeds was a question decided in an interim application, none

of the courts have decided the issue of creation of a charge over the property. The Debt Recovery Tribunal had decided the issue only with respect to enforceability of debt and it had no occasion, even assuming it has jurisdiction, to deal with the question of charge over the property. Since that issue is still to be decided and findings of the court on that issue may have an impact on period of limitation, it has to be tried in the suit. Such being the legal position, the plaint cannot be rejected at the threshold. The contention that the suit it is a simple suit for recovery of money valued under Sec 22 of TNCF&SV Act filed beyond a period of three years is barred by limitation cannot be accepted at this stage as the cause of action is founded on disputable facts. The issue of limitation being a question of fact and law, in the present factual circumstances of the present suit, the plaint cannot be rejected at the threshold as one barred by Limitation Act, 1963.

In view of the above discussions, the Application Nos.3931 of 2015 and 3944 of 2013 are dismissed.

Sd./-M.G.R.J
14.08.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 26/08/2020 COURT OFFICER(O.S.)

From 25th day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.