

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 24TH DAY OF AUGUST 2020

THE HON'BLE THIRU. JUSTICE M.GOVINDARAJ

A.No.3432 of 2016
in
C.S.No. 490 of 2015

R.Appaswamy,
Son of A.Ramachandran
No.73, Old No.36, First Main Road,
Raja Annamalaipuram, Chennai 600 028. ..Plaintiff

Vs.

1.M.A.Narasimhan,
S/o.late M.A.Krishnamurthy,
No.14, South Mada Street,
Triplicane, Chennai-600 005.

2.M.A.Srinivasan
S/o.late M.A.Krishnamurthy,
No.27, Car Street,
Triplicane, Chennai-600 005.

3.Mr.M.A.Venkatakrishnan,
S/o.late M.A.Krishnamurthy,
No.7, South Mada Street,
Triplicane, Chennai -600 005.

4.M.A.Parthasarathy,
S/o.late M.A.Krishnamurthy,
No.6, South Mada Street,
Triplicane, Chennai-600 005.

5.Mrs.M.A.Ranganayaki,
W/o.S.Srinivas
D/o.late M.A.Krishnamurthy,
No.14, South Mada Street,
Triplicane, Chennai-600 005.

6.Mrs.M.A.Rukmani,
W/o.late M.A.Krishnamurthy,
No.6, South Mada Street,
Triplicane, Chennai-600 005.

7.The Sub-Registrar,
O/o.Sub Registrar, Registration Department,
Adyar, Chennai-600 020.

..Defendants

A.No.3432 of 2016:

1.M.A.Narasimhan,
S/o.late M.A.Krishnamurthy,
residing at No.14,
South Mada Street,
Triplicane, Chennai-600 005.

2.M.A.Srinivasan
S/o.late M.A.Krishnamurthy,
residing at No.27, Car Street,
Triplicane, Chennai-600 005.

3.Mr.M.A.Venkatakrishnan,
S/o.late M.A.Krishnamurthy,
residing at No.7, South Mada Street,
Triplicane, Chennai -600 005.

4.M.A.Parthasarathy,
S/o.late M.A.Krishnamurthy,
residing at No.6, South Mada Street,
Triplicane, Chennai-600 005.

5.Mrs.M.A.Ranganayaki,
D/o.late M.A.Krishnamurthy,
residing at No.14, South Mada Street,
Triplicane, Chennai-600 005.

6.Mrs.M.A.Rukmani,
D/o.late M.A.Krishnamurthy,
residing at No.6, South Mada Street,
Triplicane, Chennai-600 005.

..Applicants/Defendants

-Vs-

R.Appaswamy,
S/o. A.Ramachandran
73/36, First Main Road,
Raja Annamalaipuram,
Chennai 600 028.

..Respondent/Plaintiff

2.The Sub-Registrar,
O/o.Sub Registrar,
Registration Department,
Adyar, Chennai-600 020.

..Respondent/7th Defendant

Application praying that this Hon'ble Court be pleased to reject the
plaint C.S.No.490 of 2015 pending on the file of this Hon'ble Court.

This Application coming on this day before this Court for hearing,
the court made the following order:-

The above application has been filed for rejection of plaint on the
ground it is barred by limitation.

2. According to the applicants/defendants, defendants 2 to 6 have
executed a Release deed in favour of the first applicant/1st defendant on
14.06.2010. The 1st applicant/1st defendant filed a suit for permanent

file of XVII Assistant City Civil Court, Chennai claiming title on the basis of the Release deed dated 14.06.2010. In the plaint the fact that the Release deed was registered as document No.1420/2010 at the office of the Sub-Registrar Adyar on 14.06.2010 was specifically pleaded and said document was marked as plaint document No.6 under Or.7 R.14(1) C.P.C. Summons were served on the respondent on 28.01.2011 along with copy of plaint. Hence, he got knowledge of the document on 28.01.2011 itself. Hence, the cause of action to file the suit for declaring the document has arisen for him on 14.06.2010, much less on 28.01.2001 from the date of knowledge under Art.59 of Limitation Act, the suit should have filed within 3 years i.e before 2014. But it was filed with a delay of 1 year and 3 months. Hence, the suit is ex-facie barred by limitation. Even though, he had an opportunity to file a counter claim in O.S.No.14355 of 2010 filed by petitioner, he has not chosen to do so. Hence, the suit is hopelessly barred by limitation and the plaint is liable to be rejected.

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3. In support of the contention learned counsel for the applicants would rely on the following judgments.

1. N.V.Srinivasa Murthy and others vs. Mariyamma (dead) by proposed

Lrs and others, 2005-3-L.W.772

2. Dr.L.Ramachandran and another vs. K.Ramesh and others, 2015 (5) CTC 629
3. Radhakrishna Reddy (died) and others vs. G.Ayyavoo and others, 203 (6) CTC 314
4. Surjit Karu Gill & another vs. Adarsh Karu Gill & another, CDJ 2014 SC 140
5. M.S.Dhanasingh & Others vs. Inbam Padmini Selvaraj & another, CDJ 2017 MHC 2696
6. T.Kannappan Gurukkal @ Venkatraman vs. K.Kannian & others, CDJ 2014 MHC 5991
7. Sarala Vasu & Others vs. M/s. Belair Corporation Private Limited, (Formerly known as M/s. Belair Enterprises Private Limited), represented by its Managing Director Aravind Srinivasan & Others, CDJ 2015 MHC 4590
8. Sunitha Sankara Menon & Another vs. B.Mythili & Others, CDJ 2015 MHC 3534
9. A.No.767 pf 2014 in C.S.No.801 of 2013, dated 25.11.2014, CDJ 2014 MHC 6062
10. V.Bragan Nayagi vs. R.R.Jayaprakasam & another, CDJ 2015 MHC 3946

respondents would contend that the above application has been filed with an ulterior motive to diver the attention of the Court and with a malafide intention to procrastinate the proceedings by adopting delaying and dilatory tactics. It is an abuse of process of law. The plaint clearly discloses the cause of action continues and the suit is within limitation period in view of the legal steps taken by the plaintiff continuously. The cause of action being bundle of facts it is required to plead and prove the same. Further issue of limitation is a mixed questions of fact and law, it requires elaborate trial and the plaint cannot be rejected at the starting point. The petitioner has suppressed vital documents and orders passed by the statutory authorities. The purchase made by the vendor of the respondent/plaintiff for full sale consideration under permission granted by Civil court to sell minors share and direction to deposit the same in fixed deposits. The suit filed by the petitioner in O.s.No.996 of 2010 against the 1st applicant/1st defendant for permanent injunction is posted for final hearing. The suit filed by the 1st applicant/1st defendant in O.S.No.14335 of 2010 was dismissed for default. Suppressing the fact the petitioner has filed the above application. The application for rejecting the plaint is sought to be rejected taking support of the judgments reported in

1. Vathapa Gounder & Others vs. Thambau Ammal & Others, CDJ

2. Md.Noorul Hoda vs. Bibi Raifunnisa and Others, CDJ 1995 SC 511
3. Gulkandi vs. Prahlad, CDJ 1966 Raj HC 123
4. Dalilm Kumar Sain and others vs. Smt. Nandarani Dassi and another, 1970 Air CAL 292
5. Mt.Izhar Fatma Bibi and Ors. vs. Mt.Ansar Fatma Bibi and Ors, AIR 1939 AII 348
6. Mt. Kaniz Fizza Bibi vs. Datadin and Ors, AIR 1925 Oudh 678
7. P.Govindasamy vs. Manickam and Ors, 2016-1-L.W. 49

5. I have heard the rival submissions.

6. Facts narrated above are admitted by both the parties. It is well settled that averments made in the plaint are germane for rejection of plaint.

7. It is an admitted fact the Release deed, which is sought to be declared as null and void was executed on 14.06.2010. The suit has been filed only in the year 2015. Whether suit is barred by limitation has to be seen based on the plaint averments. It is true that the Hon'ble Supreme Court and High Courts have repeatedly held that if the suit is barred by law of limitation it will fall under the Sub Rule (d) of Rule 11 of Or. VII C.P.C

and as such it is barred by law. In such cases Courts have held that the

defendants need not be forced to undergo the ordeal of trial and the plaint is liable to be rejected. But at the same time, it is also settled fact that a rejection of plaint at the earlier stage may lead to serious consequences and may be order on defeating the ends of justice. If a plaint establishes legally tenable and arguable points it ought not be rejected in terms of Or. 7 R.11 of C.P.C.

8. In *Virender Nath Gautam vs. Satpal Singh and Ors*, AIR 2007 SC 581, whereby at para 21 it is observed and held as follows:

“21. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.”

9. In view of the above ratio laid down by Hon'ble Supreme Court, the plaint in the present suit disclose man material facts and particulars in support of the same. The primordial aspect which should not be lost sight of is that the permission granted by the competent Civil Court to sell the suit property and deposit the minors share in fixed deposit. In O.P.No.342 of 1966, Principal Judge, City Civil Court, Chennai by its order dated 11.01.1967 granted permission to sell minors share and to pay Estate duty. After getting permission the 6th defendant, who is the mother of appellants 1 to 5 /defendants 1 to 5 sold the suit schedule property in favour of the vendor of the respondent/plaintiff namely V.Venkataraman vide registered Sale deed bearing document No.1895/1968 dated 17.04.1968 after recovering full sale consideration. This undisputed fact of sale of suit schedule property pursuant to the permission of Court, will have a binding effect on minors. Even assuming the sale should be challenged it should have been challenged within three years of attaining majority at the youngest kid of the family. At the time of filing the suit for injunction in O.S.No.14335 of 2010 the 4th defendant, who is the last child was himself around 45 years of age. As contended by the learned counsel the execution of Release deed after the sale of the suit schedule property, whether will bind the respondent/plaintiff is a fact that can be decided only after

10. Fraud avoids all judicial acts, ecclesiastical or temporal. It nullifies the orders irrespective of the Court being inferior or Superior. When pleadings are made touching upon some of the acts of the parties to the litigation, it being a fact to be proved, requires trial and in such cases a plaint cannot be rejected at the threshold point. On the other hand, as per the decision of *Unnaji vs. Makanji*, 1910 (ILR) 34 Bom 250 when a plaint seen from the averments set out in the plaint to be barred by law of limitation, but the plaint is not rejected when presented, it is the prime duty of the Court of Law to find out if a plaint discloses materials and particulars. In the instant case it is seen that after getting knowledge of the Release deed dated 14.06.2010, the respondent/plaintiff has taken steps to get the defect in this sale deed rectified. The property tax assessment, patta, electricity connection are all transferred in his favour while simultaneously prosecuting his suit filed before High Court in C.S.No.996 of 2010 and the suit filed by the petitioner/1st defendant in O.S.No.14355/2010 on the file of XVII Assistant Judge, City Civil Court, Chennai. These material particulars if not tried may cause serious prejudice to the parties and for this purpose the rejection of plaint shall not be made at the threshold.

11. It is well settled by the Hon'ble Supreme Court that the pleadings

then read. The right method of reading the pleadings is that it must be read in entirety, to ascertain their true in spirit. To put it differently, the intention of a litigant is to be gathered basically from the tenor and spirit of his pleadings taken in a wholesome manner. In this case it is not in dispute that as per Article 59 of the Limitation Act, 1963 a suit ought to have been filed within a period of three years from the date of the knowledge. But as observed by the Hon'ble Supreme Court, while deciding the application under Or. VII R.11 C.P.C, few lines or passages should not be read in isolation and the pleadings as a whole to be read to ascertain its true import.

12. In that view of the matter it is seen that true intent of the plaint averments is to do away with a document standing as an obstacle to plaintiff's title. The entries in the register of the Sub-Registrar casts a cloud on his title. Art.59 of the Limitation Act, 1963 will directly apply, if the issue of limitation is a pure question of law. But if it is an void or voidable document, whenever it creates obstacle it will give rise to a new cause of action. In such circumstance, Art.59 of the Limitation Act cannot be straight away invoked and the plaint cannot be struck off without trial. The decision relied on by the counsel for petitioner will come to his aid to strike off the plaint on the question of law that it is barred. But the document defended by

property including minors share after getting permission has been a party to the same.

13. Therefore, when the averments in the plaint disclose continuous cause of action based on material facts of valid transfer of property with the permission of Court, subsequent material facts of valid transfer of title to the suit property with the permission of the Court, for proper sale consideration, subsequent transfer of title without challenge, continuous possession of successor in title and orders of the authorities validating the same till 2015 makes the issue of limitation, not a pure question of law, but one of mixed question of fact and law. Considering the plaint in its entirety, this Court is of the considered opinion the facts need to be proved as to whether the suit is barred of limitation or not? Therefore, the plaint as such cannot be rejected at the threshold without trial. As such the application to reject the plaint cannot be sustained at this stage, accordingly dismissed.

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Sd./-M.G.R.J

24.08.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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