

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD).No.616 of 2020

and

C.M.P.No.3228 of 2020

K.Kumar

... Petitioner

Vs

1.Uma Rani

2.Parasuraman

3.Menaka

4.Jayalakshmi

5.Arumugam

... Respondents

Prayer : Civil Revision petition filed under Article 227 of the Constitution of India To set aside the fair and decreetal order dated 18.12.2019 made in I.A.No.2 of 2019 in O.S.No.358 of 2018 on the file of the Additional District Munsif, Erode.

For Petitioner : Mr.N.Somasundar

For Respondents : Mr.V.Raghavachari

ORDER

This Civil Revision Petition is directed against the fair and decreetal order passed by the Trial Court refusing to reject the plaint Or.VII R.11 of C.P.C.

2. According to the petitioner/defendant, the suit is hopelessly barred by limitation and without cause of action. Hence it shall be rejected under Or.VII Rule 11 (a) and (d) of C.P.C

3. The plaintiff have filed the above suit in O.S.No.358 of 2018 to declare the sale deed dated 07.11.2003 as null and void, mandatory injunction to demolish the structure and hand over possession and for permanent injunction restraining the defendants from constructing the building.

4. The case of the plaintiff is that husband of the first plaintiff and father of plaintiffs 2-4, namely Jeganathan borrowed a sum of Rs.75,000/- from the 2nd defendant in the suit and handed over title deed to him during December 2000, for discharge of one mortgage to a third party. Even before that the said Jeganathan mortgaged the property to third party. The said Jeganathan paid interest at the rate of Rs.3/- per hundred per month. He remitted interest upto 2002, and after that he was unable to pay due to some personal problems. Since

Jeganathan was not well his son-in-law one Manickam discharged the debt, but the 2nd defendant has not issued any receipt for payment. After recovering from illness, Jeganathan insisted on return of the document, which was refused by the second defendant. During 2003, the 2nd defendant had taken all the plaintiffs to his house and forcefully obtained signature in the last page of a type written document, despite the resistance of the plaintiffs. On the same day after sometime, a person came and the 2nd defendant asked him to get signature in book, which he obtained by force. Jeganathan was not there, when plaintiffs signed the document, but returned home in the evening, exhausted with signs of contusion on his face. On enquiry, he informed that he was beaten up by 2nd defendant and his signature were obtained by force by detaining him in a room. Thereafter the said Jeganathan fell sick, left home and was informed that his dead body was found on the banks of Cauvery rivers. Due to fear the plaintiffs have not lodged any complaints.

5. In the property, which was obtained through a document by force, tenants were residing. The first plaintiffs asked the tenants not to vacate, whereas the 2nd defendant threatened them to vacate. In the year 2008, the 2nd defendant forcibly entered into the premises and locked the door. Even after the death of Jeganathan, plaintiffs were enjoying the property till October 2015.

The first plaintiff approached the Police officials but she was driven out and unable to do anything. She could not trace the document from the concerned office due to the influence of the 2nd defendant. On 06.04.2015, she got the certified copy, which she read and understood the contents in the month of May 2018 that her husband alleged to have sold the property on 07.11.2003. There was neither debt and nor necessity for her husband Jeganathan to sell the property. Their daughters were married by that time. The recitals in the document falsely state that title deed and mortgage deed were handed over, but infact no such mortgage deed was handed over.

6. After reading the document it was disclosed that the plaintiff and her son-in-law have signed as attestors. The second defendant has never signed the document and they were not aware of the said document they were not aware of the document writer also. Hence it is a bogus and forged document and without any consideration from first defendant. In the first week of May, 2018, when the first plaintiff was informed by her relative that the first defendant demolished the building and constructing a new building, he questioned the first defendant, but the second defendant locked the door and went away. The building was at basement stage. Her husband never executed any sale deed nor surrendered possession. Between 2003 and 2018 the property was under lock.

Only when she got the certified copy on 06.04.2015 and when the 2nd defendant was trying to demolish the building she came to know of the fraudulent and illegal actions of the 2nd defendant and they have right to sue. Hence, the suit is not barred. They have right to sue within 12 years when defendants claimed adverse possession. Based on the above narrated facts the plaintiffs claims declaration of the sale deed dated 07.11.2003 as null and void alongwith the reliefs of mandatory and permanent injunction.

7. The learned counsel for petitioner would contend that the suit is filed for a relief of declaration declaring the sale deed of the year 2003 as null and void. As per Art.58,59 and 113 of First Schedule of Limitation Act, 1963 (herein after called Limitation Act) limitation period for filing a suit for declaration is 3 years. Whereas, the present suit has been filed after a period of 15 years, hence it is hopelessly barred by limitation. Secondly, the plaintiffs stood as witnesses to plaint document No.1 viz the sale deed dated 07.11.2003. Therefore, they were very much aware of the execution of sale deed in the year 2003 itself. Even assuming that they got knowledge of the sale transaction on 06.04.2015, the suit should have been filed within three years i.e on or before 05.04.2018. Whereas the suit was filed only in June 2018, which again barred by limitation. The averments that though the plaintiffs obtained the document

on 06.04.2015, they have carefully read the contents only in May 2018, is nothing but an attempt to cover up the delay and to create an illusory cause of action.

8. Another averment that the building was locked between 2003 and 2018 would go to show that plaintiff was not in possession of the property from 2003. Even assuming the contradictory averment that the 2nd defendant had taken over possession forcibly in 2008 and locked in the year 2008, is taken for consideration, the cause of action has arisen in 2008, when they were dispossessed of the property. They should have filed the suit within 3 years, but the suit was filed only in the year 2018, is barred by limitation. In that event, the averment, they got knowledge only in the year 2015 is again a false averment for the purpose of creating an illusory cause of action.

9. After having signed as witnesses and after getting information before the death of Jeganathan personally from him in the year 2007, the plaintiff cannot feign ignorance of the execution of the sale deed till 2015. Therefore, according to the petitioner the plaint based on surreal cause of action and barred by limitation is liable for rejection as per the judgment of various courts. He would rely on the following judgment.

1. Dr.L.Ramachandran and another vs. K.Ramesh and others, 2015 (5) CTC 629

2. Popat and Kotecha Property vs. State Bank of India Staff Association, (2005) 7 SCC 510

3. Vaish Aggarwal Panchayat vs. Inder Kumar & Others, AIR 2015 SC 3357

4. Hardeh Ores Pvt. Ltd vs. M/s. Hede Co, 2007 AIR SCW 3456

10. Per contra, the learned counsel for respondent/plaintiff would vehemently contend that Limitation being an issue of mixed question of fact and law the plaint cannot be rejected in limine. The Hon'ble Supreme Court in Vaish Aggarwal Panchayat vs. Inder Kumar & Others, AIR 2015 SC 3357 and Hardeh Ores Pvt. Ltd vs. M/s. Hede Co, 2007 AIR SCW 3456 has held that the plaint cannot be rejected as issue of limitation being a fact and law requires trial. Likewise there is a dispute in the signature obtained from the parties and they have to be proved only during trial. It is also alleged that those signatures were obtained by force and therefore they were not legible, but shaky. It can be only examined only by an expert and hence it requires trial and the plaint cannot be rejected at the threshold. As per Sec. 21 of the Indian Evidence Act, 1872, even admissions have to be proved by way trial. Further

there is dispute as to possession. It is stated that the tenants were residing at the property and the plaintiffs resided there till 2015. This shows the defendant 1 and 2 were not in possession. Only when the possession was disturbed in 2015, they got the certified copy of the document and got knowledge about the fraudulent sale. Therefore, the cause of action raised is not a surreal cause of action, but the suit is within limitation period. Further the defendants claimed adverse possession of having possession of suit property for more than 12 years. In that event, the limitation shall be calculated as per Art.64 of the Limitation Act, which is 12 years. Hence the suit is within the period of limitation. Moreover, there is a dispute over payment of sale consideration. According to the plaintiffs no consideration was paid and the transaction is fraudulent. There are specific averments as to bogus and forged creation of the document. The averment of payment of interest at the rate of Rs.3/- per hundred per month paid to the defendants. The payment was towards mortgage of property. All these factors can be elicited only by trial. Hence the plaint shall not be rejected. The suit is in trial stage. Hence a direction can be given for early disposal of the suit. The Trial Court has rightly refused to reject the plaint and it need not be interfered.

11. Heard both sides.

12. Admittedly, the suit has been filed for a relief of declaration of the sale deed dated 07.11.2003 as null and void. It has to be seen as to whether there is admission as to the execution of the sale deed. The cause of action paragraph reads as under:

“ 16. The cause of action for the present suit arose on in the year 2000 December when the Jeganathan has borrowed the amount from the 2nd defendant and also on the same date when the deceased Jeganathan has been handed over the title deed of the suit property to the 2nd defendant and all the other dates when the Jeganathan has paid the interest and after that when the Jeganathan has not paid the interest and due to that in the year 2003 when the 2nd defendant has taken the present plaintiffs and obtained some signatures in the some printed papers by force and as also when the said 2nd defendant has obtained the signature of the Jeganathan in papers and after that when the said Jeganathan has informed the same to the plaintiffs and after that when he was died and after that in the year 2008 when the 2nd defendant has evicted the tenants by force and also when the plaintiffs have not delivered the possession to the 1st defendants and after that on 06.04.2015 when the plaintiffs got the certified copy of the sale deed and all the other dates when the plaintiffs have afraid to the 2nd

defendant and also in the first week of May 2018 when the defendants have tried to construct the new houses and all the other dates when the same has been obstructed by the 1st plaintiffs and also only on 1st week of May 2018 when the plaintiffs have full knowledge of the sale when they taken steps to action and also on 11.05.2018 when the plaintiffs have caused notice to the defendants and also all the other dates when the defendants have constructing the houses all are arose at Erode town within the jurisdiction of this Court.”

From the above paragraphs it is found that

- a) The title deed was handed over to the defendants by deceased Jeganathan, the husband and father of plaintiffs.
- b) Signature of the plaintiffs were obtained in a printed paper, ofcourse by force.
- c) Signature of Jeganathan was also obtained.
- d) Jeganathan informed the first plaintiff about obtaining of his signature in the document.
- e) The 2nd defendant evicted the tenants in the year 2008
- f) The plaintiffs got certified copy on 06.04.2015 and
- g) On 11.05.2018, the plaintiff cause notice.

13. It is true that the plaint shall be read as a whole and points shall not

be culled out from statements here and there. The above cause of action on which the plaint is filed is supported by the averments through out the plaint. It is averred at para 5 of the plaint that all the plaintiffs were taken to the house of the 2nd defendant and they were forced to sign in a type written document. Those signatures were obtained in the last page, whereas Jeganathan's signature was obtained in all pages of the document. They have signed in document, without knowing its contents. Again they have signed in one book, which was also taken by force. At the time of signing the book, Jeganathan was not there and when he returned home in the evening he informed the first plaintiff that he was beaten up and his signature was forcibly obtained. Further the husband of first plaintiff, namely Jeganathan would inform her that only his signature was obtained in the document and no other signature was found in the document and it was obtained by a third person at a place which was not known to him. He further informed that he was not aware of the contents of the document.

14. The above averments goes to show that the sale deed dated 07.11.2003 was executed by the first plaintiffs husband. The plaintiffs have infact affixed their signatures as witnesses. The above admissions that the executor has signed at all the pages and the signature was taken by a third person and the signature was taken by a third person and that the plaintiffs have

signed in the last page of a type written document and their signatures were obtained by a third party in a book goes to show that an execution of the document and the registration of same at the office of the Sub-Registrar was within the knowledge of the plaintiffs in the year 2003 itself. The said Jeganathan died on 06.11.2007 as per plaint document No.2. Before his death he had informed the first plaintiff that he had executed a document. It is clearly pleaded as one of the causes of action in the plaint that when he executed the sale deed. Therefore, if not 2003, before the death of Jeganathan in 2007, the plaintiffs had knowledge about some document executed in favour of the first defendant. But curiously there is no allegation against the first defendant of using force or threat against the plaintiffs in whose favour the sale has been executed. Besides this in the year 2008, the 2nd defendant had locked the doors of the suit property and took forcible possession. Cause of action to take action against the 2nd defendant arose at least on 2008, but the plaintiffs have not taken any action. In fact the executor of the document namely Jeganathan has not taken any steps to challenge the action of the defendants against the forcible execution of the document. When he himself has not taken action within 3 years, i.e before 2006, whether the right to sue survives on his legal heirs that too after a period of 15 years? has to be seen.

15. The legal maxim “Vigilantibus non dormientibus jura subveniunt”

meaning Law assist who are vigilant, not those who sleep over their rights will squarely apply to the case on hand. The plaintiffs having known that a document was executed against them, should have agitated the issue within 2006; even assuming a cause of action arose in 2008, should have challenged the document before 2011; if they came to know of it only on 06.04.2015, should have filed the suit within three years i.e before 05.04.2018, having slept over their rights, cannot aver that cause of action arose when they carefully read the document only in May 2018 and filed a suit. One cannot say that I woke up from deep slumber only now and therefore I am entitled to act immediately after I woke up. Such a conduct does not help those who are not watchful and hiding behind, under the pretext of fear or financial constraints. Therefore, a reading of the plaint as a whole divulges that the suit is based on a surreal or illusive cause of action and barred by limitation.

16. A Division Bench of this Court in Dr.L.Ramachandran and another vs. K.Ramesh and others, 2015 (5) CTC 629, at para 26 has held as under:

*“ 26.In terms of Order 7 Rule 11 (d) CPC, the
Plaint shall be rejected where the suit appears from the
statement in the Plaint to be barred by any law. The
scope of Rule 11 of Order 7 CPC has been explained in
various decisions and the legal principle deducible are
that, if the Plaint does not disclose the cause of action or*

is barred by law; can be rejected where the litigation was utterly vexatious and abuse of process of Court ; if any one of the conditions mentioned under the Rule were found to exist, thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation and where the suit was instituted without proper authority. Thus, the provision of Order 7 Rule 11 PC being procedural is designed and aimed to prevent vexatious and frivolous litigation. The plaint is liable to be rejected on the ground of limitation only where the suit appears from the statements in the plaint to be barred by any law and the law within the meaning of clause (d) of Order 7 Rule 11 CPC, shall include law of limitation as well.”

17. At para 7 of the plaint it is stated that in the year 2008, the 2nd defendant had taken forcible possession and locked the door. Whereas it is averred at paragraph 11 it is averred that “ the suit property has been locked form the year 2003 to 2008. Only in the year 2018 where the 2nd defendant was trying to demolish the building the plaintiffs have come to know of the recitals in the sale deed and then only they came to know of the illegal and fraudulent act of the 2nd defendant. The contradictory averments go to show that the right to sue, if survives, arose in 2007, much less in 2008, by their own admissions.

For any suit for declaration period of limitation is prescribed under Art.56 to 60

of First schedule of Limitation Act. To be specific, to the case on hand Art.58 will apply, which prescribes three years as limitation period. As contended by the learned counsel for petitioner for the relief of mandatory injunction, where limitation period is not specified the residuary provision under Art.113 will apply, which also prescribe 3 years period from when the right to sue accrues.

18. As discussed above right to sue first accrued on 2003 when the sale deed, which is sought to be declared as null and void was executed. Even assuming that the executor died and the right survive through plaintiff and right to sue first accrued on them in 2008. At least from 2008 they should have filed the suit within three years. But in the instant case as admitted in the plaint averments, right to sue accrued on 06.04.2015, the suit should have been filed before April 2018. Whereas it was filed only in June 2018. When there is clear bar of limitation the defendants need not be forced to undergo the ordeal of trial and suffer mental torture. In such a view of the matter, the plaint is barred by Law of Limitation.

19. In the case of Popat and Kotecha Property vs. State Bank of India Staff Association, 2005 (7) SCC 510, it has been held that Law of Limitation fixes a life span for such legal remedy for redress of the legal injury so

suffered. Time is precious and wasted time never revisit. During efflux of time, newer causes would sprout up necessitating newer provisions to seek legal remedy by approaching Courts. So, a life span must be fixed for each remedy. It has been held at paragraphs 9 and 10 as under:

“ 9. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So, a life-span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for legislatively fixed period of time. (See N. Balakrishanan v. M. Krishna Murthy (1998 (7) SCC 123).

10. Clause (d) of Order VII Rule 7 speaks of suit, as appears from the statement in the plaint to be barred

by any law. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. Clause (d) of Rule 11 of Order VII applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.”

20. In the judgment of *Hardesh Ores Pvt. Ltd vs. M/s. Hede and Co*, 2007 AIR SCW 3456, it is held that the conclusion as to absence of cause of action shall be drawn from totality of the averments made in plaint. It is held as under:

“ 21. The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out

whether clause (d) of Rule 11 of Order VII is applicable.

It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this court in *Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I and another* : (2004) 9 SCC 512 and *Popat and Kotecha Property Vs. State Bank of India Staff Association* : (2005) 7 SCC 510.”

As held by the Hon'ble Supreme Court, it is no doubt that the right to sue first accrued on 07.11.2003 when the sale deed allegedly got executed and registered. Even assuming newer cause of action accrued on the plaintiff, as admitted in the plaint, it first accrued in the year 2008, when the 2nd defendant taken forcible possession of the property or he kept it locked between 2003 to 2018. When it is clear that the suit has not been filed within 3 years of the abovesaid causes of action, it is clearly barred by limitation. Getting the certified copy in the year 2015 and reading and understanding it in the year 2018, will not at all extend the cause of action. It is nothing but a feeble attempt to create illusory or surreal cause of action. Hence the plaint is liable to

be rejected on the point of limitation and accordingly rejected. The order passed in I.A. No. 2 of 2019 in O.S.No.358 of 2018 dated 18.12.2019 on the file of the I Additional District Munsif, Erode is hereby set aside.

In fine, the Civil Revision petition stands allowed. No costs. Connected miscellaneous petition is closed.

14.08.2020

Index : Yes / No
Internet : Yes / No
Speaking/ Non Speaking Order

To

The Judge,
I Additional District Munsif, Erode

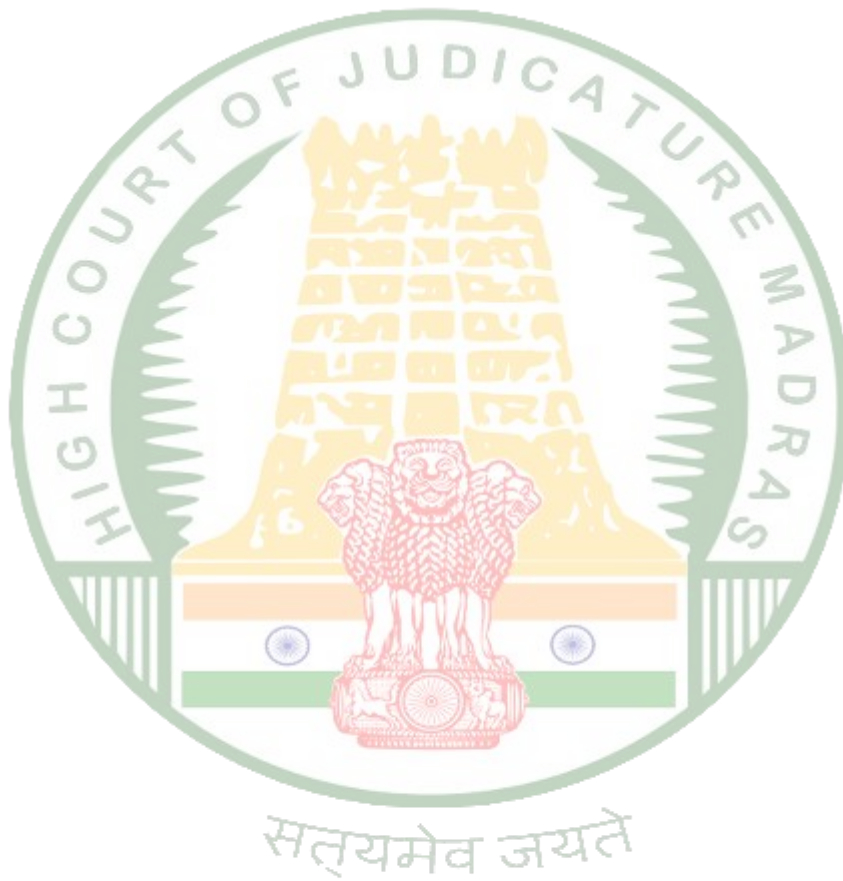


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