IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 10.02.2020

Order pronounced on : 28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 1938 of 2015
and
M.P. 1 of 2015

K. Akkamma Krishnamurthy ... Petitioner

Versus

K.Prasanna Venkatachalam ... Respondent

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the order dated 07.01.2015 passed in I.A. 177 of 2014 in O.S. 8 of 2014, on the file of Sub-Judge, Neyveli.

For Petitioner : Mrs.Dakshayani Reddy

For Respondents : Mr. M.Kalyanasundaram
Senior Advocate for
Mr.R.Vasudevan

O R D E R

This Civil Revision Petition has been filed against the order dismissing the petitioner's application filed under Order 7 Rule 11 of C.P.C. to reject the plaint.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The petitioner is a sole defendant in the suit, who is a mother of plaintiff, the respondent is her son. The suit has been filed directing the defendant to account for various sales of properties effected by the defendant as a guardian of plaintiff, and to pay his share to the present value of the suit property. The above suit has been filed on the ground that, the suit schedule property originally owned by the father of plaintiff, and husband of defendant, one Krishnamurthy Reddiar, who died intestate in the year 1996 leaving behind the plaintiff, his son, and his younger brother Ashok. In an earlier family partition, the plaintiff's father was alloted vast extent of property, and he was in possession and enjoyment of the same. After the death of his

father, there were misunderstandings in the family between his brother and defendant mother, who was supporting her son Ashok. In the year 2013, the plaintiff came across few sale deeds executed by his father, and the defendant representing the plaintiff and his brother, and also one K.P.Ramasubramania Reddiar in favour of various persons. The properties were sold, when he was minor, at the age of 15 years. Only after seeing sale deeds, he came to know that, the properties were sold when there was no need to sell the properties. He also understand that, the defendant has no authority to represent the plaintiff, as his guardian. Further, the sales are also not true and valid, which are not binding on the plaintiff. Hence, he has issued show cause notice calling upon the defendant to give accounts for the sales effected by her as a guardian, but there is no response.

4. It is also stated that earlier, a partition suit has been filed in respect of the estate of K.S.Krishnamurthi Reddiar in C.S. 498 of 1998 before this Court, and a preliminary decree has been passed. Subsequently, a final decree has been passed for the jewellery and shares of some of the properties. Hence, the plaintiff has filed the present suit for rendition of accounts, and

to pay his share. Along with the plaint, the plaintiff has listed as many as 76 properties, which are said to have been sold by the defendant along with her deceased husband.

5. In the above suit, the petitioner/defendant has filed an application under Order 7 Rule 11 of C.P.C. to reject the plaint stating that, even though the plaintiff has claimed that, he has found various registration copy of sale deeds in the year 2013, the copies of which were not filed along with the plaint. The properties have been sold long ago, when the plaintiff was a minor. If at all, he has any grievance over the same, he ought to have taken steps within 3 years after the plaintiff attains majority. But, the suit has been filed only in the year 2014, which was clearly barred by limitation. That apart, the plaint does not disclose cause of action, and the suit is also under-valued, and the certified copy of patta was also not filed along with the plaint. Hence, the suit is barred under Sec.15 of Patta Passbook Act.

6. The above application has been resisted by the respondent/plaintiff, on the ground that, the plaintiff came to know about the sale deeds only in the year 2013, and the issue of

limitation is mixed question of law and fact, and the same can be decided only during trial. The plaint clearly disclose the cause of action, and it was properly valued.

7. The Trial Court, after considering the rival submissions, has dismissed the application holding that, the question of limitation only cannot be decided under Order 7 Rule 11 of C.P.C. That apart, suit valuation and payment of court fee can be decided as a preliminary issue in the suit, on that ground, the suit cannot be rejected at the threshold, and the plaint also disclosed the cause of action. That apart, it is not a suit claiming title over the property. Hence, it is not necessary to file a copy of patta along with plaint. Now, challenging the same, the present Civil Revision Petition has been filed.

8. Mrs.Dakshayani Reddy, learned counsel appearing for petitioner would submit that, the suit has been filed in clear abuse of process of law, and it is clearly barred by limitation. The plaintiff fully aware about all the transactions, when he was a minor. In the earlier suit filed for partition between the parties before this Court, the plaintiff has clearly disclosed all the facts, and also contended that, from out of the sale proceeds, various

shares have been purchased by deceased father, which are the one of the suit schedule properties, and he has sought for his share, which was also granted in his favour in the suit. In the above circumstances, it is not open to him to file a suit claiming accounting of sales, and also to pay his share. According to the petitioner, the suit is also hopelessly barred by limitation. All the transactions were made, when he was a minor, and he ought to have filed the suit within three years from attaining majority. Hence, the plaintiff cannot maintain the present suit, and the suit also does not disclose a cause of action. Since the suit is barred by limitation, the suit should be rejected under Order 7 Rule 11 of C.P.C.

9. Per contra, Mr. M.Kalyanasundaram, learned senior counsel appearing for respondent vehemently contended that, the question of limitation is a mixed question of law and facts, and it can only be decided in the trial, whether the petitioner has knowledge about the sale made by the defendant can be decided by the trial court only through oral and documentary evidence. The learned senior counsel further submitted that, for deciding the application under Order 7 Rule 11 of C.P.C., the averments

made in the plaint alone germane, and the documents relied upon by the defendant cannot be taken into consideration at this stage. Admittedly, when the defendant made some alienation on behalf of plaintiff as his guardian, which is against the interest of plaintiff. Hence, it is always open to him to question the same, and he is entitled to get his share in the properties sold by the defendant, and the suit has clearly disclose the cause of action. That apart, the valuation of suit property also cannot be decided at this stage. If at all, there is any issue, it can be taken and decided as a preliminary issue. The Trial Court, after considering the entire materials in proper perspective, has rightly dismissed the application. Hence, there is no illegality or irregularity in the order passed in it.

10. I have considered the rival submissions made by learned counsel appearing for petitioner as well learned senior counsel appearing for respondent and perused the records carefully.

11. The suit has been filed by the son, seeking for rendition of accounts and also for payment of his share for the properties said to have sold by the defendant mother and his father, when

the plaintiff was minor. According to the plaintiff, when he was at the age of 15 years, the defendant and her husband, i.e. father of plaintiff has sold various properties to third parties on behalf of plaintiff also. The said sale was not for the interest of the family, and he came to know about alienation only in September 2013. Hence, the plaintiff has filed a suit in the year 2014, and sought for the above said relief. In the plaint, the plaintiff also referred to another suit for partition filed before this court in C.S. 481 of 1998. The above suit has been filed by the plaintiff against this defendant, his brother Ashok, and one Padma. In the above suit, a preliminary decree has been passed in favour of plaintiff by judgment and decree dated 02.08.1999. On perusal of the plaint filed in the above suit, it is stated that, the plaintiff's father along with the defendant has sold an extent of 600 acres during the period between 1964 and 1976, and the defendant herein is also fully aware of the same. The sales were made by the father of plaintiff, and the plaintiff and his brother were shown as minors represented by their mother, who is a defendant herein as their guardian. It is now stated that those properties are the subject matter in the present suit. Further, some shares have been purchased by the father of plaintiff from and out of that sale proceeds and other income from the joint family. The relevant portion of plaint reads as follows :-

> *"16.B. The plaintiff further states that late K.S.Krishnamoorthy Reddiar purchased all the shares described in Schedule 'D' to the plaint from and out of the funds belonging to the Hindu Undivided Family. In fact, he sold Cashew Thoppu in Neyveli, which is acquired under the partition with his brother dated 13.4.1952. Though he had more than 1000 acres, he sold an extent of more than 600 acres during the period 1964 to 1976. The 1st defendant is well aware of the sales. In fact, such sales were made by plaintiff's father herein, the plaintiff and 2nd defendant were shown as minors represented by mother [(**) included as per order in amendment application in Appln.No.2276/99 dt.07.1999] and guardian the 1st defendant herein. In fact, the partition deed dated 13.5.1964 between the father of the plaintiff, the plaintiff and the 2nd defendant, more than 1000 acres*

were possessed by the Hindu Undivided Family. It was only because some of the areas of land have been sold by the father and the monies utilised for the purchase of shares, there was another partition with regard to Neyveli land (cashew thoppu) dated 15.6.1976, in which total area partitioned is only 375 acres. The different in the area will clearly show that the properties were sold by the father and the nucleus for the purchase of the share came from and out of the joint family funds."

From a cursory reading of the above plaint, it could be seen that, the plaintiff was fully aware of sale deed executed by the father along with defendant herein, much earlier, not as contended by him that, he came to know about the same in the year 2013.

12. That apart, in the earlier suit, the plaintiff has also contended that, the shares have been purchased by father from and out of sale proceeds and other income from the joint family nucleus and sought for share in the property, which was also granted to him in the earlier suit. In the above circumstances,

the contention of the petitioner is that, he has knowledge about the sale only in the year 2013 cannot be accepted.

13. As rightly contended by the learned senior counsel appearing for respondent that, for considering the application filed under Order 7 Rule 11 of C.P.C., the averments made in the plaint alone are germane, and the contentions of the defendant cannot be considered. However, in the instant suit, the plaintiff has clearly admitted about the earlier partition suit filed by him in para 7 of the present plaint, and it is also form part of the plaint. Considering the same, it is clear that, the plaintiff has knowledge about the transaction much earlier, and he failed to challenge the same within three years from attaining majority, hence, the suit is barred by limitation. That apart, based on the disputed sale transaction, the plaintiff also got his share in the previous suit. Hence, there is no cause of action arises for filing the fresh suit.

14. It is a settled law that, on a meaningful reading of the plaint, if the court found that, the suit is manifestly vexatious and an illusory cause of action has been created for the purpose of filing suit, the suit can be rejected at the threshold.

15. The Hon'ble Supreme Court of India in the case of ***T.Arivanandam Vs. T.V.Satyapal*** reported in ***1977 (4) SCC 467,*** wherein it was held as follows :-

> *"The trial court must remember that if on a meaningful - not formal - reading of the plaint, it is manifestly, and meritless, in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 of C.P.C., taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 C.P.C. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (chapter (11) and must be triggered against them."*

16. That apart, if the suit is barred by limitation on the face of it, by means of a clever drafting, the plaintiff cannot create any illusory cause of action. Unless, a clear right to sue has been shown in the plaint, the plaint should necessarily be rejected. The Hon'ble Supreme Court of India in the case of ***ITC Ltd. Vs. Debts Recovery Appellate Tribunal*** reported in ***1998 (2) SCC 70,*** has held as follows :-

> *"The question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 C.P.C. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint."*

17. Considering the above circumstances, this Court is of the considered opinion that, there is no cause of action arises for filing a suit. That apart, the suit is also hopelessly barred by limitation, and it is manifestly vexatious and meritless suit. Hence, the suit is liable to be rejected. The Court below without

considering the same, has mechanically dismissed the application, and the same is liable to be set aside.

18. In the result, this Civil Revision Petition stands allowed. The suit in O.S. 8 of 2014, pending on the file of Subordinate Judge, Neyveli stands rejected. No costs. Consequently, the connected Miscellaneous Petition is closed.

28.02.2020

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

Subordinate Judge,
Neyveli.

V.BHARATHIDASAN,J.

rpp

Pre-delivery order in
C.R.P. PD 1938 of 2015
and
M.P. 1 of 2015

28.02.2020