IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03 / 09 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (NPD) NO.131 OF 2018
AND CMP NO.693 OF 2018

P.Narayanan ... Petitioner

Vs.

1.P.Kumarakurubaran
2.Kalavathy
3.Avudaiammal ... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order in I.A.No.151 of 2015 in O.S.No.310 of 2014 dated 04.10.2017 pending on the file of Additional District Judge at Chengalpattu.

For Petitioner : Mr.R.Krishnamoorthy
Senior Counsel for Mr.C.B.Muralikrishnan

For Respondent-1 : Ms.Hema Sampath
Senior Counsel for M/s.R.Radha Pandian

For Respondents 2&3: Mr.V.Ayyadurai
Senior Counsel for Mr.P.Muthukumarasamy

ORDER

This Civil Revision Petition is directed against the order dismissing the interlocutory application filed for rejection of plaint under Order VII Rule 11 of Code of Civil Procedure.

2. The first respondent is the plaintiff in O.S.No.310 of 2014 filed the above suit for declaration. The respondents 2 and 3 and the petitioner herein are the defendants 1 to 3 in the suit. According to the petitioner, the suit is barred by limitation and undervalued with suppression of material facts.

3. According to the plaintiff, he was assigned a vacant site by Special Tahsildar, Saidapet, on 05.05.1974. He has constructed a house with tiled roof and enjoying the same. Since he got employment in the Police Department, he executed a power of attorney in favour of his father vide Document No.04-11-101-102-3/1978 on 06.01.1978. The power of attorney was given only for the purpose of putting up construction in the plot and to

enter into agreement, to get permission and other activities relevant to the same. No power was given for transferring the title. The father of the defendants 1 and 3 and husband of the second defendant, signed as a witness in the above said document. The original assignment deed as well as the original of the power of the attorney was with the father of the plaintiff. While so, on 10.10.1988, the power of attorney, namely, the father of the plaintiff executed a sale deed in favour of the second respondent / first defendant and registered the same vide Document No.303/1993 at the Office of the Sub-Registrar, Pudukottai, without any right or authority. The father of the plaintiff died on 21.02.2012. Pursuant to the sale deed executed, the first defendant, on 16.04.2012, executed a settlement deed in favour of her mother, the second defendant herein, vide Document No.1198/2012. After knowing the transaction, the plaintiff lodged a complaint with the Additional Commissioner of Police, Chennai, for land grabbing against the first defendant and her family. On 24.02.2012, he applied for patta and raised an objection with the Sub-Registrar, Alandur, not to register any document with respect to the suit property on 05.03.2012. The defendants have applied for building permission on 05.07.2013. In the meanwhile, they executed a power of attorney in favour of the third defendant on 31.12.2012 and therefore, the petitioner has preferred the above suit on the cause of action on the dates stated above.

4. The learned Senior Counsel appearing for the petitioner would contend that the suit is hopelessly barred by limitation and there is no cause of action for maintaining the suit as no material facts to give rise to the same has been pleaded. Further, the plaintiff had deliberately undervalued the suit and paid insufficient court fee on the basis of the affidavit obtained from the third parties. He would draw the attention of this Court to plaint document Nos.5, 6 and 12. He would further contend that the impugned documents were executed as early as 1988. For a suit for declaration, the limitation period is only three years, whereas, the suit came to be filed after 24 years, which is hopeless barred by limitation. Further, the claim of the plaintiff that he had filed it within three years from the date of his knowledge is also barred by limitation. The plaintiff has lodged a complaint vide plaint

document No.5 on 09.12.2011. This shows that the plaintiff had knowledge even before 09.12.2011. From the date of the knowledge, it should have been filed within three years. But there is no specific pleading of material facts that as to when he got the date of knowledge. From the plaint document No.3, it is seen that he applied for certified copy even before 28.07.2011. In that event, the suit should have been filed before July 2014. But, it was filed only on 03.12.2014, which is beyond the period of three years. He would further contend that the plaintiff and the defendants are closely related. The power of attorney is none other than his father and the defendants are his sister, niece and nephew. Therefore, he cannot plead ignorance of the fact that the title of the property was transferred as early as in 1988. The entries made in plaint document no.12 shows that there are transactions on 23.11.2011, 12.04.2012, 16.04.2012 and 31.12.2012. There is no material pleading with respect to his knowledge as to the above transactions.

5. Furthermore, even after approaching the Sub-Registrar's Office, the plaintiff has valued the suit on the basis of the third party

affidavit. Further, the valuation made by him was deliberately to avoid the payment of Court fee. Even after the objections raised by the defendants, he has not chosen to pay the correct Court fee till date. Therefore, the plaintiff is not entitled to any relief.

6. In so far as the allegation of fraud is concerned, the plaint averments are not specific. It is averred that his father had fraudulently executed the sale deed in favour of his grand daughter, the first defendant herein. Whereas, during his lifetime, even after the knowledge, he has not instituted the proceedings. The suit was instituted only after the death of his father against whom the allegation of fraud cannot be proved. Therefore, there is no cause of action for the plaintiff to maintain the suit. With these arguments, the learned Senior Counsel appearing for the petitioner would rely on the following judgments:-

(i) Judgment of the Hon'ble Supreme Court in ***MEENAKSHISUNDARAM CHETTIAR VS. VENKATACHALAM CHETTIAR [1980(1) SCC 616]***

(ii) Judgment of the Hon'ble Supreme Court in ***RAM SINGH AND OTHERS VS. GRAM PANCHAYAT MEHAL KALAN AND OTHERS [1986 (4) SCC 364]***

(iii) Judgment of the Hon'ble Supreme Court in ***A.B.C.LAMINART PVT. LTD., AND ANOTHER VS. A.P.AGENCIES, SALEM [1989 (2) SCC 163]***

(iv) Judgment of the Hon'ble Supreme Court in ***SOPAN SUKHDEO SABLE AND OTHERS VS. ASSISTANT CHARITY COMMISSIONER AND OTHERS [2004 (3) SCC 137]***

(v) Judgment of this Court in ***MEHARAJ VS. HURMATHUTH NISHA [2017 (5) CTC 676]***

7. Per contra, the learned Senior Counsel appearing for the respondents 2 and 3 would vehemently contend that limitation is a matter of question of law and facts. It requires elaborate trial. The plaint cannot be rejected on the ground that it is barred by limitation as held in the various judgments of the Hon'ble Supreme Court. In support of his contention, he

would rely on the following judgments:-

(i) Judgment of the Hon'ble Supreme Court in ***LIVERPOOL & LONDON S.P. & I ASSOCIATION LTD. VS. M.V.SEA SUCCESS I AND ANOTHER [2004 (9) SCC 512]***

(ii) Judgment of the Hon'ble Supreme Court in ***JAGESHWARI DEVI AND OTHERS VS. SHATRUGHAN RAM [2007 (15) SCC 52]***

(iii) Judgment of this Court in ***M.THILLAIKKARASI VS. KALAVATHI AND ANOTHER [2013 (5) CTC 849]***

(iv) Judgment of the Hon'ble Supreme Court in ***SURJIT KAUR GILL AND ANOTHER VS. ADARSH KAUR GILL AND ANOTHER [2014(2) CTC 199]***

8. The allegation of undervaluation is not sustainable for the

valuation done on the basis of the document executed by the first defendant in favour of her mother in the year 2011. In all probabilities, the value cannot shoot up 600% more within three years. Since the very execution made by the power of attorney, namely, his father itself is illegal, no lawful and valid title had vest upon the defendants. Therefore, the suit should be considered as "within the limitation period".

9. I have heard the submissions made on either side and perused the materials available on record.

10. The admitted facts are that the parties are closely related. The plaintiff executed a power of attorney in favour of his father on 06.01.1978. A reading of the power of attorney discloses that it is for a specific purpose of putting up construction in his property. It is also an admitted fact that the sale deed was executed in favour of the first defendant on 10.10.1988 and registered in 1993. Even assuming that the plaintiff in spite of close relationship between the parties came to know of the

transaction, he should have filed it within three years from the date of his knowledge. Further, it is seen that he applied for a copy of plaint document No.3, which he seeks to set aside vide prayer (c) and obtained the same on 28.07.2011. Therefore, it is very clear that the petitioner had knowledge much before 28.07.2011. In that event, the suit should have been filed within three years i.e., on or before 27.07.2014. As contended by the learned Senior Counsel, the suit is admittedly barred by limitation.

11. It is well settled that for rejection of plaint, the plaint averments are germane and that it shall not be culled out in piecemeal from here and there. But the plaint shall be read as a whole to arrive at a decision. In such view of the matter, the plaint while read as a whole, does not come out with material facts as to when he came to know of the alleged illegal transactions and as to the details of payment of taxes and possession and lack of information, in spite of close relationship.

12. The Hon'ble Supreme Court in ***SOPAN SUKHDEO SABLE***

AND OTHERS VS. ASSISTANT CHARITY COMMISSIONER AND OTHERS [2004 (3) SCC 137] has held as under:

> *"20.There is distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between 'material facts' and 'particulars' was brought by Scott, L.J. in Bruce v. Odhams Press Ltd. (1936) 1 KB 697 in the following passage :*
>
> > *"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" statement is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology, and in the new is liable to be*

"struck out" under R.S.C. Order XXV, Rule 4 (see Philipps v. Philipps ((1878) 4 QBD 127)); or "a further and better statement of claim" may be ordered under Rule 7.

The function of "particulars" under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim - gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial.

The dictum of Scott, L.J. in Bruce case (supra) has been quoted with approval by this Court in Samant N. Balkrishna v. George Fernandez (1969 (3) SCC 238), and the distinction between "material facts" and "particulars" was brought out in the following terms:

> *"The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet."*

Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, *and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."*

13. The material facts are necessary to formulate the complete cause of action and omission to state even a single material fact leads to an incomplete cause of action. In that view of the matter, the failure to plead the date of knowledge *inter alia* the other material facts, is fatal to the case on hand.

14. It is also well settled that the allegation of fraud is a matter of fact to be proved against a person who committed the fraudulent act. But, in the instant case, there is no specific pleading as to the fraud committed by

the power of attorney. It only says that the power of attorney had no authority to execute the sale deed. But, in the absence of the power of attorney, what is transpired between the Principal and the Agent, cannot be proved. There is no material averments with regard to the allegations of fraud or the purchase was not *bonafide.* In that circumstances also, the plaint does not disclose cause of action. In so far as the valuation of the plaint is concerned, the matter of payment of court fee is an issue between the revenue and plaintiff. The defendants may not have severe objection for the same. Even it is found that the subject suit is undervalued, the Court can give an opportunity to the plaintiff to pay the correct court fee. When there are opportunities to amend the plaint, the plaint cannot be rejected on the ground of allegation of undervaluation made by the defendants at the initial stage. The judgments relied on by the plaintiff that the issue of limitation is a matter of law and facts is concerned, it is well settled by the Hon'ble Supreme Court that when the suit is clearly barred by law or limitation, it can be rejected. The opponent need not be forced to undergo the unnecessary mental torture subjecting himself the long pending process of trial.

15. This Court in ***RM.SUBBIAH VS. S.RAMAKRISHNAN [2012 (1) LW 437]*** has observed as under:

"15. Normally a plaint cannot be rejected exercising power under Article 227 of the Constitution. However, if a party comes to the Court with unclean hands and re-agitate the matter again and again, the Courts are not powerless to exercise its discretion in putting a full stop to the same. The suits that have been filed by the first respondent is a glaring example where the Courts have to exercise its power to stop the first respondent from proceeding with the matter endlessly. There is no rhyme or reason to allow the first respondent to proceed with the suit in spite of the fact that in various proceedings initiated at his instance he has lost in all the Forums."

16. This Court in ***DR.L.RAMACHANDRAN VS. K.RAMESH AND OTHERS [2015 (5) CTC 629]*** 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 bared 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.

27.Thus, considering the averments in the instant case and by considering as to whether the Plaint is liable to be rejected under clause (d) of Order 7 Rule 11, the only conclusion that could be arrived at is that the plaint was barred by limitation......"

17. From the above narrated facts, it is crystal clear that on

superficial grounds, the Trial Court has rejected the interlocutory application filed for rejection of plaint. Therefore, challenging the document, after 24 years by the plaintiff in the above suit leads this Court to infer the irresistible conclusion that the suit is hopelessly barred by limitation. In view of the above conclusion, the order dated 04.10.2017 passed in I.A.No.151 of 2015 in O.S.No.310 of 2014 by the learned Additional District Judge, Chengalpattu is set aside.

18. In fine, the Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
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To

The Additional District Judge
Chengalpattu.

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