

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 2552 of 2018
and
C.M.P.No. 15457 of 2018

1.Thanikachalam
2.Kamatchiammal
3.Sivakumar

..Petitioners

Vs.

1.Parthasarathy
2.Vanaja
3.K.Anbu
4.Sabitha
5.Anandan
6.Mala

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.06.2018 passed in I.A.No. 9 of 2018 in O.S.No.52 of 2015 on the file of the Additional Sub-Ordinate Court, Vellore.

For Petitioners : Mr.N.C.Ashok Kumar

For Respondents : Mr.P.Chandrasekar for R1
Mr.R.Lakshmi Narasimhan for R5 and R6

O R D E R

The defendants in O.S.No.52 of 2015, whose application under Order 7 Rule 11 for rejection of the plaint on the ground that the suit is barred by limitation was dismissed have come up with this civil revision petition.

2. The plaintiffs filed the suit for declaration that the sale deed dated 24.12.1982 registered as Document No.3851 of 1982 is null and void, for declaring their title to the suit property and for permanent injunction restraining the defendants from interfering with their possession of the suit property.

3. According to the plaintiffs, the suit property was allotted to their father, Krishnan in a partition that took place on 09.03.1980. The said Krishnan died on 01.02.1986

leaving behind the plaintiffs, who are his wife and children to succeed to the property. The plaintiffs' claim to be in possession of the property. It is stated that the plaintiffs visited the suit property in the year 2014. The first defendant claimed to have purchased the suit property from Krishnan and others and prevented them from enjoying the property. Thereafter, they took encumbrance certificate and found that the defendant had brought about a fabricated sale deed dated 24.12.1982. On the above contentions, the plaintiffs sought for the reliefs sataed supra.

4. The suit was resisted by the defendants raising various issues including issue regarding limitation. The defendants filed I.A.No.9 of 2018 seeking rejection of the plaint on the ground, the suit itself on the face of it barred by limitation. The learned Trial Judge dismissed the application concluding that the issue of limitation has to be decided in the suit only and the same cannot form basis of rejection of the plaint being a mixed question of fact and law. The learned judge concluded that since the plaintiffs have not accepted sale deed, the suit cannot be said to be barred by limitation. On the above conclusions, the learned Trial Judge dismissed the application. Aggrieved, the defendants have come up with this civil revision petition.

5. Heard Mr.N.C.Ashok Kumar, learned counsel for the petitioners and Mr.R.Lakshmi Narasimhan, learned counsel for the respondents 5 and 6 and P.Chandrasekar for the first respondent.

6. Mr.N.C.Ashok Kumar, learned counsel for the petitioners would vehemently contend that the suit is hit by Article 59 of the Limitation Act, which provides a period of three years for setting aside documents. Mr.N.C.Ashok Kumar would also point out that the properties being ancestral properties, the father, Krishnan having sold the same for himself and as the guardian of his two sons who are said to be minors and the first plaintiff having joined execution of the sale deed as a major cannot file a suit after 33 years seeking to set aside the sale deed on the ground that they had no knowledge of the execution of the sale deed. He would also point out that the sale by the guardian of the minor of his share in the ancestral property is valid and it is for such minor seek to set aside the same within three years of attaining majority, when the minor was made a party to the sale deed and represented by a guardian.

7. Contending contra, Mr.Lakshmi Narasimhan, learned counsel for the respondents 5 and 6 would submit that the Article 59 would not apply since the plaintiffs are denying the knowledge of the sale deed itself. He would also contend that the property sold is in excess of the property that was allotted to

Krishnan in the partition deed and therefore, the sale deed is invalid. I have considered the rival submissions.

8. The very suit is nothing but an abuse of process of Court. The property was allotted to Krishnan under the Partition deed of the year 1980 and it was sold by Krishnan and his three sons on 24.12.1982 to the first defendant. The plaintiffs after 33 years have come up with the suit seeking a declaration that the sale deed is null and void. The said declaration has to be sought for within three years from the date on which the facts entitling the plaintiff to that the decree cancelled or set aside become known to him. The plaintiffs cannot say that they had no knowledge of the document. The first plaintiff was a party to the document as a vendor and the plaintiffs 3 and 5 were represented by their guardian.

9. Once the plaintiffs are parties to the document, the limitation to set aside the document commenced from the date of the document. In any event, if the plaintiffs are minors and they were under a legal incapacity, they will have to file a suit within three years from attaining majority or from the date on which such an incapacity ends. The first plaintiff was a major even on the date of the instrument. Therefore, the limitation commenced from 24.12.1982. The plaintiffs 3 and 5 were shown to be minors but they had attained majority long back. The third plaintiff shown to be 55 years of age in 2015 and 5th plaintiff is shown to be 49 years old on the date of the suit. Therefore, they have attained majority several years before filing of the suit.

10. Mr.N.C.Ashok Kumar would also draw my attention to judgment of the Hon'ble Supreme Court in Raghendra Sharan Singh Vs. Ram Prasanna Singh by LR's reported in 2019 SCC Online SC 372 , wherein, the Hon'ble Supreme Court has pointed out that the plaint in a suit is liable to be rejected under Order 7 Rule 11, if it is shown to be ex-facie barred by limitation without going into another question of facts. The law laid down by the Hon'ble Supreme Court in the said judgment will apply on all fours to the case on hand. The plaintiffs cannot by simply denying the knowledge of the sale deed, which is a registered instrument, maintain a suit after 35 years seeking declaration that the document is invalid and/or null and void. A division Bench of this court in Dr.L.Ramachandran and another -Vs- K.Ramesh and others reported in 2015(4)LW585 has also held that if the suit is ex-facie barred by limitation, it can be rejected under Order 7 Rule 11.

11. In the case on hand, as facts disclose, I find that the suit is ex-facie barred by limitation. Article 59 of the

Limitation Act provides the period of limitation for setting aside the document and the period of limitation to file the suit is three years from the date on which the facts entitling the plaintiff to sue becomes known to him. As already point out, the first plaintiff was a party to the document and the plaintiffs 3 and 5 were also parties represented by their guardian. Therefore, the limitation for the first plaintiff is from 24.12.1982 i.e., date of the document and for the plaintiffs 3 and 5 limitation starts running from the date on which they attained majority. Therefore, they should have filed a suit within 3 years from the date on which they attained majority. I have already point out, the 2nd plaintiff was aged 55 years and the 3rd plaintiff was aged 49 years on the date of the suit.

12. Therefore, looking from any angle the suit is clearly barred by limitation and the Trial Court was not right in concluding that the question of limitation is mixed question of fact and law in the case on hand. Hence, the order of the Trial Court is set aside, the application in I.A.No. 9 of 2018 will stand allowed, the plaint in O.S.No.52 of 2015 will stand rejected. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:
The Additional Sub-Ordinate Court,
Vellore.

+1cc to M/s.C.Jagadish, Advocate in Sr.32535

+1cc to M/s.R.Lakshmi Narasimhan, Advocate in Sr.32293

C.R.P.No. 2552 of 2018
and
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PPA(CO)
RV(05/11/2020)

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