

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.3621 of 2019

1. B.Arunkumar
2. K.Andal
3. G.Mythili

..Appellants

-vs-

1. Kishore Kumar
S/o Desu Reddiar
2. Sridhar
S/o Desu Reddiar
3. The District Registrar
Villupuram District
Villupuram
4. The Sub Registrar
Anandapuram Sub Registrar Office
Anandapuram Village
Gingee Taluk
5. Kumaran
S/o Arunaithi Pillai

..Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Order XLIII, Rule 1(u) read with Section 104 of the Code of Civil Procedure, against the judgment and decree dated 15.3.2019 passed in Appeal Suit No.9 of 2016 on the file of Sub Court, Gingee, remanded back the judgment and decree dated 15.02.2016 in I.A.No.1234 of 2015 in O.S.No.185 of 2015 on the file of the Principal District Munsif Court, Gingee.

For Appellants :: Mr.J.R.K.Bhavanantham for
Mr.N.Naganathan

For Respondents :: Mr.A.Sivaji for
Mr.K.Krishnan R1 & R2
Mr.T.M.Pappiah
Special Government Pleader
for R3 & R4
No appearance for R5

JUDGMENT

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. The first defendant before the trial Court and the impleaded respondents 5 & 6 before the lower appellate Court, have filed this civil miscellaneous appeal challenging the correctness of the impugned decretal order of remand remanding the suit back to the trial Court for fresh disposal, setting aside the order of rejection of the plaint by the trial Court in I.A.No.1234 of 2015 in O.S.No.185 of 2015 under Order VII, Rule 11(d) of the Code of Civil Procedure.

3. When the suit in O.S.No.185 of 2015 was filed by the respondents 1 & 2 / plaintiffs before the Principal District Munsif Court, Gingee to declare the sale deed dated 17.6.2005 as a false and invalid document and not binding upon the plaintiffs and other reliefs, the first appellant herein filed I.A.No.1234 of 2015 under Order VII, Rule 11(d) of the Code of Civil Procedure seeking rejection of the plaint, on the ground that when the sale deed dated 17.6.2005 was executed in favour of the first appellant's father K.R.Balakrishnan, who is the younger brother of Desu Reddiar, to set aside the sale deed on the ground of fraud and forgery, when the suit ought to have been filed within a period of three years from the date of registration, as per Article 56 of the Limitation Act, which says that to declare the forgery of instrument issued or registered, action should be initiated within three years and Article 58 of the Limitation Act also says that the period to initiate proceedings is three years from the date of cause of action, although the respondents 1 & 2/plaintiffs pleaded that they did not have the knowledge of the registration of the sale deed, it was pleaded by the first appellant herein in the application filed for rejection of the plaint under Order VII, Rule 11(d) that the plaintiffs' father and the first defendant's father are brothers, as the first defendant's father K.R.Balakrishnan is the younger brother of Desu Reddiar who, on receipt of the sale consideration of the land in question, executed the sale deed dated 17.6.2005 in the presence of his wife Radhika and the second plaintiff and other witnesses. As Desu Reddiar was not keeping well, he has affixed his thumb impression that could be seen from the sale deed itself. With this pleading, I.A.No.1234 of 2015 was filed under Order VII, Rule 11(d) of the Code of Civil Procedure seeking rejection of the plaint in O.S.No.185 of 2015 filed for declaration of the sale deed as a false and invalid document not binding upon the plaintiffs/respondents 1 & 2 herein.

4. A detailed counter affidavit was filed by the plaintiffs/respondents 1 & 2 herein repeatedly stating that the sale deed dated 17.6.2005 was a forged one, because the father of the plaintiffs, Desu Reddiar, a person who knew to read and write, affixed his thumb impression alone, therefore, it was suspected that it was not voluntarily executed by Desu Reddiar in favour of K.R.Balakrishnan, the father of the first appellant and it was also the case of the first appellant that after the death of Desu Reddiar on 19.6.2005, when the sale deed dated 17.6.2005 was presented for compulsory registration before the Sub Registrar, Anandapuram Village, Gingee Taluk, the Sub Registrar refused to register the same, therefore, an appeal was filed before the District Registrar, Villupuram, the third respondent herein who, after issuing notice to the wife of Desu Reddiar and the witnesses who had appended their signature in the sale deed, conducted a detailed enquiry and on the basis of the evidence adduced by the witnesses in the sale deed, the District Registrar registered the sale deed. Thereafter, the second plaintiff filed First Information Report in Crime No.70 of 2015 under Sections 147, 448, 324 of IPC before the Anandapuram Police Station alleging that the first appellant herein has attempted to grab their land under a forged sale deed; that the first appellant filed a suit on 1.6.2015 in O.S.No.119 of 2015 seeking permanent injunction on the basis of the sale deed dated 17.6.2005, which was registered on 2.6.2006 bearing Document No.456 of 2006. Thereafter, the respondents 1 & 2 herein filed a suit on 20.7.2015 in O.S.No.185 of 2015 for declaration of the sale deed dated 17.6.2005 as false and invalid and not binding upon them.

5. The trial Court, on entertaining the application filed for rejection of the plaint under Order VII, Rule 11(d) of the Code of Civil Procedure on the ground that the suit in O.S.No.185 of 2015 ought to have been filed within three years from the date of registration of the sale deed, as per Articles 56 & 58 of the Limitation Act, rightly allowed the I.A.No.1234 of 2015 under Order VII, Rule 11(d) of the Code of Civil Procedure, rejecting the plaint, accepting the plea of limitation in favour of the first appellant herein. Aggrieved thereby, the respondents 1 & 2 filed A.S.No.9 of 2016 before the Sub Court, Gingee taking a sole ground that they came to know about the registration of the alleged forged deed only on 16.5.2015, when the first appellant's henchmen attempted to dispossess them from the suit properties and also assaulted the first respondent. This was heavily refuted by the first appellant pleading that when it is an admitted case that the sale deed dated 17.6.2005 was registered by Desu Reddiar, father of the respondents 1 & 2 herein in favour of his own younger brother K.R.Balakrishnan, who is the father of the first appellant, in the presence of the wife of Desu Reddiar, the

mother of the respondents 1 & 2, who was also directed to take part in the enquiry conducted by the District Registrar, Villupuram, when their mother was also aware of the registration of the sale deed and also the enquiry conducted by the District Registrar, the trial Court, rejecting the plea of ignorance of the registration of the sale deed on 17.6.2005, applying the bar of limitation put against by Articles 56 & 58 of the Limitation Act to declare the alleged instrument as a forged one, action shall be taken within three years from the date of issue or registration, rightly allowed the I.A.No.1234 of 2015 rejecting the plaint. However, aggrieved thereby, when an appeal in A.S.No.9 of 2016 was filed, the Sub Court, Gingee, without taking note of the fact that the sale deed was directed to be registered by the District Registrar, Villupuram after informing the mother of the respondents 1 & 2 to come for enquiry, therefore, Articles 56 & 58 of the Limitation Act would be attracted read with Order VII, Rule 11(d) of the Code of Civil Procedure, which says that the plaint shall be rejected where the suit appears from the averments in the plaint to be barred by any law, wrong remanded the matter back with a direction to the learned Principal District Munsif, Gingee to revive the original suit in O.S.No.185 of 2015 after providing necessary opportunities to both parties and then to dispose of the same in accordance with law. Challenging the same, the present appeal has been filed.

6. Mr.J.R.K.Bhavanantham, learned counsel appearing for the appellants submitted that when the lower appellate Court ought to have considered the plaint averments, the defence set up by the opposite party and the documents relied on before passing the impugned order of remand. When the respondents 1 & 2 came with a case of forgery and fraud in respect of the sale deed registered on 17.6.2005 by the District Registrar, Villupuram after holding enquiry with the witnesses who had appended their signatures in the sale deed and that too, after issuing notice to the wife of Desu Reddiar who had executed the sale deed on 17.6.2005 with his own brother K.R.Balakrishnan, the lower appellate Court ought not to have accepted the plea of ignorance and no knowledge of the registration of the sale deed, when the limitation on the registered sale deed would start only from the date of registration of the sale deed in the office of the registering authority, it cannot be the plea of the respondents 1 & 2 that they were unaware of the proceedings before the District Registrar and the registration of the document. Moreover, they again falsely pleaded that they got the knowledge of notice only when the first appellant filed the civil suit in O.S.No.119 of 2015. Learned counsel for the appellants further submitted that when the respondents 1 & 2 did not participate in the proceedings conducted by the District Registrar, it is an admitted case that when the mother of the respondents 1 & 2 was

issued with the notice to come for enquiry along with the testators to the sale deed, the respondents 1 & 2 cannot say that they got the knowledge of the above document ten years later from the date of registration.

7. Assailing the impugned order of remand, learned counsel appearing for the appellants vehemently argued that the impugned order of remand is showing not only the non-application of mind, but also the elements of perversity. The reason being that after the demise of R.Desu Reddiar on 19.6.2005 due to ill-health at the age of 80, when his wife and children refused to come for registration of the sale deed, the Sub Registrar, Ananthapuram refused to register the sale deed. After Desu Reddiar had executed the sale deed dated 17.6.2005 and subsequently died on 19.6.2005 and after the death of Desu Reddiar, K.R.Balakrishnan had approached the legal heirs of the deceased for sale deed registration, the legal heirs refused to register the sale deed, therefore, K.R.Balakrishnan, father of the first appellant approached the Sub Registrar, Ananthapuram, who also refused to register the document on 27.2.2006 for the reason that the executor had died. Assailing the order of the Sub Registrar, K.R.Balakrishnan preferred an appeal before the District Registrar, Villupuram under Section 73 of the Registration Act. The District Registrar, after issuing notice to all the attesting witnesses of the document, passed an order on 29.5.2006. That order became final and concluded that has not been questioned either by the respondents 1 & 2 or anyone. That shows that the respondents 1 & 2 were well aware of the order dated 29.5.2006 passed by the District Registrar, Villupuram and also the compulsory registration of the sale deed. Hence, the plea advanced by the respondents 1 & 2 before the lower appellate Court that they were not aware of the sale deed, is a deliberate falsehood, for the simple reason that they did not question the order dated 29.5.2006 passed by the District Registrar, Villupuram. Therefore, the trial Court, agreeing with the first appellant that the respondents 1 & 2 failed to challenge the sale deed within a period of three years from the date of registration as contemplated under Articles 56 & 58 of the Limitation Act, has rightly rejected the case of the respondents 1 & 2. But this legal aspect has been completely ignored by the lower appellate Court, therefore, the impugned order of remand reviving the suit being unreasonable and perverse in nature, the same is liable to be set aside, he pleaded.

8. In reply, Mr.A.Sivaji, learned counsel appearing for the respondents 1 & 2/plaintiffs pleaded that when the Sub Registrar, Ananthapuram refused to register the sale deed, on an appeal made to the District Registrar, Villupuram, a direction was issued to register the sale deed and thereupon the forged

sale deed was registered by the Sub Registrar on 2.6.2006 bearing Document No.456 of 2006 and that the respondents 1 & 2 came to know about the registration of the forged sale deed on 16.5.2015, when the first appellant's henchmen attempted to dispossess the suit properties and also assaulted the first respondent. Only on the complaint given by the second respondent, First Information Report in Crime No.70 of 2015 was registered under Sections 147, 448, 324 of IPC by the Station House Officer of Ananthapuram Police Station. Thereafter only, the first appellant filed the suit in O.S.No.119 of 2015 against the respondents 1 & 2 for the relief of permanent injunction on the basis of the forged sale deed dated 17.6.2005, which was registered on 2.6.2006 in Document No.456 of 2006. Subsequently, the respondents 1 & 2 were also advised to file the suit against the first appellant and others for the relief of a declaration to declare the impugned sale deed dated 17.6.2005 as a false and invalid document not binding upon the respondents 1 & 2 and also for permanent injunction. In these circumstances, the first appellant's I.A.No.1234 of 2015 under Order VII, Rule 11(d) of the Code of Civil Procedure to reject the plaint on the ground of limitation, ought not to have been allowed by the trial Court, for the simple reason that when the respondents 1 & 2 claimed that they are the owners of the properties and the sale deed has been registered behind their back, which they came to know only on 16.5.2015 when the henchmen of the first appellant attempted to dispossess them from the suit properties and also assaulted the first respondent, the matter needs to be thoroughly enquired by the trial Court that is possible only by holding a detailed trial. Therefore, the lower appellate Court has rightly setting aside the order passed by the trial Court under Order VII, Rule 11(d) of the Code of Civil Procedure revived the suit. Hence, the remand order cannot be found fault with, he pleaded.

9. Having heard learned counsel appearing for the parties, the following points arise for our consideration in this appeal:-

- (i) Whether the claim of the respondents 1 & 2/plaintiffs that they were unaware of the proceedings before the District Registrar, Villupuram, was established by the respondents 1 & 2 herein?
- (ii) Whether Articles 56 & 58 of the Limitation Act can be invoked for rejection of the plaint under Order VII, Rule 11(d) of the Code of Civil Procedure?

10. Point No.(i): To answer the point, relationship of the parties assumes importance. The first appellant's father K.R.Balakrishnan is the younger brother of Desu Reddiar. While so, Desu Reddiar, who is the father of the respondents 1 & 2, is

said to have executed the sale deed dated 17.6.2005 in favour of his younger brother K.R.Balakrishnan, who is the father of the first appellant. However, after the said Desu Reddiar died on 19.6.2005, K.R.Balakrishnan, the father of the first appellant, approached the legal heirs of the deceased for registration of the sale deed, but the legal heirs refused to register the sale deed. Therefore, the father of the first appellant, K.R.Balakrishnan approached the Sub Registrar, Ananthapuram for registration, who also refused to register the document on 27.2.2006 citing a reason that the testator R.Desu Reddiar died on 19.6.2005. Assailing the order passed by the Sub Registrar, the said K.R.Balakrishnan preferred an appeal before the District Registrar, Villupuram under Section 73 of the Registration Act. The District Registrar, Villupuram, the third respondent herein, finding that the legal heirs of the deceased, namely, wife of R.Desu Reddiar and son Sreedhar, who are the attesting witnesses to the sale deed dated 17.6.2005 and apart from the deceased, another brother, namely, Kesavan is also a attesting witness to the document, after conducting enquiry, passed a speaking order on 29.5.2006. The said order has not been questioned by the respondents 1 & 2. When the order dated 29.5.2006 passed by the District Registrar, Villupuram has clearly mentioned that notices were issued to the wife of R.Desu Reddiar, son Sreedhar, who were all the attesting witnesses to the sale deed dated 17.6.2005, it is highly unbelievable on the part of the respondents 1 & 2 to set up the plea of ignorance about the execution of the sale deed. Therefore, answering the plea of ignorance about the registration of the document against the respondents 1 & 2 that they have not even questioned the correctness of the speaking order dated 29.5.2006, point no.(i) is answered against the respondents 1 & 2 and in favour of the appellants.

11. Point No.(ii): Moving to the second point, when the District Registrar, Villupuram has passed the order dated 29.5.2006, the family members of the deceased R.Desu Reddiar being shown as attesting witnesses to the document, the allegation of Kishorekumar and Sreedhar, the respondents 1 & 2 that they had the knowledge about the registration of the sale deed only on 16.5.2015, is factually unfounded, since they should have filed the suit within three years, as per Article 56 of the Limitation Act. On the other hand, they filed the suit only on 20.7.2015, which is more than ten years. Therefore, the trial Court was perfectly right in accepting the application filed in I.A.No.1234 of 2015 under Order VII, Rule 11(d) of the Code of Civil Procedure for rejection of the plaint and the reasons given thereunder have not been considered by the lower appellate Court. When the sale deed dated 17.6.2005 is a registered document, non challenging the same by the respondents

1 & 2 herein at any point of time, has not been considered, therefore, the lower appellate Court has committed a material irregularity in not affirming the order of the trial Court rejecting the plaint under Order VII, Rule 11(d) of the Code of Civil Procedure. It is also borne out of record that Articles 56 & 58 of the Limitation Act have been pressed into service by the first appellant before the trial Court citing the plea of limitation for rejection of the plaint. Therefore, the lower appellate Court is required to read the pleadings in entirety along with the defence available with the evidence, the plea taken by them in the written statement and in the application filed under Order VII, Rule 11(d) of the Code of Civil Procedure. Equally when the District Registrar, Villupuram has already passed an order for registration of the sale deed vide order dated 29.5.2006, even in the suit filed by the respondents 1 & 2, the order passed by the District Registrar, Villupuram has not been questioned. When the order of the District Registrar, Villupuram dated 29.5.2006 was allowed to stand, the prayer in the suit for declaration of the sale deed dated 17.6.2005 as a false and invalid document and not binding upon the respondents 1 & 2, would be only a wasteful exercise. As a matter of fact, when the District Registrar, exercising his power under Section 73 of the Registration Act, had passed an order directing the registration of the document after hearing the parties and after being satisfied with its execution by the testator, the said order became final and concluded and the respondents 1 & 2 cannot have any grievance over its authenticity, when they chose to file the suit after a period of more than ten years with a false plea that they were unaware of the proceedings at all before the District Registrar, which is clearly hit by the law of limitation under Articles 56 & 58 that prescribe a period of three years from the date of knowledge of registration of the sale deed in question. In this context, useful reference can be had from the judgment of the Apex Court in Raghendra Sharan Singh v. Ram Prasanna Singh (Dead) by Lrs, 2020-2-L.W.889, holding that the question with regard to limitation is a mixed question of law and fact which can be decided only after the parties lead evidence, considering the averments in the plaint, if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order VII, Rule 11(d) of the Code of Civil Procedure. In my considered opinion, in the case on hand, as the question of limitation has been the sole issue before the trial Court, the lower appellate Court, without advertting to the same, has committed a serious irregularity, therefore, the same is liable to be set aside. Accordingly, answering the point no. (ii) also against the respondents 1 & 2 and in favour of the appellants, the impugned decretal order is set aside and the civil miscellaneous appeal stands allowed with costs of Rs.25,000/- (Rupees twenty five thousand only) payable by the

respondents 1 & 2 to the first appellant within a period of four weeks from the date of receipt of a copy of this order. Consequently, C.M.P.No.20856 of 2016 is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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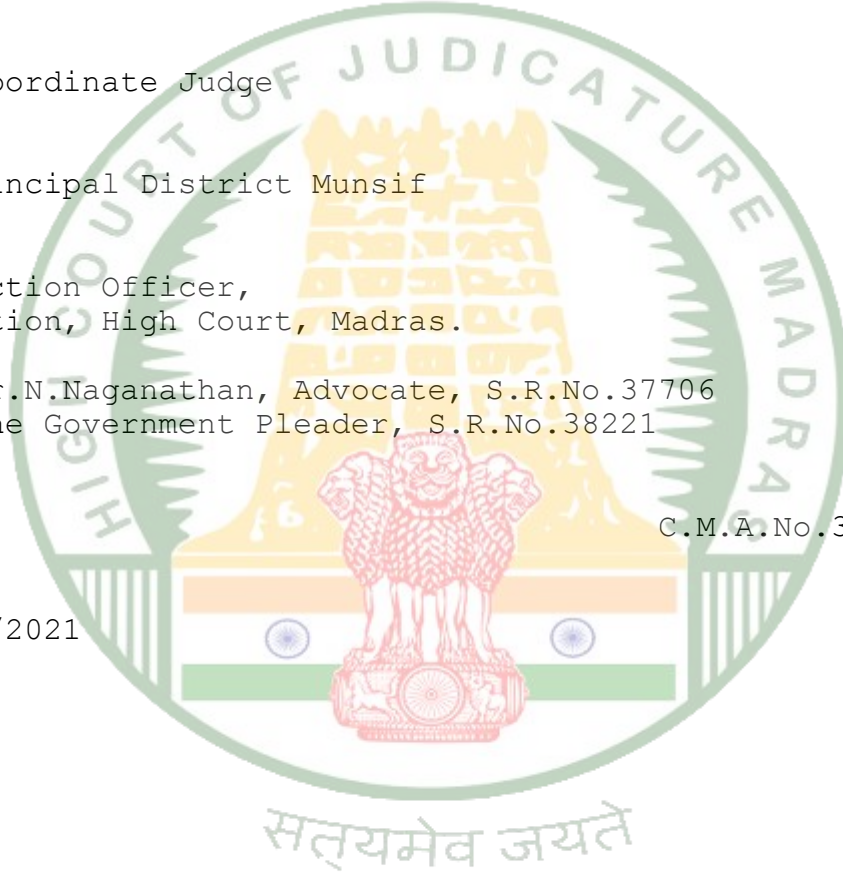
To

1. The Subordinate Judge
Gingee
2. The Principal District Munsif
Gingee
3. The Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.N.Naganathan, Advocate, S.R.No.37706
+1cc to the Government Pleader, S.R.No.38221

C.M.A.No.3621 of 2019

LN(CO)
KKV/22/02/2021



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