

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2020

PRONOUNCED ON : 30.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No.2182 of 2020

and

CMP.No.13721 of 2020

1.Rani Balakumari Nachiar

2.Usha Nandini

3.Udaya Bau

4.Gayathri Devi

5.Durga Devi

6.Sevuga Pandian @ Vignesh ...Petitioners/Plaintiffs

.. Vs ..

1.Dewan Bahadur M.O.Parthasarathy Iyengar's Charities,
Represented by its Secretary,
No.25, Peyalwar Koil Street,
Triplicane, Chennai - 600 005.

K.Jayarani @ Ganapathy Muthu Senthatti Veerammal Nachiar
(Deceased), W/o.Late, Muthusamy Pandian,
D/o.Late, Varaguna Rama Pandian

2.Soundararajan

3.V.Mayilvarthini

4.S.K.Jaganathan

5.Kumari @ Senthatti Veeramma Nachiar

6.B.Kuttiraja @ Kutti Durai

7.M.Pushpa @ Kannamma Nachiar

Represented by through

Power Agent S.Murugan and A.Amul Peter Paul Raj

8.G.Periyana Pandian

9.K.Kulandai Rani

10.M.Venkatachalapathy

11.Radha

12.T.Meena

13.Gomathy

14.M.Sakaranarayanan ...Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to allow this Civil Revision Petition and to set aside the order and decretal order dated 07.08.2020 passed by the learned V Additional Judge, City Civil Court at Chennai in I.A.No. 1 of 2019 in O.S.No. 11864 of 2010.

For Petitioners : Mr.V.V.Giridhar

JUDGMENT

(The case has been heard through video conference)

This Civil Revision Petition has been filed against the order passed by the learned V Additional Judge, City Civil Court at Chennai in I.A.No.1 of 2019 in O.S.No. 11864 of 2010, dated 07.08.2020.

2.The plaintiffs in the suit O.S.No.11864 of 2010 are the revision petitioners herein.

3.The plaintiffs have originally filed a suit before the regional jurisdiction of the High Court and subsequently, the case was transferred to City Civil Court and the same was re-numbered as O.S.No.11864 of 2010 by the learned V Additional District and Sessions Judge, Chennai. The defendants in the suit in O.S.No.11864 of 2010 have filed an interlocutory application in I.A.No.1 of 2019 to take up the issue of limitation as preliminary issue and direct the parties to lead evidence and the same was allowed. As against the same, the plaintiffs have filed the present Civil Revision Petition.

4.Heard the learned counsel for the petitioners.

5.The first defendant in the suit in O.S.No.11864 of 2010 has filed an interlocutory application in I.A.No. 1 of 2019 to take up the issue of limitation as preliminary issue and the same was allowed. It is seen that the issues before the Trial Court, inter alia whether, the suit is barred by limitation. In the counter filed in I.A.No.1 of 2019,

it is stated that the petitioner in the above said I.A/first defendant in the suit has already filed an application in I.A.No. 5908 of 2011 under Order VII Rule 11 of CPC before this Court by raising similar issues viz., the suit is barred by limitation and there is no cause of action for filing the above suit and the same was dismissed by this Court on 14.07.2011 and aggrieved by the said order, the first defendant in the suit in O.S.No.11864 of 2010 had filed the Civil Revision Petition in CRP.No.3564 of 2012 before this Court and the same was dismissed on 07.12.2017 and therefore, the above said I.A. is liable to be dismissed as not maintainable. According to the plaintiffs, since, CRP.No.3564 of 2012 was dismissed, plea of limitation cannot be taken again or re-agitated.

6.On a perusal of the plaint, it is seen that the suit in O.S.No.11864 of 2010 has been filed to set aside three sale deeds executed almost 100 years back by claiming that the vendor viz., Rani Gnanamani Nachiar had no right to deal with the property as per the judgment passed in O.S.No. 27 of 1914, on the file of the Sub-Judge, Tuticorin. But, the plaintiffs had failed to note that the right of the vendor viz., Rani Gnanamani Nachiar to deal with the property was upheld by this Court in the appeals preferred in

A.S.No. 324 of 1918 and A.S.No. 325 of 1918, and the Judgment was reported in "**Gurusami Pandiyan Vs. Sendattikalai Pandia Chinna Thambiar**" - (1920) 39 MLJ 529 = (1921) I.L.R.44 Mad.1. It is also seen that the suit property is in possession of the first defendant for more than 100 years and admittedly, the first defendant is running a reputed college in the suit property, but no attempt was made to recover the possession for all these 100 years, either by the plaintiffs or by their predecessors. Even now, only an injunction against alienation alone is sought for. Instead of seeking declaration of title and recovery of possession, the suit in O.S.No.11864 of 2010 has been filed to set aside 100 years old sale deed and injunction against alienation. This is because of the reason that both the reliefs are barred by limitation. Only when the plaintiffs can establish that the suit is not barred by law of limitation, the other issues can be tried.

7.The only point that was urged by the learned counsel appearing for the petitioners is that the question of limitation was already considered by this Court in CRP.No. 3654 of 2012 vide order dated 07.12.2017 and there is a finding on that aspect. Hence, the first defendant is not entitled to seek to try the limitation as

preliminary issue.

8.If an astute lawyer cleverly drafts the plaint to overcome the bar of limitation or manages to number/register a suit which is otherwise barred by limitation, it cannot be said that the Court is totally helpless and it should proceed to decide all the issues arising in the suit apart from limitation. In a time barred suit or claim, the defendant cannot be compelled to face trial on all issues arising therein other than limitation.

9.The general rule envisaged under Order XIV, Rule 2(1) of CPC is that the Court shall try all the issues and pronounce the judgment on all issues. The object was to prevent piecemeal trial which will be harmful to the litigants and it leads to protracted litigation and repeated appeals. But under Order XIV, Rule 2(2) of CPC, the Court is entitled to dispose of the suit on a preliminary issue provided all the requirements stated therein are satisfied. From Sub-Rule (2), *it is clear that it is only an issue of law going to the very root of the matter affecting the jurisdiction or an issue which creates a bar to the suit by any law for the time being in force, that can be tried preliminarily.* After 1976 amendment, the

discretion is vested with the Court to take up an issue of law for trial as preliminary issue and prior to the amendment, it was mandatory. The Civil Procedure Code speaks only on two kinds of issues viz., (i) Issues of fact (ii) Issues of law. The Judicial pronouncements have created a third kind of issue called mixed issue of facts and law.

10. It is true that on ex-facie reading of the plaint, if it is found that the suit was barred by limitation, the Court can reject the plaint or try the issue of limitation as preliminary issue. In the latest decision of the Hon'ble Supreme Court in the case of *"Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs. reported in AIR 2019 SC 1430 = 2019(3) MLJ 377 (SC)*, it was held that

"8. Now, so far as the application on behalf of the original plaintiff and even the observations made by the learned trial Court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence is concerned, as observed and held by this Court in the cases of Sham Lal alias Kuldip (supra); N.V. Srinivas Murthy (supra) as well as in the case of Ram Prakash Gupta (supra), 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 7 Rule 11(d) of the CPC".

Similarly in the case of **Canara Bank Vs. Sellathal and ors.** reported in **CDJ 2020 SC 271 = 2020 (2) ALT 68**, the Hon'ble Supreme Court has reiterated the same, which reads as follows:

"11. At this state, it is also required to be noted that the suits have been filed after a period of 15 years from the date of mortgage and after a period of 7 years from the date of passing of the decree by the DRT. In the plaints, it is averred that the plaintiffs came to know about the mortgage and the judgment and decree passed by the DRT only six months back. However, the said averments can be said to be too vague. Nothing has been averred when and how the plaintiffs came to know about the judgment and decree passed by the DRT and the mortgage of the property. Only with a view to get out of the law of limitation and only with a view to bring the suits within the period of limitation, such vague averments are made. On such vague averments, plaintiffs cannot get out of the law of limitation. There must be specific pleadings and averments in the plaints on limitation. Thus, on this ground also, the plaints were liable to be rejected. As observed herein above, the plaints are vexatious, frivolous, meritless and nothing but an abuse of process of law and court. Therefore, this is a fit case to exercise the powers under Order 7 Rule 11 (d) of the CPC. Both the courts below have materially erred in not rejecting

the complaints in exercise of powers under Order 7 Rule 11(d) of the CPC. Both the courts below have materially erred in not exercising the jurisdiction vested in them.”
(emphasis supplied)

In the case of **Dahiben Vs Arvinbhai Kalyanji Bhanusali(Gajara)(D) thr. Lrs & Ors.** judgment reported in **CDJ 2020 S 606**, the Hon'ble Supreme Court had reiterated the above proposition that bar of limitation is going to the root of jurisdiction of Court. On a bare and wholesome reading of the plaint, if the court finds that the suit is barred by limitation, the Court is bound to reject the plaint.

11.The question of limitation is always treated as lack of jurisdiction rather than bar of law. The term “jurisdiction” is a verbal coat of many colours and is required wider meaning. The lack of jurisdiction may be inherent, pecuniary, territorial, subject matter including limitation and res judicata etc. The issue of limitation is generally considered as mixed question of fact and law, but, in some cases, the facts required to bring the suit within limitation may be different from the facts required to get the relief prayed.

12.On the factual aspects of this case, the bare reading of the plaint would show that about 100 years back the suit property was sold by one Rani Gnanamani Nachiar to the first defendant for valid sale consideration in the year 1915 through a registered sale deed. The suit property was originally purchased by the Zamindar of Sivagiri namely (late) Ramalinga Varaguna Rama Pandia Chinna Thambiar, who is unmarried and he died and he survived by his mother Rani Gnanamani Nachiar, who took over Zamindari. This was challenged in O.S.No. 27 of 1914 on the file of the learned Sub-Judge, Tuticorin by one Sendattikalai Pandiya Chinna Thambiar, who was grand-father of plaintiffs in this suit. The properties of Zamindar consisted of impartible and partible (separate) estates. The suit property being partible estate, was ordered to be divided among the plaintiff and other heirs granting 1/6th share each. There were appeals filed before the High Court and then to Privy Council. But, later compromised among the sharers while the matter is before the Privy Council.

13.It is the contention of the plaintiffs that they recently came to know about the sale effected by Rani Gnanamani Nachiar in

favour of first defendant in the year 1915 and subsequent sale by the first defendant to a third party in the year 1923. Later, the first defendant again purchased the suit property from the third party in the Court auction sale in the year 1926. But all the three sale deeds are registered documents which are public documents as they are registered in Book I of the Registrar's office and the general public have an unrestricted access to the same either to peruse or to get the copies. Hence, the plaintiffs cannot claim that they gained knowledge about the sale deeds only after the first defendant lodged complaint before the police. In fact, no body could have personal knowledge about the documents executed 100 years back.

14.The property is admittedly in the continuous possession of the first defendant from 1926.

15.It is also seen from the records that a final decree petition was filed by Sendattikalai Pandia Chinna Thambiar in I.A.No. 1102 of 1921 on the file of the learned Sub-Judge, Titicorin, which was allowed on 05.09.1928. As per the same, the suit property was ordered to be auctioned among the parties by the Official Receiver

and sale proceeds to be distributed and against this final decree, an appeal was filed in Appeal No.485 of 1930 before this Court, and the same was dismissed vide judgment dated 02.10.1936, which is reported in " **1937 (1) MLJ 77 = 1936 (44) LW 879** -

Sendattikalai Pandia Chinna Thambiar (deceased) & Another Vs. Sangili Veerappa Pandian alias Thangaswami & Others".

However, later, by compromise, the suit property was entirely allotted to the share of Sendattikalai Pandia Chinna Thambiar alone towards his share. Therefore, only his lineal descendants are entitled to challenge the sale in this suit and not others.

16.This Court finds that the observations made by the learned District Judge are that at any event, the first defendant was not a party in any of the above proceedings and the sale of suit property effected by Rani Gnanamani Nachiar in favour of the plaintiffs was not brought to the knowledge of the learned Sub-Court, Tuticorin or High Court, Madras in any of the proceedings. Since, the time limit to institute the suit for recovery of possession of the suit property from the third party got expired during the life time of the grandfather and the father of the plaintiffs. The right and title of the plaintiffs and their predecessors to the suit property got

extinguished under Section 27 of the Limitation Act. Hence, the question of limitation in this case tends to oust the jurisdiction of this Court to try a time barred relief, which should be tried as first preliminary issue.

17.It is clear that the issue of limitation in this case is going to the root of the matter which can tried and decided as stand alone issue even without recording any evidence or if necessary by recording limited evidence on that point alone. By giving an effective interpretation to the reported judgments in A.S.No.324 of 1918 & A.S.No. 325 of 1918 (**Gurusami Pandiya Vs. Sendattikalai Pandia Chinna Thambiar**" - (1920) 39 M.L.J 529 - (1921) I.L.R.44 Mad.1) and in Appeal No. 485/1930 (**"Sendattikalai Pandia Chinna Thambiar (deceased) & Another Vs. Sangili Veerappa Pandian alias Thangaswami & Others"** - 1937 (1) MLJ 77 - 1936 (44) LW 879 of this Court on the right of the parties, the staring point of limitation can be clearly be ascertained and there is absolutely no prejudice to the respondents if the issue of limitation is taken up as preliminary issue.

18.Thus, this Court finds that on the factual matrix of this case without any evidence, plea whether the suit has barred by limitation can be gone into as a primary stage because, the starting point of limitation has to be ascertained from the decision reported in the above two citations (referred supra) viz., orders passed in I.A.No.1102 of 1921, dated 05.09.1928 and Appeal No. 485 of 1930 before the High Court has reported in **1937 (1) MLJ 77 – 1936 (44) LW 879** in (**"Sendattikalai Pandia Chinna Thambiar (deceased) & Another Vs. Sangili Veerappa Pandian alias Thangaswami & Others"**) for which no further evidence is required.

19.In view of the fact that the plea of limitation is legal on simpliciter, the trial Court had rightly come to the conclusion that on the factual matrix of the case, the issue of limitation can be gone into without any further evidence since, the stating point for computation of limitation is 02.10.1963 and 05.09.1928 and accordingly allowed the I.A. and the said order passed by the learned District Judge does not suffer from any procedural irregularities or illegalities warranting interference in this revisional jurisdiction.

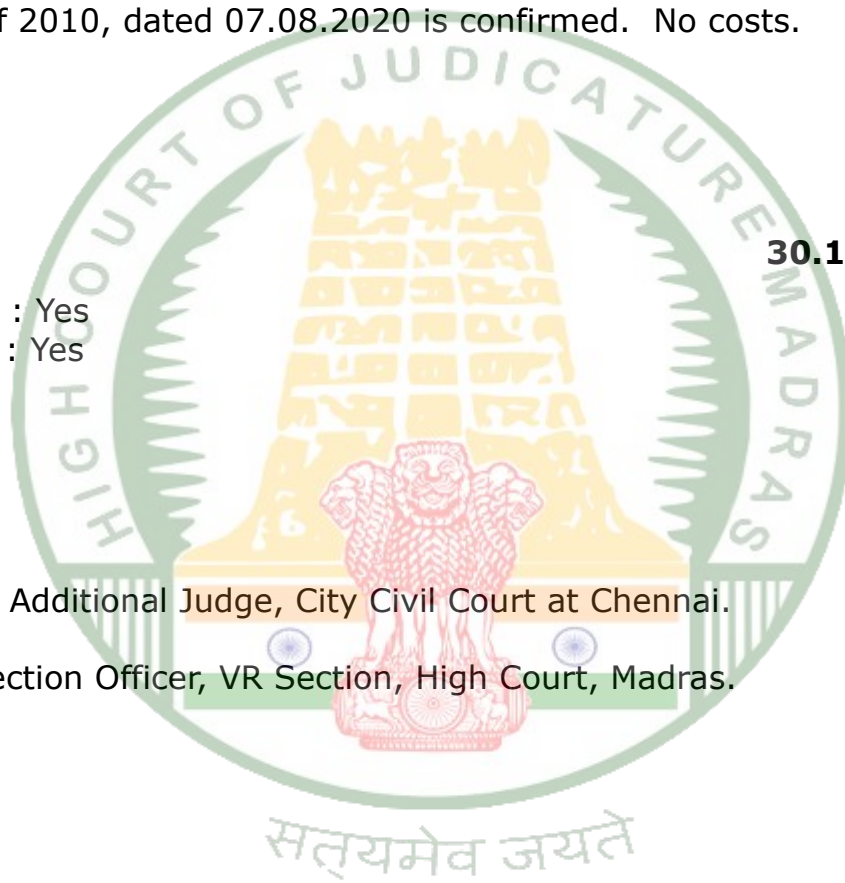
20. In this view of the matter, the Civil Revision Petition stands dismissed and the order passed by the learned V Additional Judge, City Civil Court at Chennai in I.A.No. 1 of 2019 in O.S.No. 11864 of 2010, dated 07.08.2020 is confirmed. No costs.

30.12.2020

Index : Yes
Internet : Yes
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To

- 1.The V Additional Judge, City Civil Court at Chennai.
- 2.The Section Officer, VR Section, High Court, Madras.



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CRP.(PD).No.2182 of 2020

RMT.TEEKAA RAMAN. J.

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Pre-Delivery Judgment
in
CRP.(NPD).No.2182 of 2020

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