



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

O.S.A.Nos.179 of 2019 and C.M.P.No.15790 of 2019

David Tyagaraj ... Appellant

-Vs-

1.Dr.Daphne Dilip James
2.Dr.Karthik Selvakumaran
3.Dr.Sangeetha Selvakumaran ... Respondents

Prayer : Appeals under Clause 15 of the Letters Patent against the order of this Court dated 26.02.2019 passed in A.No.6428 of 2018 in C.S.No.968 of 2017.

Prayer in A. 6428 of 2018 : Application praying to reject the plaint under order VII Rule ii(a) and (d) of the C.P.C.

Prayer in C.S. 968 of 2017: Plaint filed under Order IV Rule 1 of O.S.Rules Read with order VII, Rule 1 of the C.P.C to grant a preliminary decree for partition of 1/3rd share to the 1st plaintiff and 1/3rd share jointly to the plaintiffs 2 and 3 and thereafter pass a final decree by appointing an Advocate Commissioner to divide the plaint schedule property into 3 equal shares and allot one such share to the 1st plaintiff and 1 such share jointly to the plaintiffs 2 and 3 by demarcating the same by metes and bounds, directing the defendant to pay costs of the suit; and grant such other relief or reliefs of the Honourable Court may deem fit.

For Appellant : Mr.Venkatesh V.S.

For Respondents: Mr.C.Jagadish

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

This Original Side Appeal has been filed by the defendant David Tyagaraj S/o Muthusamy Masilamani Tyagaraj, aggrieved by the order dated 26.02.2019, whereby the learned Single Judge dismissed the application under Order 7 Rule 11 of C.P.C., filed by the defendant seeking rejection of the plaint. The



"6. In view of the above said categorical pronouncements, it is seen that the plaint cannot be rejected as barred by limitation unless it appears from the avements with the plaint that it is barred by limitation. A reading of the plaint in the case on case on hand does not lead to the conclusion that the same is barred by limitation. The contents of the reply notice cannot be looked into while dealing with an application under Order VII Rule 11. In view of the same, the application stands dismissed."

3. Per contra, learned counsel for the plaintiff supported the impugned order and submitted that the present appeal deserves to be dismissed.

4. Having heard the learned counsel for the parties, we are of the clear opinion that there is no error in the order of the learned Single Judge as the question of limitation is always a mixed question of law and facts, which requires to be decided upon issue being framed. Merely giving a notice and reply thereof does not render the suit for partition barred by limitation ex-facie and therefore, the learned Single Judge was right in holding that it is a mixed question of law and facts and it has to be decided by way of framing of issues.

5. The appeal is devoid of any merits and deserves to be dismissed and the same is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Assistant Registrar

```
//True Copy//
```

Sub Assistant Registrar

KST



TO

The Sub Assistant Registrar (O.S),
High Court, Madras.

WEB COPY

+1cc to Mr.V.S.Venkatesh Advocate, S.R.No. 20735

O.S.A.No.179 of 2019

SSV(CO)
GN(01/07/2020)