Application No.7495 of 2019
in
C.S.No.829 of 2018

Senthilkumar Ramamoorthy,J

This application is filed to reject the plaint in C.S.No.829 of 2018.

2. I heard the learned counsel for the applicant/first defendant and the learned counsel for the respondents/plaintiffs.

3. The learned counsel for the applicant submitted that the plaint is liable to be rejected because the cause of action is illusory and the suit is barred by law. In support of the submissions, the learned counsel contended that the suit schedule properties were purchased by the applicant's late father Mr.S.P.Thangarajan. He further submitted that these suit properties were either settled or transferred during the lifetime of the father. By referring to paragraph Nos.6, 7, 8 and 9 of the plaint, the learned counsel contended that a plain reading of these paragraphs would disclose that the transactions that are challenged in the suit occurred many years ago and during the life time of the father. For example, with

reference to schedule 'A' of the suit schedule property, she pointed out that settlement deeds were executed as early as on 5/3/2007. Likewise, with regard to schedule 'B' of the suit schedule property, she submitted that a settlement deed was executed on 5/3/2007 and it was settled in favour of the first defendant with an absolute estate to the grand sons. Schedule 'C' of the suit property was also settled in favour of the first defendant, under a settlement deed, dated 5/3/2007 and thereafter, transferred under a sale deed, dated 11/9/2008.

4. On the above basis, the learned counsel submitted that the plaintiffs do not have a cause of action against the applicant/first defendant. She also pointed out that all these transactions took place many years ago and that, therefore, the suit is also barred by limitation.

5. In response, the learned counsel for the respondents/plaintiffs submitted that it is admitted in the affidavit in support of the application at paragraph No.2 that the suit schedule properties are Hindu joint family properties. He also referred to paragraph 16 of the plaint to contend that the plaintiffs are claiming a right, title and interest in the suit schedule properties under the Hindu Succession Act, including in the capacity of coparceners under the amended Section 6 thereof. Therefore, he

contended that the transfer of these properties under settlement deeds or sale deeds is illegal, null and void and the plaintiffs had the option of disregarding such conveyances but instead sued for partition and also prayed that the impugned transactions should be declared as null and void. With reference to the specific grounds on which this application has been filed, he pointed out that the plaint cannot be rejected for deficiency in Court fee because Order 7 Rule 11 (b) (c) do not apply to suits before Chartered High Courts by virtue of Order 49 Rule 3 of C.P.C. He also pointed out that the suit is primarily for partition and mesne profits and therefore, limitation does not apply.

6. In support of his submissions, he referred to and relied upon the judgment of the Hon'ble Supreme Court in ***MADHAV PRASAD AGGARWAL AND ANOTHER Vs. AXIS BANK LIMITED AND ANOTHER {(2019) 7 SCC – 158}***, wherein, the Hon'ble Supreme Court held at paragraph Nos.10 and 12 that a plaint cannot be rejected in part.

7. He also relied upon the judgment of this Court in ***SELVI DURAISWAMY AND 2 OTHERS VS. R.SANTHANAM AND TWO OTHERS {(2017) SCC On line Madras - 29050}***, wherein, at paragraph Nos.29 and 30, this Court held in the context of coparcenary property, that the

settlement deeds executed after 20/12/2004 would not be protected. It was further held therein that in such a situation, it cannot be contended that the suit is barred by limitation and that at best ouster could be pleaded.

8. The last judgment that was relied upon by him is the order of this Court in ***UMA KUMAR VS. B. MURUGESWARAN AND SIX OTHERS {Application No.2996 of 2015 in C.S.No.837 of 2014}***, wherein this Court discussed the entire law with regard to rejection of plaint.

9. By way of rejoinder, the learned counsel for the applicant submitted that the plaintiffs did not plead in the plaint that the suit schedule properties are coparcenary properties. She further submitted that the plaint is liable to be rejected by reference to Section 47 of the Registration Act and Sections 91 and 92 of the Evidence Act.

10. I considered the submissions of the learned counsel for the respective parties and examined the plaint and the affidavit in support of the application.

11. The first contention which is required to be examined is whether the plaint is liable to be rejected because it is barred by

limitation.

12. It is the settled legal position that an application under Order 7 Rule 11 should be decided entirely with reference to the averments in the plaint. In this case, the plaint discloses that the plaintiffs are the wife and daughters of the erstwhile head of the family, viz., the late S.P.Thangarajan, who admittedly built the business from which properties were purchased.

13. The case of the plaintiffs appears to be that all the suit schedule properties are properties purchased either independently or jointly with the funds provided by the late S.P.Thangarajan. Consequently, the members of the plaintiffs family are entitled to these properties. On this basis, the suit is laid for partition of the suit schedule properties and for consequential orders such as rendition of accounts and mesne profits. In view of the fact that various conveyances have taken place with regard to the suit schedule properties, consequential declaratory prayers have been made to declare those documents as null and void and not binding on the plaintiffs.

14. On perusal of the plaint, it is not possible to conclude that

the plaintiffs do not have a cause of action to maintain the suit either as coparceners, as per amended Section 6 of the Hindu Succession Act or otherwise. As regards limitation, in a suit for partition, it cannot be contended that the suit is barred by limitation. As regards the declaratory prayers in respect of specific sale deeds, once again these are consequential remedies on the basis that the transferor did not have the right to transfer the property. Therefore, it cannot be concluded at this juncture that the suit is barred by limitation. In this connection, it is pertinent to mention that limitation is a mixed question of fact and law and a definitive determination cannot be made at the rejection of plaint stage, unless the suit is self-evidently barred on the basis of admitted facts.

15. The contention of the learned counsel for the applicant that the plaint is liable to be rejected on account of Section 47 of the Registration Act and Sections 91 and 92 of the Evidence Act are also not tenable. These provisions may have a bearing at the time when evidence is recorded and thereafter, at the time of final disposal. However, neither Section 47 nor Section 91 and 92 of the Evidence Act are material for the purposes of deciding whether the plaint should be rejected as being barred by law.

16. In view of the foregoing analysis, I conclude that this application is liable to be rejected. Accordingly, the **application to reject the plaint is dismissed.**

3/2/2020

mvs.

Senthilkumar Ramamoorthy,J

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