



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P. (PD) (MD)No.693 of 2017

and

C.M.P. (MD) .No.3125 of 2017

Kathoos Beevi

... Petitioner/Petitioner/1st Defendant

Vs.

1.Mohamed Abdullah

... Respondent/Respondent/Plaintiff

2.Thenmoli

... Respondent/Petitioner/2nd Defendant

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the District Munsif, Aranthangi in I.A.No.190 of 2016 in O.S.No.71 of 2014.

For Petitioner : Mr.K.Baalasundharam

ORDER

This Civil Revision Petition is filed against the order dated 22.12.2016, passed in I.A.No.190 of 2016 in O.S.No.71 of 2014, by the learned District Munsif, Aranthangi.

2.The first respondent herein, who is the plaintiff has filed a suit in O.S.No.71 of 2014 before the District Munsif Court, Aranthangi for bare injunction. After serving of the summons, the petitioner/1st defendant has filed an application in I.A.No.190 of 2016 before the trial Court under Order VII Rule 11 of C.P.C., to reject the plaint on the ground that the suit is barred by limitation. The trial Court, after going through the materials, dismissed the said application. Challenging the said order of dismissal, the petitioner/1st defendant is before this Court.

3.The learned counsel for the petitioner would submit that the suit is barred by limitation. The learned Trial Judge has failed to consider the defence taken by the defendants, even the averments of the plaint itself shows that the first respondent/plaintiff averred that the suit is barred by limitation. The learned Trial Judge has failed to consider the averments made by the plaintiff especially in para No.3 of the plaint and dismissed the application on the ground that the question of limitation is not purely question of law and it is only a mixed question of law and facts, which has to be established only after the trial. Therefore, the order of the trial Court warrants interference by this Court.



4.The learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **RAGHWENDRA SHARAN SINGH V. RAM PRASANNA SINGH(DEAD) BY LRS.**, reported in **2019 (2) CTC 823**. The averments of the plaint itself stated that the cause of action is barred by limitation and that the Court can reject the plaint under Order VII Rule 11 of C.P.C., whereas, the said decision is not applicable to the present case.

5.Heard the learned counsel for the petitioner and perused the materials available on record.

6.It is a settled proposition of law that at the time of deciding the application filed under Order VII Rule 11 of C.P.C., the Court has to see the averments made in the plaint and document filed thereon and not the defence taken by the defendant. Though the learned counsel for the petitioner would submit in para No.3 of the plaint, the plaintiff himself has admitted that the documents stated to have been forged, whereas, the suit is of the year 2014 and therefore, it is clearly barred by limitation. Therefore, the averments made in the plaint itself clearly shows that the suit is barred by limitation, the trial Judge failed to note it.

7.On going through the averments made in the plaint, especially in para No.3 of the plaint, it is seen that only based on the forged document, the defendants have obtained the revenue records in the year 2012 and nowhere stated that they were aware of the forged document obtained in the year 2018. The said issue is to be decided only after the trial. Therefore, as already stated that at the time of deciding the application, the Court has to see the averments made in the plaint and not the defence taken by the defendant.

8.Under these circumstances, this Court does not find any merit in the order of rejection of the plaint by the Court below and there is no perversity in the order passed by the Court below. Hence, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

The District Munsif,
Aranthangi.

WEB COPY

Copy to : The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

AKM/19.05.2020 /3P-3C/

C.R.P. (PD) (MD) No.693 of 2017
and
C.M.P. (MD) .No.3125 of 2017
04.03.2020