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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.No.1731 of 2019

and

CMP.No.11083 of 2019

[Video Conferencing]

1.Muthukumarasamy

2.Dhandapany

....Petitioners/Petitioners/Defendants

Vs.

1.S.Saravanan

2.S.Murugan

....Respondents/Respondents/Plaintiffs

Prayer:-

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 27.07.2018 passed by the II Additional District Judge at Puducherry in I.A.No.697 of 2015 in O.S.No.16 of 2015.

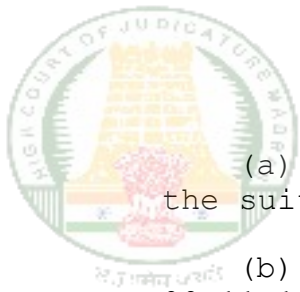
For Petitioners : Mr.Sai Srijan Tayi
for M/s.Giridhar and Sai

For Respondents : Mr.K.S.Karthik Raja,
for R1 and R2

ORDER

The present Civil Revision Petition is directed against the order dated 27.07.2018 made in I.A.No.697 of 2015 in O.S.No.16 of 2015 on the file of the II Additional District Judge at Puducherry.

2.The revision petitioners are the defendants in the suit in O.S.No.16 of 2015. The respondents 1 and 2 herein as plaintiffs filed the suit in O.S.No.16 of 2015 for the following reliefs:



(a).declaring that the plaintiffs are the absolute owners of the suit property;

(b).declaring that the registered settlement deed dated 09.11.1989 (Doc No.1034/1989) executed by Vimalambalammal and Jaya @ Jayalakshmiammal in favour of the first defendant, Muthukumarsamy before the Office of the Sub-Registrar, Thirukannur is null and void and non-est in the eye of law and and not binding on the plaintiffs, as they are not parties to the deed;

(c).for consequential permanent injunction as against the defendants, their men, agents or anyone claiming under them from making any interference into the plaintiffs peaceful possession and enjoyment over the suit property.

3.The revision petitioners/defendants also filed a detailed written statement. After filing the written statement, they also filed an application in I.A.No.697 of 2015 under Order 7 Rule 11 CPC for rejection of plaint in O.S.No.16 of 2015. The application was filed mainly on the ground that the suit in hopelessly barred by limitation.

4.It is seen from the affidavit filed in support of the petition filed under Order 7 Rule 11 CPC that several details have been given. It is stated that the predecessors in interest of the plaintiffs had challenged the order passed by the Executing Court and that the Predecessors in title of the present plaintiffs did not file the suit at the appropriate time, even though they were advised by the Executing Court to approach the Civil Court to establish their title independently. The petitioners/defendants had narrated several dates and events involving several transactions.

5.It is not the case of the revision petitioners that the suit can be dismissed based on the averments in the plaint. Order 7 Rule 11 CPC reads as follows:

11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and



the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

From the express language of Order 7 Rule 11(d) CPC, this Court is of the view that the petition under Order 7 Rule 11(d) CPC cannot be decided on the basis of the written statement filed by the defendants or the facts supplemented by the defendants in the petition. It has been repeatedly held that the petition for rejection of plaint under Order 7 Rule 11(d) CPC should be based on the averments made in the plaint.

6. In that view of the matter, this Court is unable to entertain the Civil Revision Petition which was against the order dismissing the petition filed by the revision petitioners under Order 7 Rule 11 CPC. It has to be noted that the petitioner has raised the plea of limitation which is always a mixed question of law and facts. Even in this case, for instance, the petitioner can ultimately succeed, if he establishes that the cause of action of the suit arose long back and that the suit is barred by limitation. Placing reliance on certain facts and events which are not in the plaint, the petitioner cannot succeed in his plea that the plaint should be rejected as barred by limitation.

7.1. In the decision of the Hon'ble Supreme Court made in the case of Salim D. Agboatwala and others v. Shamalji Oddhavji Thakkar and others reported in 2021 SCC Online SC 735, the Hon'ble Supreme Court has held as follows:-

"10. Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasis



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that limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.

11. The above averments may or may not be true. But if the plaintiffs succeed in establishing the above averments, the issue of limitation cannot be put against the plaintiffs. Generally a party, who never had any notice of a particular proceeding before a quasijudicial authority, is entitled to approach the Court upon gaining knowledge of the proceedings. Limitation cannot be put against such a party.

12. We are not dealing here with a case where notices were ordered to be issued, but were not or could not, be served on necessary and proper parties. We are dealing with a case where the plaintiffs assert in no uncertain terms that notices were never ordered to them nor served on them. Therefore, the answer to the issue regarding limitation, will depend upon the evidence with regard to the issuance and service of notice and the knowledge of the plaintiffs. Hence, the Trial Court as well as the High Court were not right in rejecting the plaint on the ground of limitation, especially in the facts and circumstances of this case.

13. As observed by this Court in P.V. Guru Raj Reddy vs. P. Neeradha Reddy And Others, the rejection of plaint under Order VII Rule 11 is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order VII Rule 11.

14. Again as pointed out by a three member bench of this Court in Chhotanben vs. Kiritbhai Jalkrushnabhai Thakkar², the plea regarding the date on which the plaintiffs gained knowledge of the essential facts, is



crucial for deciding the question whether the suit is barred by limitation or not. It becomes a triable issue and hence the suit cannot be thrown out at the threshold.

15. Referring to a few averments contained in the plaint, it is contended by the learned counsel for the respondents that the appellants had constructive notice of the proceedings under Section 32G and the sale certificate issued under Section 32M. In support of such a plea, the learned counsel relies upon the following decisions, Ram Niwas (Dead) vs. Bano (Smt.) & Ors.; Rajasthan Housing Board vs. New Pink City Nirman Sahakari Samiti Limited & Anr.; Murlidhar Bapuji Valve vs. Yallappa Lalu Chaugule; Parvathathammal vs. Sivasankara Bhattar And Others.

16. But a defendant in a suit cannot pick up a few sentences here and there from the plaint and contend that the plaintiffs had constructive notice of the proceedings and that therefore limitation started running from the date of constructive notice. In fact, the plea of constructive notice is raised by the respondents, after asserting positively that the plaintiffs had real knowledge as well as actual notice of the proceedings. In any case, the plea of constructive notice appears to be a subsequent invention."

7.2. In the decision of the Hon'ble Supreme Court made in the case of Shakti Bhog Food Industries Ltd. v. Central Bank of India and another reported in 2020 (5) MLJ 502 SC, the Hon'ble Supreme Court had an occasion to deal with the scope of Order 7 Rule 11 CPC, particularly with reference to sub-rule (d) of Rule 11 of Order 7 CPC. When a petition is filed under Order 7 Rule 11 CPC on the ground that the suit is barred by law of limitation, the Hon'ble Supreme Court held that the issue should be considered purely on the basis of what is stated in the plaint and not on the basis of the information furnished or supplemented by the defendants either in the written statement or in the application filed under Order 7 Rule 11 CPC. Further, it is reiterated that the plea of limitation is a mixed question of fact and law and that the Court cannot consider the plea of limitation in a petition filed under Order 7 Rule 11 CPC, if the plaint disclose the cause of action and the plaint averments save the period of limitation.

8. In similar circumstances where the plea was that the suit is barred by limitation, it has been held in several decisions that the issue should always be decided after full trial.

9. For the aforesaid reasons, this Court is not inclined to entertain the Civil Revision Petition and hence, the Civil



Revision Petition is dismissed. However, it is open to the revision petitioners to approach the Trial Court for framing necessary issues on the question of limitation and proceed further. Connected miscellaneous petition is closed. No costs.

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Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To:

II Additional District Judge,
Puducherry.

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GSM(CO)
SU(15/12/2021)