

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.1375 of 2018  
and CMP.No.7394 of 2018

E.R.Joteeswari

..Petitioner

Vs.

E.R.Ravichandran

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order in IA.No.72 of 2017 in OS.No.55 of 2016 on the file of the Court of the Principal District Munsif at Gobichettipalayam dated 06.01.2018.

For Petitioner : Mr.V.Lakshmi Narayanan

For Respondent : Mr.N.Manokaran

**ORDER**

This Civil Revision Petition is filed against the order and decretal order in IA.No.72 of 2017 in OS.No.55 of 2016 on the file of the Court of the Principal District Munsif at Gobichettipalayam dated 06.01.2018, thereby dismissing the petition filed for rejection of plaint.

2. The petitioner is the third defendant and the respondent is the plaintiff. The respondent filed suit for declaration declaring that the settlement deed dated 22.07.1994 as null and void and also for partition in respect of the suit property. While pending the suit, the petitioner filed petition for rejection of plaint on the ground that the suit itself is barred by limitation and also the plaint was not properly valued and paid insufficient court fees and the same was rejected. Aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioner would submit that the petitioner is the third defendant in the suit filed by the respondent for declaration and partition. The petitioner is the sister of the respondent. Originally the suit property belonged to their father and he derived the property by way of partition. He had three sons and two daughters. After his demise, three sons executed release deed in favour of their mother. Thereafter, their mother executed settlement deed in favour of the petitioner dated 22.07.1994 registered vide document No.90 of 1995. Thereafter, her mother cancelled the settlement deed unilaterally by the cancellation deed dated 14.09.2009 and registered vide document No.1492 of 2009.

Therefore, the petitioner challenged unilateral cancellation of the settlement deed dated 14.09.2009 before this Court in WP.No.17983 of 2011 and the same was allowed by order dated 01.03.2012. While allowing the writ petition, this Court observed that it is open to the respondent to challenge the gift deed in accordance with law before the civil court, if so advised. The respondent challenged the settlement deed dated 22.07.1994 by way of the present suit only in the year 2016 and therefore it is clearly barred by limitation under Article 59 of the Limitation Act.

3.1 He further submitted that the respondent paid insufficient court fees and it has to be paid. The settlement deed was executed on 22.07.1994 and on the date of settlement onwards, the petitioner is in possession and enjoyment of the entire suit property. While being so, the respondent has paid a sum of Rs.500/- only, valued the suit property at Rs.1,20,000/- as if he is in possession and enjoyment of the suit property. Without considering these facts and circumstances of the case, the court below dismissed the petition for rejection of plaint.

4. Per contra, the learned counsel for the respondent submitted that the property originally belonged to their father and he derived the same

by way of partition on 09.06.1950. After demise of their father, the three sons of their father executed release deed in favour of their mother i.e. Sarojini. In pursuant to the said release deed, she had executed settlement deed in favour of one of her daughter on 22.07.1994 and registered vide document No.90 of 1995. Since the property is ancestral property and derived by their father by way of partition, their mother decided to give equally to all the issues. Therefore, she cancelled settlement deed executed in favour of the petitioner by the cancellation deed dated 14.09.2009 vide document No.1492 of 2009. After period of two years, it was challenged by the petitioner before this Court in WP.No.17983 of 2011 and the same was allowed. However, the respondent was given liberty to challenge the settlement deed in the manner known to law before the civil court. Accordingly, the respondent filed suit challenging the settlement deed executed by his mother in favour of the petitioner dated 22.07.1994 and also prayed for partition in respect of the suit property. The plaint cannot be rejected on its threshold since the plaint has bundle of facts and it has to be decided only during the trial by let in evidence.

4.1 He further submitted that the plaint cannot be rejected on the question of limitation since the Hon'ble Supreme Court of India held that

the plaint cannot be rejected on the ground of limitation. The ground of limitation has to be gone into by trial and it has to be decided in the conclusion of the trial. He further submitted the respondent categorically explained in the plaint about the delay caused to him to file the present suit. His mother cancelled the settlement deed executed in favour of the petitioner on 14.09.2009 and the same was challenged by the petitioner before this Court and this Court allowed the writ petition on 01.03.2012. Therefore, only thereafter the respondent filed the present suit challenging the settlement deed dated 22.07.1994 as directed by this Court. It is categorically explained in the plaint as contemplated under Order 7 Rule 6 of CPC. In support of his contention, he relied upon the following judgments.

- (i) ***Vaish Aggarwal Panchayat Vs. Inder Kumar and others*** reported in **2020 (12) SCC 809**
- (ii) ***Shakti Bhog Food Industries Ltd. Vs. Central Bank of India and another*** reported in **2020(5) MLJ 502 (SC)**
- (iii) ***Urvashiben and another Vs. Krishnakant Manuprasad Trivedi*** reported in **2019(13) SCC 372**
- (iv) ***Pawan Kumar Vs. Babulal and others*** reported in **2019 (4) SCC 367**

(v) ***Thamma Venkata Subbamma Vs. Thamma Rattamma and others*** reported in **1987 (3) SCC 294**

(vi) ***Jagannath Amin Vs. Seetharama (dead) by LRS and others*** reported in **2007(1) SCC 694**

(vii) ***N.Mohan Vs. P.Govindasami and others*** reported in **2019 (4) CTC 856**

5. Heard, Mr.V.Lakshmi Narayanan, the learned counsel for the petitioner, and Mr.N.Manokaran, the learned counsel for the respondent.

6. The petitioner is the third defendant in the suit filed by the respondent for declaration declaring that the settlement deed dated 22.07.1994 as null and void and for partition in respect of the suit properties. While the respondent valued the suit property for a sum of Rs.1,20,000/- and paid a sum of Rs.500/- under Section 37 (2) of Tamil Nadu Court Fees and Suit Valuation Act, 1955.

7. The grounds raised by the petitioner for rejection of plaint under Order 7 Rule 11 (a) (b) and (d) of CPC are on two folds: (i) The plaint is liable to be rejected on the ground of barred by limitation under

Article 59 and 60 of Limitation Act. (ii) The plaint is not properly valued and paid insufficient court fees.

8. The respondent filed suit for declaration declaring that the settlement deed dated 22.07.1994 as null and void on 25.05.2016. Originally the suit property was derived by one, E.R.Ramasamy, who is none other than the father of the petitioner as well as the respondent herein by partition on 09.06.1950. He had three sons and two daughters along with wife. While being so, the sons of E.R.Ramasamy i.e. the respondent herein along with two brothers executed release deed dated 01.02.1980 and 22.09.1980 in favour of their mother. After demise of their father i.e. E.R.Ramasamy, their mother became absolute owner of the entire property and executed settlement deed in favour of the petitioner dated 22.07.1994 registered vide document No.90 of 1995. Subsequently, on 14.09.2009, the settlement deed dated 22.07.1994 was cancelled by the deed of cancellation by their mother i.e. Sarojini and the same was registered vide document No.1492 of 2009. It was challenged by the petitioner herein on the ground that her mother cancelled the settlement deed unilaterally and she is not party to the cancellation of settlement deed in WP.No.17983 of 2011. This Court allowed the writ petition and the deed of cancellation was quashed by

order dated 01.03.2012. While allowing the writ petition, this Court observed as follows:

*“14.However, it is made clear that this decision be not taken as upholding the Gift Deed executed in favour of the petitioner, as it will be open to the respondents to challenge the Gift Deed in accordance with law in the Civil Court, if so advised.”*

9. As observed by this Court, the respondent filed the present suit for declaration and partition. On perusal of the plaint, the respondent explained delay in filing the present suit challenging the settlement deed executed in favour of the petitioner. It revealed that the petitioner as well as the respondent along with other brothers convened panchayat through panchayatars in the month of June 2014 and demanded the petitioner for partition of the suit property into four equal shares by metes and bounds. Further, the petitioner attempted to alienate 2/3 of the property in which covered under gift settlement deed dated 22.07.1994 to the third parties. Therefore, immediately the respondent filed the present suit. The Hon'ble Supreme Court of India and this Court repeatedly held that the plaint cannot be rejected on the ground of limitation. When the plaint has mixed question of law and facts, it can be determined only after considering evidence.

Further, when the plaint read as whole discloses cause of action, the same cannot be rejected as clever and astute drafting and partial rejection of plaint is not permissible.

10. In support of his contention, the learned counsel for the respondent relied upon the judgment in the case of ***Vaish Aggarwal Panchayat Vs. Inder Kumar and others*** reported in **2020 (12) SCC 809**, wherein the Hon'ble Supreme Court of India held that the the suit could not be dismissed as barred by limitation without proper pleadings, framing of issue on limitation and taking evidence, for question of limitation is a mixed question of fact and law and on ex-facie reading of the plaint it could not be held that the suit was barred by time.

11. He also relied upon the judgment in the case of ***Shakti Bhog Food Industries Ltd. Vs. Central Bank of India and another*** reported in **2020(5) MLJ 502 (SC)**, wherein it is held as follows:

13. It is well established position that the cause of action for filing a suit would consist of bundle of facts.

Further, the factum of suit being barred by limitation,

ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order VII Rule 11 of the CPC is ruled out

12. He also relied upon the judgment in the case of **Pawan Kumar Vs. Babulal and others** reported in **2019 (4) SCC 367**, wherein it is held as follows:

“15.It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under O.VII R.11(d) of the CPC. Equally, it is well settled that for the purpose of deciding application filed under O.VII R.11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into.”

13. The above judgments are squarely applicable to the case on hand. Therefore, this Court is of the considered view that the merits and demerits of the plaint cannot be gone into at this stage while deciding the application filed under Order 7 Rule 11 of CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint, in the case on hand, it cannot be said

that the suit is barred by limitation. The issue raised by the petitioner is an issue which can be adjudicated after trial. There is inordinate delay and laches on the part of the respondent, and the same cannot be the ground for rejection of plaint under Order 7 Rule 11 (d) of CPC.

14. Insofar as insufficient court fee is concerned, the learned counsel for the respondent relied upon the judgment in the case of **Jagannath Amin Vs. Seetharama (dead) by LRS and others** reported in **2007(1) SCC 694**, wherein the Hon'ble Supreme Court of India held as follows:

*Reference was also made to the decision in **Neelavathi and Ors. v. N. Natarajan and Others** (AIR 1980 SC 691). In para 8 this court while considering the identical provision of the Tamil Nadu Court Fee and Suits Valuation Act, 1955 stated as follows:*

*"8. Section 37 of the Tamil Nadu Court Fees and Suits Valuation Act relates to Partition Suits. Sec. 37 provides as follows:*

*"37 (1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.*

*"37 (1) In a suit for partition and separate possession of joint family property or property owned, jointly or in common by a plaintiff who is in joint possession of such property, fee shall be paid at the rates prescribed."*

*It will be seen that the Court Fee is payable under Section 37 (1) if the plaintiff is "excluded" from possession of the property. The plaintiffs who are sisters of the defendants, claimed to be members of the joint family, and prayed for partition alleging that they are in joint possession. Under the proviso to Section 6 of the Hindu Succession Act, 1956 (Act 30 of 1956) the plaintiffs being the daughters of the male Hindu who died after the commencement of the Act, having at the time of the death an interest in the mitakshara coparcenary property, acquired an interest by devolution under the Act. It is not in dispute that the plaintiffs are entitled to a share. The property to which the plaintiffs are entitled is undivided 'joint family property' though not in the strict sense of the term. The general principle of law is that in the case of co- owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property*

*as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay court fee under Sec. 37 (1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been "excluded" from joint possession to which they are entitled to in law. The averments in the plaint that the plaintiff could not remain in joint possession as he was not given any income from the joint family property would not amount to his exclusion from possession. We are unable to read into the plaint a clear and specific admission that the plaintiff had been excluded from possession."*

15. The general principles of law is that in the case of co- owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay court fee under Sec. 37 (1) of the Act

on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been "excluded" from joint possession to which they are entitled to in law. The averments in the plaint that the plaintiff could not remain in joint possession as he was not given any income from the joint family property would not amount to his exclusion from possession. Therefore, the court below rightly dismissed the petition for rejection of plaint on these grounds.

16. In view of the above, this Court finds no infirmity or illegality in the order passed by the court below. Accordingly, the civil revision petition is dismissed. However, considering that the suit is of the year 2016, the trial court is directed to dispose of the suit within a period of twelve months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

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14.06.2021

Speaking/Non-speaking order

Index : Yes/No

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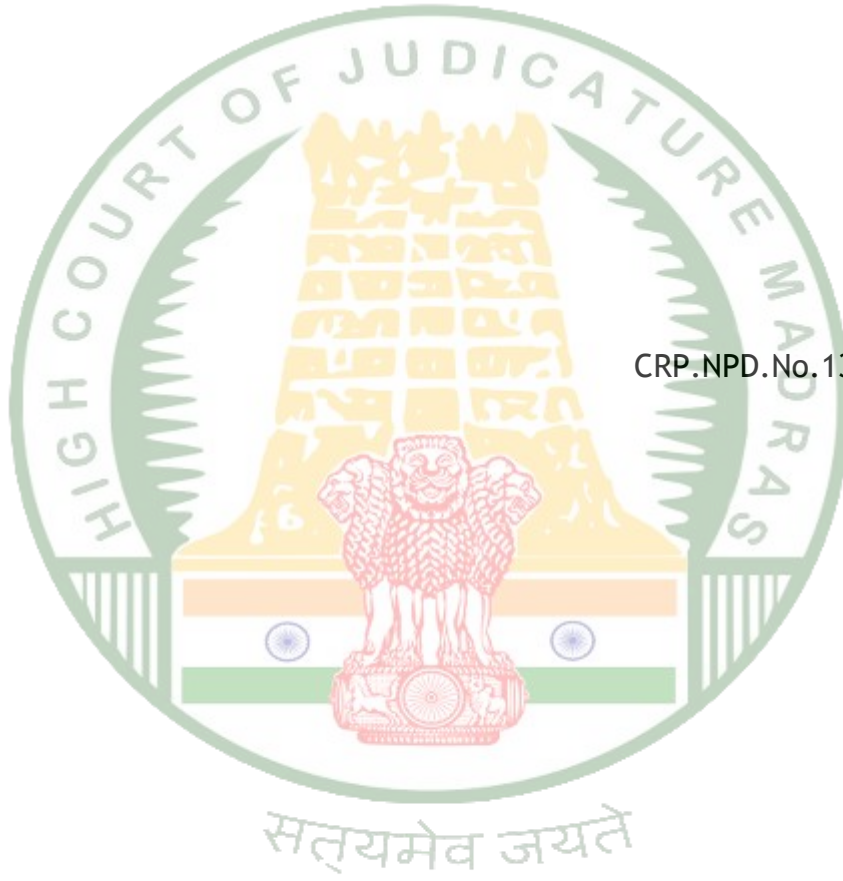
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**G.K.ILANTHIRAIYAN,J.**

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CRP.NPD.No.1375 of 2018

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14.06.2021