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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2021

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

S.A.No.410 of 2021

1. Ponnann
2. Manickam
3. Rajendran
4. Rajeswari
5. Vijaya
Savitha (died)
6. Vijayan

... Appellants/Plaintiffs

Vs.

1. Velmurugan
2. Sabarathinam
3. Suchitra
4. Elavarasan
5. Dhamodiran
6. Saravanan
7. Sathiyaraj
8. Karunagaran
9. Janaki
10. Gowramma
11. Navaneethammal

12. The District Registrar
District Registration Office
Vellore

13. The Sub Registrar, Office of the SRO
Nethaji Road, Ambur
Vellore Division

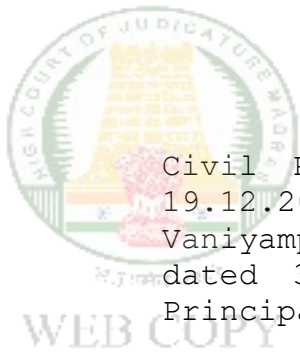
... Respondents 1 to 13/Defendants

Rathina Gounder (died)

14. Sulochana
15. Phandu
16. Rajendran

... Respondents

Second Appeal filed under Section 100 of the Code of



Civil Procedure to set aside the judgment and decree dated 19.12.2019 in A.S.No.56 of 2016 on the file of Sub Judge, Vaniyampadi, Vellore Dt., confirming the judgment and decree dated 31.03.2015 in O.S.No.145 of 2014 on the file of the Principal District Munsif, Ambur, Vellore District.

For Appellant : Mr.S.Kalyanaraman

JUDGMENT

Plaintiffs who were concurrently non-suited by the trial Court and the first Appellate Court are before this Court by way of captioned second appeal under Section 100 of 'The Code of Civil Procedure, 1908' ('CPC' for the sake of brevity). The life of this lis, as of today is more than half a decade as the plaint was presented in 'Principal District Munsif's Court, Ambur' (hereinafter 'trial Court' for the sake of brevity) on 25.09.2014 and the same was taken on file as O.S.No.145 of 2014.

2. The prayers in the plaint were inter alia for declaration of title and injunction qua suit property which is punjai agricultural lands. The defendants, who were served with suit summons, entered appearance through a counsel and filed a written statement dated 27.10.2014.

3. The plaintiffs' case is that one Seetharaman and one Lakshmanan (Seetharaman is father of plaintiffs 1 to 4, father-in-law of 5th plaintiff, grandfather of 6th plaintiff and Lakshmanan is father of 7th plaintiff) purchased the suit property from one Narayanasamy Chettiar under a sale deed dated 12.12.1939. There was some purported hindrance in 2014 from defendants qua suit property, there was exchange of legal notices and this is proximate cause of action for the suit is plaintiffs' case. The burden of song qua defendants pleading is, they do not dispute that the suit property was purchased by plaintiffs' ancestors Seetharaman and Lakshmanan on 12.12.1939 from one Narayanasamy Chettiar, but Seetharaman and Lakshmanan had on 11.01.1946 conveyed the suit property for valuable consideration to defendants' predecessor.

4. What is of utmost significance is, the plaintiffs did not choose to file a replication and refute the pleadings in the written statement.

5. To be noted, at the time of filing of the suit, the original 1939 sale deed and encumbrance certificate were sought



for, by way of objections for numbering the plaint, but the plaintiffs took the stand that it will be produced later.

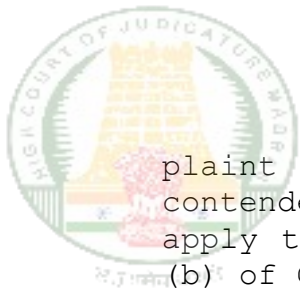
6. In the trial Court judgment, there is a reference to I.A.No.474 of 2014. Mr.Kalayanaraman, learned counsel on record for appellants submits that this interlocutory application is under Order VII Rule 11 of CPC for rejection of plaint, but the same is not before this Court. It may not be necessary to embark upon that exercise as trial Court has framed two preliminary issues, answered both the preliminary issues against the plaintiffs and non-suited the plaintiffs. Two preliminary issues turn on abuse of process of law and limitation.

7. Mr.Kalayanaraman, learned counsel appearing on behalf of the counsel for appellants submits that trial Court, while deciding the preliminary issues, has looked into the pleadings of the defendants without trial which is impermissible. Whether a trial Court can frame a preliminary issue on the abuse of process of law question is left open and this Court is of the view that captioned second appeal can be disposed of leaving open this question as limitation has been framed as the other preliminary issue. Limitation can certainly be framed as preliminary issue under Clause (b) of Sub-Rule (2) of Rule 2 of Order XIV of CPC i.e., Order XIV Rule 2(2)(b) of CPC, which reads as follows:

'(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.'

8. The trial Court has proceeded on the basis that the plaintiffs having not filed a replication to the plea that plaintiffs' predecessor under whom plaintiffs are claiming had sold the property to defendants under sale deed dated 11.01.1946, the plaintiffs also not having chosen to produce the Encumbrance Certificate, though specifically asked for (obviously if the Encumbrance Certificate had been produced, this sale deed would have been reflected in the same, but without going into that arena which may take us to arena of conjectures and surmises) noted that plaintiffs did not choose to file a replication. Therefore, prayer for declaration of title is clearly time barred is the finding returned by trial Court.

9. To be noted, in a Order VII Rule 11 CPC rejection of



plaint legal drill contra pleadings cannot be looked into as contended by learned counsel for appellants but that does not apply to deciding a preliminary issue under Order XIV Rule 2(2)(b) of CPC.

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10. When the plaintiffs carried the matter in appeal by way of a regular first appeal under Section 96 of CPC on the file of 'Subordinate Judge's Court, Vaniyambadi, Vellore District' (hereinafter 'first Appellate Court' for the sake of brevity) vide A.S.No.56 of 2016, first Appellate Court also dismissed the first appeal holding that answer to the preliminary issue given by the trial Court does not warrant interference.

11. The interesting aspect is, the plaintiffs had not taken any effort to bring before Court the Encumbrance Certificate though there is a specific pleadings by the defendants in the aforesaid manner. Even in the regular first appeal under Section 96 CPC, nothing prevented the plaintiffs from invoking Order XLI Rule 27 CPC and seeking to bring in the same as additional evidence. This was also not done. Therefore, inference drawn by the Courts below on limitation cannot be found fault with as limitation is a mixed question of fact and law and there is nothing demonstrable before this Court that the inference drawn by the Courts below and the findings returned by the Courts below warrant interference much less interference qua a legal drill under Section 100 CPC.

12. As the sale deeds are dated 12.12.1939 and 11.01.1946 (not disputed by replication) suit filed on 25.09.2014 is clearly barred by limitation and no elaboration qua Articles in Limitation Act is necessary.

13. In this regard, this Court reminds itself that a legal drill under Section 100 CPC turns of substantial question of law. The expression 'substantial question of law' occurring in Section 100 CPC is not defined in CPC, but it has been elucidatively explained in a long line of authorities starting from Rimmalapudi Subba Rao's case [Rimmalapudi Subba Rao Vs. Noony Veeraju And Others reported in AIR 1959 Madras 969]. This Rimmalapudi Subba Rao case, which was rendered by a Hon'ble Full Bench of this Court (Madras High Court) was affirmatively referred to by Hon'ble Supreme Court in another celebrated judgment in Sir Chunilal Mehta's case [Sir Chunilal V.Mehta and Sons Ltd., Vs. Century Spinning and Manufacturing Co. Ltd., reported in AIR 1962 SC 1314]. This is neatly captured in Santosh Hazari case [Santosh Hazari Vs. Purushottam Tiwari



(Deceased) by Lrs reported in (2001) 3 SCC 179] and the relevant paragraph is paragraph 12:

'12. The phrase "substantial question of law", as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying "question of law", means — of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with — technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. T. Ram Ditta [AIR 1928 PC 172 : 55 IA 235] , the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case as between the parties. In Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd. [AIR 1962 SC 1314 : 1962 Supp (3) SCR 549] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju [ILR 1952 Mad 264 : AIR 1951 Mad 969] :

"[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law."

and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial:



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"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."'

14. Very recently in Nazir Mohamed case [Nazir Mohamed Vs. J.Kamala reported in 2020 SCC OnLine SC 676], this position has been reiterated. The term 'substantial' prefixing 'question of law' has been explained and the expression 'involved in the case' has also been explained. This Court drawing inspiration from Nizar Ahmed case [Nazir Mohamed Vs. J.Kamala reported in 2020 SCC OnLine SC 676] and Santosh Hazari case holds that paramount overall consideration in a legal drill in a Section 100 second appeal is striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. In this case, latter prevails as there is no more prolongation of life of this lis, which commenced half a decade ago.

15. In the light of the narrative thus far, the two points for consideration which arise in the second appeal are:

'a) When limitation has been raised as a preliminary issue under Order XIV Rule (2)(2)(b) CPC can the Court look into contra pleadings of adversary to decide the preliminary issue?; and

b) Whether any substantial question of law arises in the case on hand?'

16. Limitation is a mixed question of fact and law, but limitation has to be examined even if it is not set up as a defence as per Section 3 of Limitation Act. The first point for determination cannot but be answered against the appellants as contra pleadings cannot be looked into only in plaint rejection legal drill under Order VII Rule 11 CPC and legal drills akin to such applications, but that does not apply to a Order XIV Rule (2)(2)(b) exercise. With regard to the second point for determination regarding substantial question of law, this has



been explained by long line of authorities the same is instructive as already alluded to supra and if those determinants and concomitants are applied, it follows as an inevitable sequitur that no substantial question of law arises in the case on hand as nothing debatable, nothing res integra or nothing that demonstrates that a settled principle has been disregarded arises in the case on hand. Therefore, this Court following Kirpa Ram principle [Kirpa Ram Vs. Surendra Deo Gaur and others reported in 2020 SCC Online SC 935], deems it appropriate to dismiss the captioned second appeal at the admission stage holding that no substantial question of law arises.

Considering the nature of the matter and considering the nature of submissions made before this Court, this Court deems it appropriate to say that there shall be no order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

Gpa

To

1. The Sub Judge, Vaniyampadi
Vellore District
2. The Principal District Munsif,
Ambur, Vellore District

+1cc to Mr.S.Kalyanaraman, Advocate SR.No.26128

S.A.No.410 of 2021

BS (CO)
GN(22/11/2021)