

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM

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

C.R.P.(PD) No.1542 of 2016
and C.M.P.No.8378 of 2016

R.Sarojini Ammal Petitioner

Vs.

1. Prabakaran Reddiar
2. Radha Krishna Reddiar
3. Valli
4. Dharanibai
5. Jothi @ Senthilkumar
6. Logamanikandan

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the constitution of India, to set aside the fair and decreetal order dated 13.10.2015 passed in I.A.No.276 of 2014 in O.S.No.42 of 2013 on the file of the District Munsif Court, Tindivanam.

For Petitioner : Mr.V.Chandra Prabu

For Respondents

For R1 & R2 : Mr.Desingu

For Mr.S.Dawoodkhan

R3 to R6 : Given up

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 13.10.2015 passed by the learned District Munsif, Tindivanam, in I.A.No.276 of 2014 in O.S.No.42 of 2013, thereby dismissing the petition filed by the petitioner for rejection of plaint on the ground of limitation.

2. The petitioner is the first defendant in the suit filed by the respondents 1 & 2 herein in O.S.No.42 of 2013, for declaration in respect of the suit property as well as the recovery of possession and for means profit. The case of the respondents 1 & 2 is that originally on 27.07.1966, the suit property was purchased by their mother on her behalf as well as the respondents 1 & 2, when they were minors. Thereafter their mother maintained the property. She became judgment debtor in the suit filed for recovery of money in O.S.No.788 of 1972, in which the suit property brought to auction.

3. In the auction sale, the father of the respondents 3 to 6 viz., Subramaniya Achari purchased the suit property in the year 1974. Thereafter the said Subramaniya Achari sold out the suit property in favour of the petitioner herein in the year 1994, vide registered sale deed dated 20.07.1994. In the year 2013, the respondents 1 & 2 filed suit for declaration of title in their favour and recovery of possession and also for mesne profit. Therefore the petitioner filed petition in I.A.No.276 of 2013 to reject the plaint in O.S.No.42 of 2013, on the ground that even according to the respondents 1 & 2, at the time of filing the suit, they were aged about 53 years and 51 years respectively. They might have attained majority in the years 1978 and 1980 respectively and the limitation for filing the suit is up to 1981 and 1983 respectively. However, the trial Court dismissed the above said petition as against which, the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner raised two grounds to reject the plaint as follows :- The first ground is that the suit is barred by law of limitation and the second one is that the suit itself is not maintainable, without the prayer of declaration declaring that the sale deed

executed in favour of the said Subramaniya Achari and the petitioner herein as null and void. The respondents 1 & 2 were obtained majority in the year 1978 and 1980 respectively. As per Article 60 of the Limitation Act, the limitation is three years from the date of attainment of majority, if the property purchased in the name of the minor.

5. In the case on hand, their mother purchased the suit property in the year 1966 and thereafter, it was subjected to the Court auction in the year 1974, in pursuant to the judgment and decree passed in O.S.No.788 of 1972. In the Court auction, the father of the respondents 3 to 6 purchased the suit property in the year 1974. In turn, he sold out the suit property in the year 1994 to the petitioner herein. Therefore, the limitation starts from their attainment of majority viz., 1981 and 1983 respectively. Whereas the said suit is filed in the year 2013. It relevant to extract the Article 60 of the Limitation Act as follows :-

60. *To set aside a transfer of property made by the guardian of a ward—*
(a) by the ward Three years. When the ward
who has attained attains majority.
majority;

(b) by the ward's legal representative—

(i) when the ward dies within three years from the date of attaining majority. Three years. When the ward attains majority.

(ii) when the ward dies before attaining majority. Three years. When the ward dies.

6. In support of his contention, the learned counsel appearing for the petitioners also relied upon the judgment reported in **(2019) 20 SCC 633** in the case of **Murugan and ors Vs. Kesava Gounder (died) through Lrs and ors**, in which the Hon'ble Supreme Court of India held as follows :-

"9. Article 60(b)(ii) refers to a suit when a ward dies before attaining majority. The present is a case where Palanivel died on 11.02.1986 before attaining majority, his date of birth being 16.07.1978, the limitation to avoid instrument made by guardian of the ward is 03 years from the death of ward when he dies before attaining majority. This Court had occasion to consider Articles 60 and 65 of the Limitation Act in reference to alienation made by a de-facto guardian of a minor. In the case of Madhukar

Vishwanath Vs. Madahav and Others, (1999) 9 SCC 446, the maternal uncle of the appellant has executed a sale deed. The appellant after becoming major on 22.08.1966 filed a suit on 07.02.1973 praying that transferors be required to deliver the possession of the property. On behalf of appellant, Article 65 was relied for the purposes of limitation. This Court held that it is Article 60 and not Article 65, which is applicable. Paragraph No. 4 and 5 of the judgment are relevant, which are quoted as below:-

“4. XXXXXXXXXX That the defendant, Baburao Madhorao Puranik, was the appellant’s de facto guardian had been established and, therefore, the disposal by him of the said property was void. Being void, it was open to the appellant to file the suit for possession of the said property and the period for limitation for such suit was prescribed by Article 65.

5.Even if the suit was entertained as pleaded, no decree for possession could have been passed without first finding that the alienation was not for legal necessity and was, therefore, bad in law. To such a suit the provisions

of Article 60 apply. Article 60 relates to a suit to set aside a transfer of property made by the guardian of a ward by the ward who has attained majority and the period prescribed is three years commencing on the date on which the ward attains majority.....”

.....
35. We are, thus, of the considered opinion that in the present case it was necessary for the person claiming through minor to bring an action within a period of three years from the date of the death of the minor to get sale deed executed by Balaraman set aside. We, thus, conclude that the sale deeds executed by Balaraman were not repudiated or avoided within the period of limitation as prescribed by law. Issue No.3 is answered accordingly."

The above judgment is squarely applicable to the case on hand and the limitation starts from the respondents 1 & 2 attainment of majority viz., from the year 1981 & 1983 respectively. Therefore, the suit itself is clearly barred by law of limitation.

7. Insofar as the next ground is concerned, on perusal of the entire

plaint revealed that the respondents 1 & 2 averred in the plaint that the property originally purchased by their mother in the year 1966. She was a judgment debtor and the suit property was brought for Court auction sale. In the Court auction sale, one Subramaniya Achari purchased the suit property in the year 1974. Thereafter, in the year 1994, the suit property purchased by the petitioner herein. After verification of encumbrance certificate, the respondents 1 & 2 came to knowledge about the above sale deed and Court auction sale. The property originally stands in the names of respondents 1 & 2 purchased on their behalf by their guardian namely their mother. Since the property purchased in the name of minors without any permission from the Court, the mother cannot sell the property.

8. Even then the respondents 1 & 2 failed to seek the prayer of declaration declaring that the Court auction sale and subsequent sale deed executed in favour of the petitioner herein as null and void. Without seeking those prayers, the respondents 1 & 2 cleverly asked for declaration in respect of the suit property in their favour. If the respondents 1 & 2 challenged those sale deeds, the suit itself barred by limitation, since the

sale deeds were executed in the year 1974 and 1994 respectively. Therefore, the respondents 1 & 2 cleverly omitted to seek the relief for declaring those sale deeds as null and void.

9. In this regard, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in **2019 SCC Online SC 372** in the case of **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (died) by LRs**, which held as follows :-

"29. At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial court.

30. Now, so far as the application on behalf of the original plaintiff and even the observations made by the learned trial court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence, is concerned, as observed and held by this Court in *Sham Lal* [*Sham Lal v. Sanjeev Kumar*, (2009) 12 SCC 454 : (2009) 4 SCC (Civ) 741] ; *N.V. Srinivasa Murthy* [*N.V. Srinivasa Murthy v. Mariyamma*, (2005) 5 SCC 548 : AIR 2005 SC 2897] as well as in *Ram Prakash Gupta* [*Ram Prakash Gupta v. Rajiv Kumar Gupta*, (2007) 10 SCC 59] , considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) CPC."

The above judgment is squarely applicable to the case on hand. The Hon'ble Supreme Court of India held that if the suit is clearly barred by law of limitation, the same can be rejected under Order 7 Rule 11(d) of C.P.C. In the case on hand, even from the averments made in the plaint, the suit itself

barred by limitation. The entire suit itself nothing but clear abuse of process of law and it cannot be sustained as against the petitioner. Therefore, the order passed by the trial Court is perverse and liable to be set aside.

10. Accordingly, the order dated 13.10.2015 passed by the learned District Munsif, Tindivanam, in I.A.No.276 of 2014 in O.S.No.42 of 2013 is hereby set aside and consequently the plaint in O.S.No.42 of 2013 is hereby rejected and this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.02.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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WEB COPY

G.K.ILANTHIRAIYAN, J.

rts

To

1. The District Munsif,
Tindivanam
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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