



C.R.P.(PD)No.3778 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3778 of 2016
and C.M.P.No.19254 of 2016

A.Rasheeda

.. Petitioner

Vs.

1.Velathal

2.Manonmani

3.K.Arunkumar Vignesh

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.07.2016 made in I.A.No.231 of 2015 in O.S.No.1583 of 2003 on the file of the II Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.R.Singaravelan, Senior Counsel
for M/s.Ojas Law Firm

For RR 1 to 3 : No appearance



C.R.P.(PD)No.3778 of 2016

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3. According to the petitioner, the suit is hit by principles of resjudicata as defendants 1 to 3 in the present suit earlier filed O.S.No.172 of 1991 on the file of the District Munsif Court, Coimbatore, against fourth defendant in the present suit and one Ajis. The petitioner and 8 others filed O.S.No.705 of 1991 on the file of the District Munsif Court, Coimbatore, against respondents 2 and 3 herein and defendants 1 to 3 in the present suit. The suit O.S.No.172 of 1991 filed by the defendants 1 to 3 was decreed and O.S.No.705 of 1991 filed by the petitioner and others was dismissed. Challenging the same, the petitioner filed two First Appeals A.S.Nos.49 and 50 of 1992 on the file of the II Additional Sub Court, Coimbatore. Both the appeals were allowed in favour of petitioner and others. In the appeals, the learned Judge upheld the contentions that the property given in lieu of maintenance enlarges into absolute estate, as contemplated under Section 14(1) of the Hindu Succession Act. In order to avoid that, the present suit may be hit by principles of resjudicata by the judgment in A.S.Nos.49 and 50 of 2012, the respondents 2 and 3 have cleverly added their mother-in-law as 1st



C.R.P.(PD)No.3778 of 2016

plaintiff in the present suit. However, the present suit is hit by principles of resjudicata insofar as respondents 2 and 3 are concerned. The plaint does not disclose cause of action, suit is barred by limitation, barred by law and prayed for rejection of plaint.

4.The respondents filed counter affidavit and denied all the averments in the affidavit filed in support of the present application and stated that the petitioner is claiming right only with regard to 'A' schedule property, but he seeks rejection of entire plaint with regard to 'B' and 'C' schedule properties also. The question of non-joinder of party cannot be decided in the application filed under Order VII Rule 11 of C.P.C. The suit is filed against 8 defendants. The petitioner is only one of the defendants in the present suit and he is not entitled to seek rejection of entire plaint. The respondents have disclosed cause of action in the plaint for filing the suit, question of limitation and non-impleading parties can be decided only after trial. The respondents are not parties to the maintenance deed dated 19.03.1941 and therefore, the same is not



C.R.P.(PD)No.3778 of 2016

binding on them. The defence taken by the petitioner cannot be considered in the application filed under Order VII Rule 11 of C.P.C. and prayed for dismissal of the said application.

5.Before the learned Judge, the petitioner did not let in any oral evidence, but marked 12 documents as Exs.P1 to P12. The respondents did not let in any oral and documentary evidence.

6.The learned Judge considering the averments in the affidavit, counter affidavit and the documents filed along with plaint, dismissed the application holding that plaint discloses cause of action, the suit is not barred by limitation, even question of limitation can be decided only during trial, the question of resjudicata is factual matter and only after examining the parties, question of resjudicata can be decided.

7.Against the said order of dismissal dated 20.07.2016 made in I.A.No.231 of 2015 in O.S.No.1583 of 2003, the petitioner has come out with the present Civil Revision Petition.



C.R.P.(PD)No.3778 of 2016

WEB COPY

8.The learned Senior Counsel appearing for the petitioner contended that suit is not maintainable and is vexatious suit. The application for rejection of plaint can be filed at any stage of the suit. The learned Judge erred in holding that suit is of the year 2003, the petitioner filed written statement in the year 2010 itself and filed application only in the year 2015. The learned Judge failed to see that respondents have not impleaded all the legal heirs of Ayyasamy Gounder as parties and erred in holding that issue of non-joinder of parties relates to merits of the case. The learned Judge failed to consider that present suit is hit by principles of resjudicata as in the earlier suits in A.S.Nos.49 and 50 of 2012, declaration of title of suit property was decided in favour of the petitioner. The learned Judge erroneously held that suit cannot be rejected under Order VII Rule 11 of C.P.C., on the ground of resjudicata and the same can be decided only after examining the parties. The judgment passed by the First Appellate Court in A.S.Nos.49 and 50 of 2012 has become final and the said judgment is judgment in rem and a right in rem cannot be challenged once again. The learned Judge failed to



C.R.P.(PD)No.3778 of 2016

see that respondents have colluded together and filed a vexatious suit relitigating the issue already decided by the First Appellate Court in A.S.Nos.49 and 50 of 2012. The learned Judge failed to see that the defendants 4 and 5 have become absolute owners of the suit property as per Section 14(1) of the Hindu Succession Act, which enlarges the title of defendants 4 and 5 as the property was given in lieu of maintenance. The respondents have filed present suit without clean hands. The learned Judge failed to consider the judgments relied on by the counsel for the petitioner and erroneously dismissed the application. The learned Senior Counsel in support of his contentions, relied on the following judgments and prayed for allowing the Civil Revision Petition.

(i) 1998 (II) CTC 537 (Nesammal and another vs. Edward and another);

“11. In view of all these decisions the argument of the counsel for the petitioners that unless the conditions are satisfied under Order 7, Rule 11 of Code of Civil Procedure, the plaint cannot be rejected is without any basis. The provisions of Order 7, Rule 11 are not exhaustive and the Court has got inherent



C.R.P.(PD)No.3778 of 2016

powers to see that the vexatious litigations are not allowed to take or consume the time of the Court. In appropriate cases, directions can be given by this Court as well as the Court in which the suit is filed not to entertain the suit, if on reading the allegations in the plaint it reveals that the same is abuse of process of law. In this case all the grounds are made out and the very same plaintiff who got defeated in the litigation has agitated the very same issue by filing the present plaint. I appreciate the stand taken by the lower court in rejecting the plaint at the threshold.”

(ii) (2008) 3 MLJ 371 (C.E.Sulochana and others vs.

C.E.Sathyannarayana Reddy);

“18.As noted earlier in the earlier suit in O.S.No.8620 of 1996 specific plea was raised that the property was the joint family property and not the absolute property of the first defendant. The specific issue was framed, viz., whether the suit is a joint family property?. By a plain reading of the written statement filed in O.S.No.8620 of 1996, it is evident that the character of suit property Item (1) was specifically



C.R.P.(PD)No.3778 of 2016

raised and therefore, it cannot be said that the finding in respect of Item (1) of the said issue is being incidental to the substantial issue. Even assuming that in the earlier suit the said issue was not directly and substantially in issue, the plaintiff having raised the said plea cannot re-agitate the same issue by putting the case in another way. The re-agitation may or may not be barred as resjudicata. But, if the same issue is sought to be re-agitated, it would amount to abuse of process of Court.”

(iii) 2015 (3) CTC 54 (Vasumathi H.Shah vs. Pushpa Raju);

“15.It is another submission of the learned counsel for the respondent/plaintiff that the plea of limitation is mixed question of facts and law and as such, the plaint cannot be rejected at the threshold stage and the same can be decided only at the time of trial. But, I am of the opinion that when it is apparently clear from the averments of the plaint that the suit has been filed beyond the period of limitation, the plaint could be rejected even at the threshold stage. In this regard, a reference could be placed in the decision reported in 2013(4) CTC 175 (M.Banupriya Vs.



C.R.P.(PD)No.3778 of 2016

M.Lakshmi and others), wherein it has been held as follows:

“37. But I am of the opinion that when it is apparently clear from the averments of the plaint that the suit has been filed beyond the period of limitation, then the plaint could be rejected even at the threshold stage. At this stage, it would be apt to rely on the judgment of the Hon'ble Apex Court reported in Hardesh Ores Pvt. Ltd., and another vs. Hede and Company 2007 (5) MLJ 187 (SC), gives a fitting answer for this issue and the relevant paragraphs are extracted hereunder:

"21. The language of Order VII Rule 11, C.P.C. is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr.Nariman did not dispute that "law" within the meaning of clause(d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. It is not



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C.R.P.(PD)No.3778 of 2016

permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in *Liverpool & London S.P.& I Association Ltd., .vs. M.V.Sea Success I and Another* (2004) 9 SCC 512 and *Popat and Kotecha Property v. State Bank of India Staff Association* (2005) 7 SCC 510".

38. A reading of the above paragraphs would show that when it is apparent from the averments made in the plaint and the materials that the suit is filed beyond the limitation period, then the same is liable to be rejected. As per the provisions under Order VII Rule 11(d), where the suit appears from the statement in the plaint to be barred by any law, then the plaint is liable to be rejected. The wordings 'any law' envisaged in Order VII Rule 11(d) includes law of limitation also. So far as the present case is concerned, as observed, the present suit has been filed after 11 years from the date on which she got knowledge about the purchase of 'C' schedule property by D3 from D2 as power agent of the plaintiff and seven years from the date on which D4 purchased 'B' schedule property from D1. Therefore, I am of the view that the suit is hopelessly barred by limitation. ..."



C.R.P.(PD)No.3778 of 2016

In the instant case, from the averments made in the plaint it is apparently clear that the suit filed by the plaintiff is hopelessly barred by limitation. Hence, the plaint is liable to be rejected under the provisions of Order VII Rule 11 of C.P.C.”

9.Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

10.Heard the learned Senior Counsel appearing for the petitioner and perused the entire materials on record.

11.From the materials on record, it is seen that the respondents have filed suit for declaration that the sale deeds dated 17.02.2003 executed by the defendants 4 and 5 in favour of the petitioner and defendants 7 and 8 as null and void and for other reliefs with regard to three properties described in the plaint schedule. The three sale deeds and three properties are the issues in the present suit. The petitioner is claiming that suit is hit by principles of resjudicata. As per Section 11 of C.P.C., a subsequent suit is hit by principles of resjudicata, only when the



C.R.P.(PD)No.3778 of 2016

party and issue in the earlier suit was decided on merits. To decide whether the parties and issues in both the suits are one and the same, the complaints in both the suits are to be considered. Before the learned Judge, the petitioner did not file complaints in earlier suits, but marked decree in the suit as well as in the First Appeals. Before this Court, in the additional typed set of papers, the petitioner filed copy of the complaints in the earlier suits. A reading of complaints in earlier suits and present suit reveal that parties are not one and the same. Further, issues involved in the earlier suit are only with regard to 'A' schedule property described in the present suit. The 'B' and 'C' schedule properties described in the present suit were not subject matter in the earlier suits. The reliefs sought for in the earlier suits as well as present suit are different. Therefore, the present suit is not hit by principles of resjudicata. In view of the same, the judgments relied on by the learned Senior Counsel appearing for the petitioner do not advance the case of the petitioner.

12. Though the petitioner raised averments in the affidavit as well as in the grounds of revision that complaint in the present suit does not



C.R.P.(PD)No.3778 of 2016

disclose cause of action, at the time of arguments, the learned Senior Counsel appearing for the petitioner has not pressed the said ground.

13.As far as limitation aspect is concerned, the respondents have stated that petitioner has purchased 'A' schedule property from defendants 4 and 5 by the deed of sale dated 17.02.2003 based on the maintenance deed dated 19.03.1941. In the same year of purchase by the petitioner, the respondents have filed present suit. In view of the same, the suit is not barred by limitation. Further, when the defendant satisfies any one of the ingredients under Order VII Rule 11 of C.P.C., entire plaint has to be rejected. A plaint cannot be rejected in an application filed under Order VII Rule 11 of C.P.C. in part and other part cannot be retained for trial. The petitioner having interest only with respect to 'A' schedule of property in the present plaint, cannot seek rejection of entire plaint. For the above reasons, this Court is of the view that there is no error or irregularity in the order of the learned Judge dismissing the application filed under Order VII Rule 11 of C.P.C. warranting interference by this Court.



C.R.P.(PD)No.3778 of 2016

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14.The learned Senior Counsel appearing for the petitioner submitted that the suit is of the year 2003 and prayed for speedy disposal of the suit. In the counter affidavit filed by the respondents in the present application, they have stated that some of the defendants were not served. Considering the submission of learned Senior Counsel appearing for the petitioner and averments in the counter affidavit, the learned Judge is directed to dispose of the suit in O.S.No.1583 of 2003 as expeditiously as possible, in any event, not later than, nine months from the date of receipt of a copy of this order.

15.In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.12.2021

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C.R.P.(PD)No.3778 of 2016

V.M.VELUMANI,J.

Kj

To

II Additional District Munsif
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C.R.P.(PD)No.3778 of 2016
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08.12.2021