

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**CRP (PD).No.2729 of 2018
and
CMP.No.16053 of 2018**

1. S.Karthik
2. Sumathi
3. S.Kaviya (Minor)
Rep.by its Guardian of mother Sumathi ... Petitioners

Vs.

Bagyalakshmi (Died)
1. Bagavathi
2. Pasupathy
3. Kalyani
4. Banu Vijayan
Samanna Died on 05.11.2014
Subbulakshmi (Died)
Sirpi Died on 10.09.2014
5. Sivabalan
6. Baskaran (adopted)
7. Sivashanmugam
8. Sindumathi
9. Chitra

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 18.04.2018 made in I.A.No.163 of 2018 in O.S.No.750 of 2007 and allow I.A.No.163 of 2018 in O.S.No.750 of 2007 on the file of the learned III Additional Subordinate Judge, Coimbatore.

For Petitioners : Mr.Silambanan
Senior Counsel for
M/s.Kaavya Silambanan Associates

For Respondents : Mr.D.Veerasekaran (for R1 to R4)
: Not Ready in Notice
(No Appearance) (for R5, R6 & R8)
: Notice Served (No Appearance)
(for R7 & R9)

ORDER

This Civil Revision Petition is filed as against the fair and decretal order passed in I.A.No.163 of 2018 in O.S.No.750 of 2007 dated 18.04.2018 on the file of the learned III Additional Subordinate Judge, Coimbatore, thereby dismissing the petition for rejection of plaint.

2. The petitioners are the defendants 9 to 11 and one deceased Bagyalakshmi and the respondents 1 to 4 are the plaintiffs. The plaintiffs

originally filed a suit for declaration to declare that they are the absolute owners of the suit schedule II property and to direct the defendants 1 to 4 to vacate and hand over the vacant possession of the suit schedule II property to them along with damages. After filing the written statement, the respondents 1 to 4/plaintiffs filed a petition for amendment to include the prayer for declaration to declare that the impugned sale deed dated 30.11.1979 registered vide document No.2128 of 1979 is null and void. When the suit was posted for further evidence of defendants, the petitioners/defendants 9 to 11 filed a petition for rejection of plaint and the same was dismissed and aggrieved by the same, the present Civil Revision Petition is filed.

3. Mr.Silambanan, learned Senior Counsel for the petitioners submitted that the petitioners filed a petition for rejection of plaint on two grounds viz., (i) The suit itself is barred by limitation. (ii) There is no cause of action to file the suit as against the petitioners. He further submitted that the case of the respondents 1 to 4/plaintiffs is that the suit property was in permissive possession by the petitioners. Whereas, in the amended plaint,

they stated that when one Pattammal was not in a state of sound mind, the alleged sale deed was said to have been executed by her on 30.11.1979 registered vide document No.2128 of 1979. The said Pattammal died in the year 1999. After a period of 20 years, the impugned suit has been laid seeking possession of the suit property, that too after a period of nearly 30 years from the date of sale deed. After the death of the said Pattammal, the respondents 1 to 4/plaintiffs permitted the petitioners/defendants 9 to 11 to reside in permissive possession and the deceased first defendant, who is grandfather of the first petitioner herein, has been paying monthly permission fee of Rs.500/- till revocation of the same. The learned Senior Counsel for the petitioners further submitted that no document was annexed with the plaint to that effect. Therefore, there is no cause of action to file the impugned suit. In fact, after purchase of the property from the said Pattammal, the first defendant had mutated the revenue records in the year 1980 itself. Thereafter, all the revenue documents were mutated in his name and after execution of the Will in favour of the petitioners herein, the revenue documents were mutated in favour of the petitioners herein. He further submitted that at any time before passing judgment, the petition can

be filed for rejection of plaint under Order 7 Rule 11 of the Civil Procedure Code. The respondents 1 to 4 cleverly drafted the plaint with the illusionary cause of action, as if the suit is filed within limitation, seeking prayer for declaration to declare that the suit property in their favour, as if they did not have knowledge about the sale deed executed by the said Pattammal in favour of the deceased first defendant. Therefore, the suit is clearly barred by limitation and there is no cause of action to file the present suit and prayed for rejection of the plaint. In support of his contentions, the learned Senior Counsel for the petitioners relied upon the judgments are as follows:-

- (i) Civil Appeal No.9519 of 2019 (***Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) (D)***)
- (ii) SLP (Civil) No.31844 of 2018 (***K.Akbar Ali vs. K.Umar Khan & Ors.***)
- (iii) Appl.No.97 of 2020 (***C.Durairaj vs. K.Baby.***)

4. Per contra, the learned counsel for the respondents 1 to 4 contended that the entire plaint averments are containing bundle of facts and issues and it cannot be rejected on its lemini. The suit was posted for

further evidence of the defendants and at that juncture, the present petition has been filed for rejection of plaint, that too without any grounds. Initially, the suit was filed for declaration to declare that the suit property in favour of the respondents 1 to 4 and recovery of possession. In the year 2008, the deceased first defendant filed a written statement alleging that the suit property was purchased by him by the sale deed dated 30.11.1979 vide registered document No.2128 of 1979 in the Sub Registrar Office, Periyannayakkampalayam for valid sale consideration. Immediately, the respondents 1 to 4 filed a petition seeking amendment to include the prayer for declaration to declare that the impugned sale deed dated 30.11.1979 vide document No.2128 of 1979 is null and void. The same was allowed in I.A.No.754 of 2010 by an order dated 16.10.2012. It was not challenged by the petitioners herein and after examining D.W.1, the petition for rejection of plaint has been filed by the petitioners herein.

5. He further submitted that the revenue documents were mutated only in the year 2014 in favour of the petitioners herein. Therefore, the veracity and genuinity of the sale deed in the year 1979 has to be decided

only during the trial by let in evidence. When the said sale deed was challenged in the suit, it cannot be rejected on its lemini. Further, the case of the respondents 1 to 4 is that when D.W.1 was examined and Ex.B.1 was marked, they came to understand about the sale deed itself is null and void. Therefore, they rightly amended the plaint to nullify the sale deed dated 30.11.1979. That apart, the suit cannot be rejected on the ground of limitation, since the limitation is bundle of facts and law and it cannot be rejected on the ground of limitation.

6. Heard the learned Senior counsel for the petitioners as well as the learned counsel for the respondents 1 to 4.

7. The petitioners are the defendants 9 to 11 and the respondents 1 to 4 are the plaintiffs. The respondents 1 to 4 filed the impugned suit for declaration to declare that they are the absolute owners of the suit schedule II property and to direct the defendants 1 to 4 to vacate and hand over the vacant possession of the suit schedule II property to them along with damages. The case of the respondents 1 to 4 is that the suit schedule I

Property originally belonged to one Subbaraya Gurukkal, who purchased the same by way of registered sale deed dated 16.11.1916 vide document No.2105 of 1916. The respondents 1 to 4 are the grand sons of Subbaraya Gurukkal. The said Subbaraya Gurukkal is the father of Subramania Gurukkal, who is none other than the father of the respondents 1 to 4 herein. After demise of the said Subbaraya Gurukkal, his sons viz., Krishnasamy Gurukkal and Subramania Gurukkal orally divided the suit schedule I property equally. The said Krishnasamy Gurukkal, died on 31.07.1970 before his demise, he executed a Will dated 31.05.1970 bequeathing his share in respect of the suit schedule II property in favour of his wife viz., Pattammal. The said Pattammal died intestate on 06.10.1999. The said Krishnasamy Gurukkal and Pattammal viz., paternal uncle and aunt of the respondents 1 to 4 had no issues. The father of the respondents 1 to 4 died in the year 1990. While the said Pattammal was alive, the deceased first defendant was permitted to reside in the suit schedule II property in permissive possession. After demise of the said Pattammal, the respondents 1 to 4 herein became the absolute owner of the said suit schedule II property, as class II heirs under the Hindu Succession Act. After the demise

of the said Pattammal, the respondents 1 to 4 also permitted the petitioners to continue to reside in the suit schedule II property in permissive possession. When the respondents 1 to 4 intended to do some repair work on the south western side of the roof of the properties of the respondents 1 to 4, the petitioners objected the same without any right over that property. Hence, the respondents 1 to 4 filed the suit with the above said prayer. Whereas, the case of the petitioners is that the said Krishnasamy Gurukkal viz., the paternal uncle of the respondents 1 to 4, bequeathed the suit property in favour of his wife viz., the said Pattammal by way of will 31.05.1970 and thereafter, he died on 31.07.1970. Thereafter, the said Pattammal sold the suit property in favour of the deceased first defendant by the registered sale deed dated 30.11.1979 vide document No.2128 of 1979 at the office of the Registrar, Perinayakkampalayam.

8. On receipt of the written statement, the respondents 1 to 4 filed a petition for amendment in I.A.No.30 of 2010 to implead the legal heirs of the deceased first defendant and the same was allowed. Thereafter, they also filed a petition in I.A.No.754 of 2010 to include the prayer for declaration

to declare that the sale deed dated 30.11.1979 registered vide document No.2128 of 1979 as null and void and not binding on the respondents 1 to 4 herein. It was allowed and the suit was tried for trial. After examining D.W.1, the petitioners filed a petition for rejection of plaint on the grounds of limitation and no cause of action.

9. Now, the point for consideration is that (i) Whether the suit is barred by limitation (ii) Whether there is any cause of action to file the present suit. Admittedly, the suit property was bequeathed by Krishnasamy Gurukkal by the registered Will dated 31.05.1970 in favour of his wife Pattammal. After execution of the said Will, he died on 31.07.1970. After his demise, the said Pattammal became absolute owner of the property. While she was alive, she executed the registered sale deed dated 30.11.1979 vide document No.2128 of 1979 in favour of the deceased first defendant. Therefore, after a period of 28 years from the date of sale deed, the present suit has been laid. That apart, after the sale deed, the entire revenue documents were mutated in the name of the deceased first defendant. Though, the respondents 1 to 4 herein had no knowledge about the sale

deed dated 30.11.1979, they filed a suit without even verifying the encumbrance certificate in respect of the suit property. Even according to the respondents 1 to 4, when they were intended to do some repair work on the south western side of the roof of the properties, the petitioners started objecting the same.

10. It is relevant to extract the portion of the cause of action in the impugned suit as follows:-

“12. Cause of action for the suit arose on 06.11.1916 when Subbaraya Gurukkal purchased the suit schedule I property under a registered sale deed, on subsequent several days when he was in possession and enjoyment of the same, in or about the year 1945 when Subbaraya Gurukkal died intestate, thereafter his sons Krishnasamy Gurukkal and Subramania Gurukkal have orally divided the suit schedule I properties equally and retained their respective portions under a family arrangement, on subsequent several days on 31.05.1970 when Krishnasamy Gurukkal executed a registered Will in favour of his

wife Pattammal, on subsequent several days on 31.07.1970 when Krishnasamy Gurukkal died, on subsequent several days when Pattammal was in possession and enjoyment of suit schedule II properties, thereafter Pattammal inducted the 1st defendant in permissive possession in suit schedule II property, on subsequent several days on 06.10.1999 when Pattammal died intestate and plaintiffs 2 to 5 became the absolute owner of the same as Class II heir under the Hindu Succession Act, thereafter when the plaintiffs permitted the 1st defendant to continue to reside in the suit schedule II property in permissive possession along with other defendants 2 to 4, two months ago when the defendants objected to the plaintiffs making repairs in their south western portion of the suit schedule I property, one month ago when the plaintiffs terminated the permission granted to the 1st defendant and demanded vacant possession of suit schedule II property, on subsequent several days at Sarkarsamakulam coming within the jurisdiction of this Court.”

11. The respondents 1 to 4 did not even whisper on what date repair

of the suit property was intended and what date they were prevented from doing repair work. Even according to them, while the said Pattammal was alive, the first defendant and others were permitted to take possession of the suit property in permissive possession.

12. In this regard, the learned Senior Counsel for the petitioners relied upon the judgment in Civil Appeal No.9519 of 2019 (***Dahiben vs.Arvindbhai Kalyanji Bhanusali (Gajra) (D)***) held that when the suit is barred by limitation under Rule 11 (d), the Court could not permit the plaintiff to unnecessarily protract the proceedings in the suit. In the case of *Azhar Hussain v. Rajiv Gandhi* 1986 Supp. SCC 315 held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the Court, in the following words:

“12.....The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles

need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

13. The Hon'ble Supreme Court of India further held that the power under Order VII Rule 11 of CPC may be exercised by the Court at any stage of the suit, either before registering the plaint or after issuing summons to the defendant or before conclusion of the trial as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra (2003) 1 SCC 557*. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious and an abuse of the process of the Court.

14. In the case on hand, as stated supra, the respondents 1 to 4 filed the suit after a period of 28 years from the date of sale deed. Even according to the respondents 1 to 4, the petitioners were in permissive occupation of the petition premises during the life time of the deceased Pattammal.

Therefore, the present suit is nothing but vexatious and an abuse of process of the Court. The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, the period of limitation prescribed in the schedule for suits for declaration under Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as follows:-

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
58. To obtain any other declaration	Three years	When the right to sue first accrues.
59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

Accordingly, the present suit is clearly barred by limitation.

15. The learned counsel for the respondents 1 to 4 submitted that the plaint discloses triable issues, and therefore, the plaint should not be

rejected at the initial stage.

16. When there is no cause of action to file the present suit, it cannot be allowed to continue. The respondents 1 to 4 have no cause of action as against the petitioners herein in respect of the suit property. Admittedly, when the paternal aunt of the respondents 1 to 4 was alive, the suit property was in permissive occupation of the petitioners herein. Therefore, after a period of 28 years, the present suit has been laid for recovery of possession. There is no whisper about the cause of action to file the present suit.

17. Therefore, considering the averments made in the plaint and the bundle of facts stated in the plaint, this Court is of the opinion that by clever drafting the respondents 1 to 4 have tried to bring the suit within the period of limitation which otherwise is barred by limitation. Therefore, considering the decision of *T.Arivandandam v. T.V.Satyapal & Anr (1977) 4 SCC 467*, the Hon'ble Supreme Court of India held that when the suit is clearly barred by law of limitation, the plaint is liable to be rejected in the exercise of

powers under Order VII Rule 11 CPC.

18. In view of the above, this Civil Revision Petition is allowed and the order passed in I.A.No.163 of 2018 in O.S.No.750 of 2007 dated 18.04.2018 is hereby set aside. The plaint in O.S.No.750 of 2007 is hereby rejected. Consequently, the connected Miscellaneous Petition closed. No costs.

26.07.2021

Speaking/Non-speaking order
Index : Yes/No
kv

To

1. The III Additional Subordinate Judge, Coimbatore.
2. The Section Officer,
V.R. Section, High Court of Madras.

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G.K.ILANTHIRAIYAN,J.

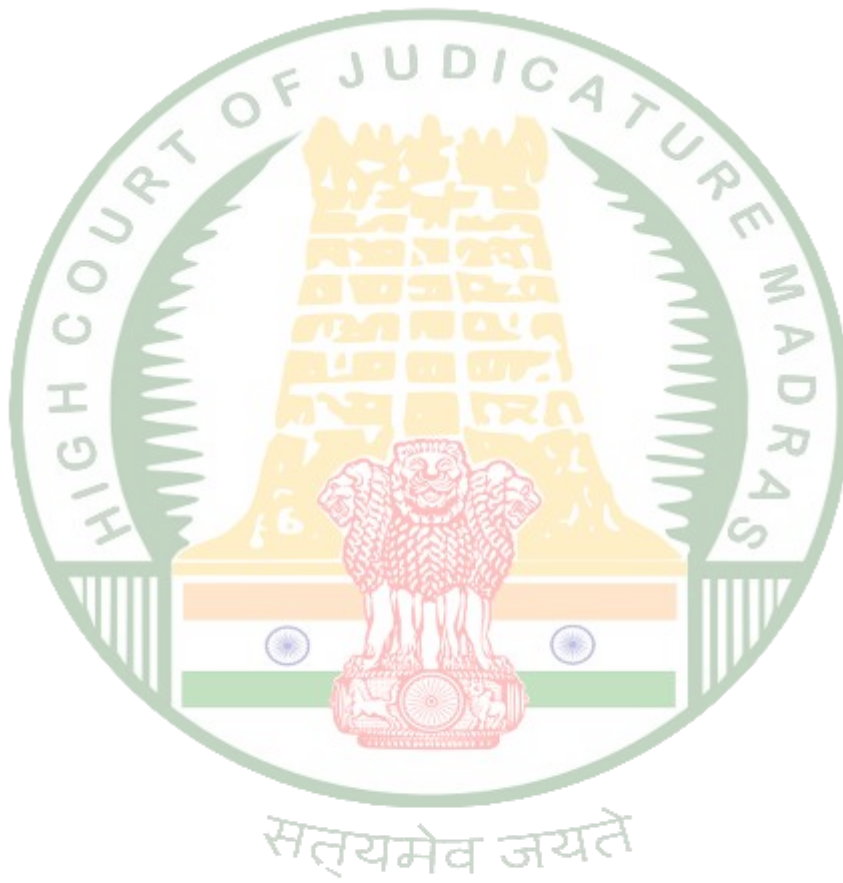
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