

Application No.3291 of 2020
in
C.S.No.401 of 2019

V.PARTHIBAN.,J.

The applicant herein is the first defendant. The first respondent herein is the plaintiff in the suit. The suit has been filed by the first respondent for the following prayer;

a)Directing the first defendant to pay to the plaintiff a sum of Rs.3,93,00,000/- (Rupees Three Crores Ninety Three Lakhs only) together with 12% interest per annum on the principal payable amount of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) from the date of plaint till the date of realization;

b)directing the first defendant to render true and proper accounts to the plaintiff with regard to the sale of property involved in General Power of Attorney Deed dated 05.04.2005 in Doc.No.512 of 2005 on the file of SRO, Adayar, executed by the plaintiff to and in favour of the first defendant.

2.The applicant/first defendant has filed this Application praying to reject the plaint on certain grounds stated in the affidavit filed in support of the plaint.

3.The brief facts leading to the filing of the suit are stated hereunder;

purchase the property comprised of Old T.S.No.4 Part, present T.S.No.4/66, Block No.16 in Layout No.189/72 originally belonged to one S.K.Parthasarathy. The property is situated within the territorial jurisdiction of this Court. After decision was taken, they approached the said S.K.Parthasarathy and the property was ultimately purchased under Sale deed dated 24.08.1987 and registered on 06.01.1988 in Doc.No.26 of 1988 on the file of SRO, Adayar, Chennai. The plaintiff purchased the first floor of the building consisting of 1500 Sq.ft and the undivided share of 3100 Sq.ft out of 6200 Sq.ft from the said S.K.Parthasarathy for a valuable sale consideration. Likewise, the first defendant purchased the remaining portions of the property namely 2500 Sq.ft out of 4050 Sq.ft of the built up area and the undivided share of land to an extent of 3100 Sq.ft and vacant land to an extent of 4000 Sq.ft through two registered sale deeds dated 19.03.1987 and 07.01.1988 on the file of SRO, Chennai.

4.According to the plaintiff, since the date of purchase, both he and the first defendant were in joint possession and enjoyment of the subject property. In 2005, when the plaintiff was to go to the United States of America on a job assignment, the plaintiff executed a power of attorney in favour of the first defendant on 05.04.2005 vide Doc.No.512 of 2005 on the SRO, Adayar, Chennai. The power of attorney was executed by the plaintiff in favour of the first defendant

on a implicit trust that the first defendant would take proper care and safeguard the property belonging to him.

5. In one of his visits to India in November, 2015, the plaintiff had come to know that some strangers were in possession and enjoyment of the property owned by him. On enquiry, the plaintiff could not elicit any proper reply from the first defendant and therefore he approached the Registering Authority. On further enquiry, it was found that the first defendant had sold the property including the plaintiff's share through registered sale deed dated 11.04.2005 and 27.04.2009 in favour of third defendant, who in turn sold the same in favour of defendants 4 and 5 through another sale deed dated 17.10.2018. In view of the sale transactions, defendants 2 to 5 have been arrayed as parties in the suit.

6. According to the plaintiff that the defendant has concealed the entire fact of sale of property and has caused criminal breach of trust and the first defendant not only cheated the plaintiff but also not rendered any account to him despite repeated demands by the plaintiff. According to the information received by the plaintiff, the property was stated to be sold for Rs.3.25 Crores which was very much low, as the market value is more than Rs.10 Crores. The plaintiff has averred that the first defendant must have received more than

Rs.10 Crores but the property was undervalued for the purpose of evasion of stamp duty. In the said circumstances, the suit has been filed for payment of Rs.3.93 Crores together with interest and also for redemption of accounts etc.

7.The applicant/first defendant herein has now filed this Application for rejection of plaint refuting all the allegations contained in the plaint. The contention of the applicant/first defendant is that there was no cause of action for the plaintiff to file the suit in 2019 after a lapse of several years when the sale of the subject property has taken place in 2005. According to the applicant/first defendant, that when the power of attorney was executed in his favour, the plaintiff was very much aware of the fact that it was intended to give power to the applicant/first defendant for sale of the property. In any case, the principal contention that has been put forth on behalf of the applicant herein is that the cause of action which has arisen in 2005 and a pre-suit notice was given as early as on 11.08.2017 which was infact not served on the first defendant, therefore the suit is hopelessly barred by limitation. Since the suit is barred by limitation, the applicant/first defendant need not be subjected to the ordeal of trial as no purpose would be served. Therefore, he has come up with the application for rejection of plaint.

8. In response to this Application, a counter has been filed by the first respondent/plaintiff. In the counter, it is stated that the plaintiff became aware of the suit only in the month of June, 2015 pursuant to which legal notices dated 01.09.2017 and 08.09.2017 were issued seeking rendition of accounts and payments thereof. The suit was filed immediately thereafter in C.S.No.401 of 2019.

9. According to the first respondent/plaintiff, as admittedly the plaintiff was relocated in United States of America for more than 10 years, and hence was not aware of the illegal sale of the property by the applicant/first defendant and he on coming to know of the sale only in 2015 and thereafter he made enquiry with the Registering Authorities and issued legal notice in 2017 and immediately the suit was filed in 2019. Therefore, the legal contention as to the application of law of limitation for rejecting of plaint cannot be countenanced both in law and on facts.

10. This Court considered the arguments advanced on behalf of the parties, perused the pleadings and materials placed on record.

11. It is trite law to hold that the aspect of limitation is a mixed question of fact and law. In this case, the start of the limitation period cannot be conclusively established on the basis of the averments

contained in the respective affidavit. The plaintiff is said to have lived in the United States of America for more than 10 years and he therefore claims that he was not aware of the illegal sale which took place in 2005. According to him, he has come to know about the sale in 2005 and thereafter, prompt steps were taken to issue legal notice in 2017 and suit was filed in 2019.

12. On the other hand, the case of the Applicant/first defendant is that the prayer in the suit is a fall out of the sale which took place on 11.04.2005 and therefore, the suit was hit by limitation. The reasons for rejection of the plaint on the sole ground of suit being barred by limitation in terms of the averments of the applicant/first defendant is legally not sustainable. If the suit is barred by any law, such bar must operate from the averments as contained in the plaint but not at the instance of the defendants. In this case, the knowledge of the sale which gave rise to the filing of the suit is a matter to be determined at time of the trial of the suit. The claim of the plaintiff is to be tested as to the awareness of the disputed sale for the purpose of proving his averments in plaint with reference to the law of limitation.

13. In the above circumstances, the dispute as to the aspect of limitation between the plaintiff and the first defendant becomes a mixed question of fact and law and in that circumstance the

application for rejection of plaint on the premise of limitation cannot be entertained and allowed. In any case, the right to raise the objection on the limitation aspect is always with the first defendant even at the time of trial of the suit. At the same time, the right of the plaintiff cannot be negated at the very threshold of rejecting the plaint in the face of the averments contained in the counter filed by the plaintiff to the application filed by the applicant for rejection of plaint.

14. In the above circumstances, this Court does not find any merit in the Application and the Application also does not conform to the legal principles as laid down by Courts and also the provisions as contained in Order VII Rule 11 of the C.P.C., and hence the Application stands dismissed.

06.07.2021

mrm

सत्यमेव जयते

WEB COPY

V.PARTHIBAN.,J.

Mrm



Application No.3291 of 2020
in
C.S.No.401 of 2019

WEB COPY

06.07.2021