A.No.5961 of 2010
in C.S.No.72 of 2010

S.SOUNTHAR,J.

The defendants 2, 8 and 10 herein have filed a petition to reject the plaint. At the time of arguments, it was stated by the learned counsel for the applicant that the first applicant namely B.Ugamraraj Mootha had passed away and his legal representatives were brought on record in the main suit. However the legal representatives are not brought on record in this application by filing formal application for amendment.

2. It is stated by the learned counsel for the applicant since the applicants 2 and 3 are alive he proceeds with his arguments on behalf of the applicants 2 and 3 and the same is recorded.

3. The respondent/plaintiff filed a suit for partition and separate possession of 1/3rd of his share in item 1 to 23 set out in schedule 'A' and schedule 'B' of suit properties. He also prayed for rendition of accounts and declaration of various sale deeds executed between 08.08.2002 and 21.07.2009 as null and void. The prayer for rejection of the plaint was made mainly on three grounds namely, the point of limitation, absence of territorial jurisdiction

to entertain the suit and under valuation of the plaint and non payment of requisite Court Fee.

4. Earlier, this application was allowed by holding that the suit was barred by limitation and by the same order, the respondent/plaintiff was directed to pay deficit court fee. It is brought to the notice of this Court in pursuance of the earlier order, the plaintiff paid the deficit court fee as directed by this Court and therefore the third ground on which, the rejection of the plaint was sought for is no longer in existence. Earlier, the order passed by this Court, rejecting the plaint was challenged in Appeal in O.S.A.Nos.98 and 38 of 2017 and a Division Bench of this Court by order dated 25.07.2017 allowed the appeal mainly on the ground that the learned Single Judge having held that the suit was barred by limitation ought not to have granted time to make good deficit court fee. Therefore, the earlier order passed by the learned Single Judge in this application was set aside by the Division Bench and the application was directed to be re-heard. Therefore, the application is posted for hearing again.

5. The learned counsel for the applicant submitted that item 15 of

schedule 'A' property alone is situated at Chennai and all other properties are situated the outside the territorial limits of this Court. It is further submitted that item 15 was sold in favour of D15 to D33, even prior to the filing of the suit and hence the learned counsel objected to the territorial jurisdiction of this Court.

6. The learned counsel further submitted that the respondent/plaintiff wants declaration in respect of alienations made in the year 2003 and the present suit has been filed only in the year 2010 and hence the suit is hopelessly barred by limitation.

7. The learned counsel for the respondent on his part submitted that in a suit involving immovable property, if a portion of the suit property situated within the territorial limits of Court that Court will have jurisdiction to entertain the suit by referring to Section 17 and 18 of CPC. He further submitted that in respect of the property situated outside territorial limits of this Court, he obtained leave to sue in Application No.2426 of 2021 and the same was ordered on 27.11.2009.

8. A reading of plaint averments would make it clear that the

respondent/plaintiff claimed that the suit properties are joint family properties purchased out of joint family nucleus. There is clear averments in paragraph Nos.3 to 5 of plaint that the suit properties are joint family properties and there was no partition effected among the members of the joint family. The plaintiff also averred in the cause of action paragraph of the plaint that he came to know about the various sale transaction made by the defendants 1 and 2 only on enquiry after exchange of notices in the year 2008.

9. The learned counsel for the applicant submitted that though the sale transaction sought to be nullified by the plaintiff by seeking a declaration that those transactions which had taken place in the year 2003 were null and void, the plaint has been presented only in the year 2010 and consequently, the suit is barred by limitation. In view of the averments made in the plaint that the plaintiff acquired knowledge about the transaction only in the year 2008, it cannot be stated, on the face of it, the suit is barred by limitation. It is settled law, at the time of considering the petition for rejection of the plaint, the Court is only concerned with the plaint averment and the documents filed along with the plaint.

10. In the case on hand, it is the case of the respondent/plaintiff in his pleadings that he acquired knowledge about the stealthy sale transaction of the defendants only after exchange of notices in the year 2008. The question of limitation is a mixed question of law and facts which can be gone into only at the time of final disposal after trial, unless bar under limitation law appear on the face of plaint. In these circumstances, it cannot be stated that on the face of averments contained in plaint, prayer for declaration in respect of various sale deeds is barred by limitation. As far as the prayer for partition is concerned, it is for the defendants to plead and prove that the plaintiff was excluded from enjoying the property for more than statutory period to contend that the relief of partition is barred by limitation. The plea of ouster has to be specifically pleaded and meticulously proved by evidence and therefore, it is a matter for trial and the same cannot be gone into in an application for rejection of plaint. Considering from any angle, based on the averments contained in the plaint, it cannot be said that the suit prayer is barred by limitation on the face of it, so as to invoke the Order 7 Rule 11 of CPC to reject the plaint.

11. It would be pertinent to refer to the judgment reported in

(2005) 7 SCC 510 in *Popat and Kotecha Property vs. State Bank of India Staff Association*, wherein it has been reiterated by the Apex Court that the petition for rejection of the plaint has to be considered only in the light of the averments contained in the plaint without addition or subtraction to show that it is barred by any law to attract application of Order 7 Rule 11 of CPC. The relevant observations of the Apex Court runs as follows:

> *25. When the averments in the plaint are considered in the background of the principles set out in Sopan Sukhdeo's case (supra), the inevitable conclusion is that the Division Bench was not right in holding that Order VII Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years need evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that is barred by any law to attract application of Order VII Rule 11. This is not so in the present case.*
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> ***(Emphasis Supplied.***

In the case on hand, as discussed earlier the plaint does not appear to be barred by limitation, on the face of averments contained in the plaint. However it is made clear objection as to limitation can be gone into at the time of final disposal of suit.

12. As far as objection made by the learned counsel for the applicant, with regard to the territorial jurisdiction of this Court is concerned, admittedly, item 15 of schedule 'A' to the plaint is situated within the territorial limits of this Court. It is settled law, in a suit concerning the immovable property, if part of the suit property is situated within the territorial limits of particular Court, the said Court has got jurisdiction to entertain the suit.

13. In the case on hand, admittedly, the portion of the suit properties, namely item 15 of schedule 'A' situated within the territorial limits of this Court. Further as rightly contended by the learned counsel for the respondent that the respondent/plaintiff at the time of filing the suit obtained prior leave to sue in Application No.6410 of 2009 by order dated 27.11.2009.

14. The learned counsel for the applicant contended that item 15

of the suit property was sold to a 3rd party even in the year 2003 and therefore, said item 15 was not available for partition on the date of plaint. The said contention made by the learned counsel for the applicant cannot be accepted. The respondent/plaintiff in his pleadings had averred that the suit properties were Hindu joint family properties purchased out of joint family nucleus. Hence, any alienation by one of the member of the joint family without the consent of other member of the joint family will not bind the share of non consenting member. Therefore, merely because the first and second defendants sold item 15 of the suit property even prior to the institution of suit, the right of the plaintiff to claim partition in the property will not get vanished and hence when a portion of the suit property namely item 15 situated within the territorial limits of this Court, the objection made by the applicant as to the territorial jurisdiction of this Court also falls to ground. Therefore, both the contentions made by the learned counsel for the applicants, in support of his prayer for rejection of the plaint cannot be accepted and consequently, the application for rejection of the plaint is dismissed.

09.12.2022

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