



C.R.P.(PD).No.1299 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1299 of 2016
and C.M.P.No.7267 of 2016

1.R.Madan Chand (died)
2.M.Kavitha
3.M.Sharmila
4.M.Nanda Kumari
5.M.Praveen Kumar

.. Petitioners

*(Petitioners 2 to 5 brought on record
as LR's of the deceased 1st petitioner
viz., R.Madan Chand vide Court order
dated 19.01.2022 made in C.M.P.No.321
of 2022 in C.R.P.No.1299 of 2016)*

Vs.

R.Narendra Kumar

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 26.10.2015 made in I.A.No.682 of 2010 in O.S.No.14 of 2008 on the file of the Additional District Court at Chengalpattu.



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For Petitioners : Mr.V.Ramana Reddy

For Respondent : Mr.R.Thiagarajan

ORDER

(The matter is heard through 'video conferencing')

This Civil Revision Petition is filed against the order and decree dated 26.10.2015 made in I.A.No.682 of 2010 in O.S.No.14 of 2008 on the file of the Additional District Court at Chengalpattu.

2.The 1st petitioner is 2nd defendant in O.S.No.14 of 2008 on the file of the Additional District Court at Chengalpattu. The respondent filed said suit claiming 15 reliefs of declaration and injunction in respect of the suit property. The 1st petitioner and 4th defendant filed written statement. The 1st petitioner filed present I.A.No.682 of 2010 under Order VII Rule 11 of C.P.C., for rejection of plaint. According to the 1st petitioner, the plaint does not disclose any cause of action, the suit is



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barred by limitation, the respondent has no right over the suit property and the respondent has no *locus standi* to file the suit. There is no nexus between the documents relied upon and the relief sought for by the respondent. The respondent and his father filed O.S.No.800 of 1982 on the file of the District Munsif Court, Poonamallee and the said suit was transferred to the file of District Munsif Court, Tambaram, for declaration of title in respect of 2 Acres and 2.5 cents in Perungudi village, based on the alleged settlement deed dated 29.08.1981. On the date of alleged settlement deed, the 1st defendant did not have any title over the said property, as he already settled the suit property by deed of settlement dated 16.04.1991 on the 1st petitioner. The suit was transferred to the District Munsif Court, Tambaram and was renumbered as O.S.No.79 of 1993. Subsequently, the respondent's father died on 28.11.1997. In the same year, the suit was again transferred from the District Munsif Court, Tambaram to the District Munsif-cum-Judicial Magistrate Court, Alandur and was renumbered as O.S.No.55 of 1997. The respondent did not disclose the death of the father G.Rathanchand as co-plaintiff and he did not take steps to record all the legal representatives of the deceased 1st



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plaintiff in O.S.No.800 of 1982 (O.S.No.79 of 1993 on the file of the District Munsif Court, Tambaram and O.S.No.55 of 1997, District Munsif Court, Alandur) in the said suit. The respondent, intentionally, knowingly obtained an exparte decree in the name of the dead person. The 1st petitioner filed application to set aside the exparte decree. The decree passed in O.S.No.55 of 1997 itself is inexecutable and is hit by suppression of material facts. The respondent herein cannot maintain the present suit. One of the plot owners who purchased part of the portion of the suit property filed O.S.No.131 of 2007 before the Principal District Munsif Court, Alandur, for permanent injunction. After contest, the said suit was decreed by the judgment and decree dated 29.12.2009. Since title for the entire property is common, the judgment and decree passed in O.S.No.131 of 2007 is binding on the respondent and hence, the present suit is not maintainable. However, the respondent has under valued the suit. On that ground also the plaint is liable to be rejected. The suit filed by the respondent is vexatious litigation and is liable to be rejected.



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3.The respondent filed counter affidavit denying all the averments and submitted that the averments in the plaint has to be considered to find out whether the plaint discloses cause of action and whether suit is barred by limitation. The respondent further stated in the counter affidavit that he has valued the suit for the relief sought for by him and filed Court fee accordingly. It is for the Court to decide whether the suit is properly valued or under valued. The earlier settlement dated 16.04.1981 in favour of the 1st petitioner was never acted upon. The plea of *resjudicata*, in the absence of any foundation cannot be considered in the application filed by the 1st petitioner under Order VII Rule 11 of C.P.C. and the same has to be decided, considering the oral and documentary evidence let in by the parties during the trial. There is no merit in the application filed by the 1st petitioner. In the plaint, the respondent has disclosed valid cause of action and it is not barred by law. The present application is filed with a motive to drag on the proceedings and prayed for dismissal of application.



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4.The learned Judge, considering the averments in the affidavit, counter affidavit, plaint, provisions of Order VII Rule 11 of C.P.C., and judgments relied on by the parties, dismissed the application.

5.Against the said order dated 26.10.2015 made in I.A.No.682 of 2010 in O.S.No.14 of 2008, the 1st petitioner has come out with the present Civil Revision Petition. Pending Civil Revision Petition, the 1st petitioner died and petitioners 2 to 5 were brought on record as legal heirs of the deceased 1st petitioner vide Court order dated 19.01.2022 made in C.M.P.No.321 of 2022 in C.R.P.No.1299 of 2016.

6.The learned counsel appearing for the petitioners reiterated the averments made in the affidavit and grounds raised in the Civil Revision Petition and submitted that order of the learned Judge is perverse, the suit filed by the respondent is abuse of process of Court and law, the suit does not disclose any cause of action, the suit is barred by limitation as per Article 59 of the Limitation Act, 1963. The learned Judge failed to



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exercise judicial discretion and erroneously dismissed the application and prayed for setting aside the order of the learned Judge.

7.The learned counsel appearing for the respondent reiterated the averments in the counter affidavit filed in the present application and submitted that cause of action is bundle of date of action and it is gathered from meaning of the plaint. The plaint discloses the cause of action and the suit is not barred by any law. The issue raised by the petitioners have to be decided only based on the evidence let in by the parties during trial and prayed for dismissal of Civil Revision Petition and speedy disposal of the suit.

8.Heard the learned counsel appearing for the petitioners as well as the respondent and perused the entire materials available on record.

9.From the materials on record, it is seen that the respondent has filed suit for 15 reliefs, including declaration that he is the absolute owner of the property, against the 1st petitioner and other defendants.



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According to the respondent, originally, the suit property was settled on the 1st petitioner's father. The said settlement deed was not acted upon and the suit property was settled by the deed of settlement dated 29.08.1981 on the respondent and his father. The respondent also stated about the suit for declaration and the injunction filed by the respondent and his father and the said suit being decreed in their favour. According to the 1st petitioner, the settlement deed executed in favour of the respondent and his father is not valid and the 1st defendant did not have any right over the suit property on that date, as same was already settled on the 1st petitioner on 16.04.1981 and 1st petitioner subsequently, settled the same in favour of his wife, the 4th defendant in the suit. On these contentions, the 1st petitioner has stated that plaint does not disclose cause of action and suit is barred by limitation. These contentions of the 1st petitioner is his defence in the suit, which cannot be considered in an application filed for rejection of plaint. In an application filed for rejection of plaint, the averments in the plaint and documents filed along with the plaint alone can be considered to decide the issue.



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10.It is also well settled that plaint has to be read as a whole in a meaningful manner to find whether plaint discloses cause of action and suit is barred by limitation. A reading of the plaint, especially the cause of action paragraphs clearly discloses the cause of action for the suit. Whether the suit is barred by limitation on the basis of averments in the plaint or on the defence taken by the petitioners can be decided only on the conclusion of the trial by appreciating oral and documentary evidence let in by the respondent and petitioners.

11.As far as the contention of the petitioners that suit is hit by principles of resjudicata is concerned, the suit in O.S.No.131 of 2007, relied on by the 1st petitioner is filed by one of the purchaser, for injunction. In the said suit, the title of the respondent was not an issue and the same was not decided in the said suit. In the present suit, the respondent is claiming declaration that he is the owner of the suit property, for injunction and other reliefs. The issue and parties in both the suits are different and the present suit filed by the respondent therefore is not hit by principles of *resjudicata*.



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12.The petitioners also contend that the respondent has undervalued the suit and not paid proper Court fee. The petitioners have not filed any materials to show that as to how the respondent undervalued the suit and what is the correct valuation of the suit property. In the absence of any materials placed before the Court, in the application filed by the 1st petitioner under Order VII Rule 11 of C.P.C., the Court cannot reject the plaint, holding that the suit is undervalued.

13.According to the petitioners, the suit is barred by limitation as father of the respondent died on 28.11.1997 and present suit is filed only in the year 2008 and therefore, the suit is barred by limitation. From the averments in the plaint, it is seen that the respondent is claiming title over the suit property based on the settlement deed executed in his favour and in the favour of the respondent and his father. The claim is that he is the co-owner and therefore, question of limitation being a mixed question of law and fact, has to be decided only after conclusion of the trial, based on oral and documentary evidence let in by the parties. The learned Judge



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has considered all the materials, scope of Order VII Rule 11 of C.P.C. and judgments relied on by the parties and dismissed the application, by giving cogent and valid reason. There is no error in the order of the learned Judge, warranting interference by this Court.

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

24.01.2022

Index :: Yes/No
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To

The Additional District Judge,
Chengalpattu.



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V.M.VELUMANI, J.

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