



C.R.P(PD).No.1496 of 2021
and
C.M.P.No.11780 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 04.08.2022

Delivered On : 26.08.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P(PD).No.1496 of 2021
and
C.M.P.No.11780 of 2021

1. R.Nagarajan
2. K.Maruthambal
3. M.Indhirani

... Petitioners

Vs.

1. Selvaraj
2. Jeyalakshmi
3. Sakthivel
4. Subramaniam @ Balasubramaniam
5. Sumathi @ Kolanchi

... Respondents

Prayer: This Civil Revision Petition had been filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order dated 29.03.2021 passed in I.A.No.2 of 2020 in O.S.No.86 of 2019 on the file of the learned Subordinate Judge, Perambalur.



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For Petitioner : Mr.S.T.Bharath Gowtham

For Respondents : Mr.P.Dinesh Kumar for R1.
Mr.K.S.Navin Balaji for R2 to R5.

ORDER

This Civil Revision Petition has been filed seeking to set aside the Fair and Decreetal Order dated 29.03.2021 passed in I.A.No.2 of 2020 in O.S.No.86 of 2019 on the file of Subordinate Judge, Perambalur.

2. The learned Counsel for the Petitioners had already submitted his arguments on 21.07.2022. It is the submission of the learned Counsel for the Petitioners that the Plaintiff in O.S.No.86 of 2019 had purchased the property from the vendors of the Petitioners herein and a sale agreement was entered into. The Petitioners had filed O.S.No.210 of 1994 before the learned Sub Judge, Perambalur which was contested by the vendors of the Plaintiff in O.S.No.86 of 2019. The vendors of the Petitioners herein is the Plaintiff in O.S.No.201 of 1994 and the suit was decreed in favour of the plaintiff in O.S.No.201 of 1994. The vendors of the Plaintiff went on appeal and the said appeal was dismissed, as against which, filed Second Appeal



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before this Court in S.A.No.595 of 2002 and the same was dismissed. The Plaintiff in O.S.No.210 of 1994 had filed E.P.No.27 of 2013 in O.S.No.210 of 1994 for execution of sale deed. Accordingly, sale deed was executed by the Court in favour of the decree holder. Then, the Petitioners filed E.P.No.75 of 2018 for delivery of possession. Subsequently, the vendors of the Plaintiff in O.S.No.86 of 2019 in collusion with the Plaintiff had preferred a suit against the decree holder in O.S.No.210 of 1994. The Plaintiff in O.S.No.86 of 2019 ought to have filed the suit within three years from the date of entering the sale agreement, but they had not done so. The learned Counsel for the Petitioners/Defendants before the learned Sub Judge in O.S.No.86 of 2019 filed a Petition under Order 7 Rule 11 which was dismissed by the learned Sub Judge, Perambalur.

3. The suit was filed by the Plaintiff in O.S.No.210 of 1994, when the Execution Petition was pending before the very same Court for the very same property, beyond the period of limitation, the vendor of the Plaintiff and the Plaintiff in the suit in O.S.No.86 of 2019 in the year 2013 entered into an agreement for sale. The suit was filed in the year 2019. It is nothing



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but an abuse of the process of the Court in collusion with the judgement debtor in E.P.No.27 of 2000 and E.P.No.75 of 2018. The learned Counsel for the Petitioners relied on the following Judgments:-

(i) The Judgment passed by the Hon'ble Supreme Court reported in 1998 (III) CTC 165. [Chinnasami & others Vs Dhanasekaran].

(ii) The Judgment passed by this Court reported in 2020 (5) CTC 781. [Saraswathy Ammal & others Vs. Govindan & others]. Relevant portion of the said order is as follows:

24. From the above observations, it is clear that even without an Application under Order 7, Rule 11 of the Code of Civil Procedure or under Order 6, Rule 16, the Court is empowered to strike out the pleadings or even throw out the Plaint, if it is found that the Plaint is an abuse of the Process of the Court or is a re-litigation. The facts stated above are sufficient to demonstrate that the present Suit is a clear abuse of the process of the Court and amounts to a challenge to the title of the Defendant which has been accepted by this



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Court in Second Appeal earlier and a Decree for Possession had been granted in favour of the Defendant and the said Decree having been executed through Court and possession having been handed over to the Defendant. I am convinced that this Suit cannot stay on file even a moment longer as it would demean the very majesty of the justice delivery system.

(iii) The Judgment passed by this Court reported in 2020 (13) SCC 143. [Canara Bank & P.Selathal & others]. Relevant portion of the said order is as follows:

9. While considering the aforesaid issue/question, few decisions of this Court on exercise of powers under Order 7 Rule 11(d) CPC are required to be referred to and considered.

15. At this stage, it is also required to be noted that the suits have been filed after a period of 15 years from the date of mortgage and after a period of 7 years from the date of passing of the decree by DRT. In the complaints, it is averred that the Plaintiffs came to know about the mortgage and the judgment and decree



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passed by DRT only six months back. However, the said averments can be said to be too vague. Nothing has been averred as to when and how the plaintiffs came to know about the judgment and decree passed by DRT and the mortgage of the property. Only with a view to get out of the law of limitation and only with a view to bring the suits within the period of limitation, such vague averments are made. On such vague averments, plaintiffs cannot get out of the law of limitation. There must be specific pleadings and averments in the plaints on limitation. Thus, on this ground also, the plaints were liable to be rejected. As observed hereinabove, the plaints are vexatious, frivolous, meritless and nothing but an abuse of process of law and court. Therefore, this is a fit case to exercise the powers under Order 7 Rule 11(d) CPC. Both the courts below have materially erred in not exercising the jurisdiction vested in them.

(iv) The Judgment passed by the Hon'ble Supreme Court reported in 2012 (3) MWN (Civil) 832. [K.Chandran & others Vs V.Geethalakshmi]. Relevant portion of the said



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order is as follows:

23. A reading of the above paragraphs would show that if it is apparent from the averments made in the Plaint and the materials that if the Suit is filed beyond the limitation period, then the same is liable to be rejected. As per the provisions under Order 7, 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 7, 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 seven years from the date on which she had purchased the property, pending litigation.

31. Learned Senior Counsel for the Applicants submitted that the cause of action in O.S.No.1307 of 2012 and the present Suit is one and the same. On a perusal of cause of action paragraph in the present Suit, it is obvious that it is a clear replica of the cause of action paragraph in O.S.No.1307 of 2012. The conduct of the Respondent would show that she is re-litigating the



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same issue time and again by filing various Suits, which would amount to abuse of process of Court.

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(v) The Judgment passed by the Hon'ble Supreme Court reported in 2021 SAR (Civ) 323. [K.Akbar Ali Vs.K.Umar Khan & others]. Relevant portion of the said order is as follows:

7. In any case, an application under Order VII Rule 11 of the CPC for rejection of plaint requires a meaningful reading of the plaint as a whole. As held by this Court in ITC V. Debts Recovery Appellate Tribunal reported in AIR 1998 SC 634, clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order VII Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.

12. It is patently clear from a meaningful



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reading of the plaint in its entirety that the plaintiff has no cause of action against the first defendant being the owner of the suit property, the Power of Attorney being patently invalid. The inter-se dispute between the heirs of the deceased-Defendant No.1 will not confer any right on the petitioner as his claim is based upon a pre-emption agreement executed by a power of attorney, which does not authorize the attorney to deal with the property of the said defendant.

*(vi) The Judgment passed by the Hon'ble Supreme Court reported in **2012 (3) MWN (Civil) 832. [K.Chandran & others Vs V.Geethalakshmi]**. Relevant portion of the said order is as follows:*

23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and concluding a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.



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23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain V. Rajiv Gandhi this Court 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 powers 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 kept hanging over his head



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unnecessarily without point or purpose.

Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.06. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

29.17. The plaintiffs deliberately did not mention the date of registered sale deed dated 2-7-2009 executed by them in favour of Respondent 1, since it would be evident that the suit was barred by limitation. The prayer however mentions the date of the subsequent sale deed i.e. 1-4-2013 when the suit property was further sold by Respondent



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1 to Respondents 2 and 3. The omission of the date of execution of the sale deed on 2-7-2009 in the prayer clause, was done deliberately and knowingly, so as to mislead the court on the issue of

4. The learned Counsel for the Respondents submits that the order passed by the learned Sub Judge, Perambalur in dismissing the Petition filed under Order 7 Rule 11 in I.A.No.2 of 2020 in O.S.No.86 of 2019 is a well reasoned order. The Civil Revision Petition does not warrant any interference from this Court. Therefore, this Civil Revision Petition has no merit and the same has to be dismissed. The order passed by the learned Sub Judge, Perambalur is to be confirmed.

5. The learned Counsel for the Respondents relied on the following judgment of the Hon'ble Supreme Court ***in the case of Salim D.Agboatwala and others Vs. Shamalji Oddhavji Thakkar and others in Civil Appeal No.5641 of 2021.***Relevant portion of the said order is as follows:

10. Insofar as the rejection of plaint on the



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ground of limitation is concerned, it is needless to emphasis that limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the offence of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs to represent them in the tenancy proceedings.

11. The above averments may or may not be true. But if the plaintiffs succeed in establishing the above averment, the issue of limitation cannot be put against the plaintiffs. Generally a party, who never had any notice of a particular proceeding before a quasi-judicial authority, is entitled to approach the Court upon gaining knowledge of the proceedings. Limitation cannot be put against such a party.

12. We are not dealing here with a case where notices were ordred to be issued, but were not or could not, be served on necessary and proper parties. We are dealing with a case where the plaintiffs assert in no



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uncertain terms that notices were never regarding limitation, will depend upon the evidence with regard to the issuance and service of notice and the knowledge of the plaintiffs. Hence, the Trial Court as well as the High Court were not right in rejecting the plaint on the ground of limitation, especially in the facts and circumstances of this case.

13. As observed by this Court in P.V.Guru Raj Reddy Vs. P.Neeradha Reddy and Others”, the rejection of plaint under Order VII Rule 11 is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order VII Rule 11.

14. Again as pointed out by a three member bench of this Court in Chhotanben Vs. Kiribhai Jalkrushnabhai Thakkar, the plea regarding the date on which the plaintiffs gained knowledge of the essential



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facts, is crucial for deciding the question whether the suit is barred by limitation or not. It becomes a triable issue and hence the suit cannot be thrown out at the threshold.

6. On consideration of the rival submissions, this Court is of the view that the submission of the learned Counsel for the Respondents praying to dismiss the Civil Revision Petition, cannot be accepted as reasonable.

7. This Civil Revision Petition filed under Article 227 of the Constitution of India alleging abuse of the process of the Court and to avoid miscarriage of justice. As per the judgement dated 17.09.2001 in O.S.No.210 of 1994, the Plaintiff had succeeded in the suit. The suit for specific performance was decreed in favour of the Plaintiff. The Defendants were granted three months time to execute the sale deed. Aggrieved by the judgement and decree of the learned Sub Judge, Perambalur, the defendants in the suit in O.S.No.290 of 1994 preferred the appeal in A.S.No.131 of 2002 before the learned Principal District Judge, Perambalur in A.S.No.131 of 2002, which was dismissed on 11.10.2012 thereby confirming the



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judgement and decree passed in O.S.No.210 of 1994 by the learned Sub Judge, Perambalur.

8. Aggrieved by the judgement in A.S.No.131 of 2002, the Appellants who were the Defendants in the suit in O.S.No.210 of 1994, preferred S.A.No.595 of 2003 before this Court. After hearing the arguments of both parties, this Court had dismissed S.A.No.595 of 2003. Upto the Second Appeal, the Defendants in O.S.No.210 of 1994 agitated their rights. They are well aware of the dispute, however they are alleged to have entered into sale agreement with the Plaintiff in O.S.No.86 of 2019 in the year 2013. The vendor of the Plaintiff was one who claims right over the property. E.P.No.27 of 2013 was filed by the Plaintiff in O.S.No.210 of 1994 seeking execution of sale deed. Since the Defendants in O.S.No.210 of 1994 failed to execute a sale deed as per the decree within the time limit of three months, the learned Sub Judge, Perambalur had executed the sale deed in E.P.No.27 of 2013 as per the decree in O.S.No.210 of 1994. In continuation of the E.P.No.27 of 2013 in executing the sale deed by the learned Sub Judge himself, the Decree holder had filed E.P.No.75 of 2018 for possession of the



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property for which sale deed was executed by the learned Sub Judge, Perambalur. Accordingly, delivery of possession was granted in E.P.No.75 of 2018.

9. As per the records, when all these proceedings were pending, the Defendants, who went up to the Second Appeal, Defendant who is the JD in E.P.No.75 of 2018, had allegedly entered sale agreement with the Plaintiff in O.S.No.86 of 2019. Therefore, the suit filed by the Plaintiff in O.S.No.86 of 2019 for the relief of specific performance of contract to enforce the sale agreement entered into with the vendor of the Decree Holder in E.P.No.75 of 2018 for which delivery of possession is pending before the same Court is nothing but abuse of process of the Court.

10. In the light of the above discussion, exercising the power of this Court under Article 227 of Constitution of India, this Civil Revision Petition filed by the Decree Holder in E.P.No.75 of 2018 in O.S.No.210 of 1994 had to be allowed. The order passed by the learned Sub Judge, Perambalur in dismissing the I.A.No.2 of 2020 in O.S.No.86 of 2019 is set aside. The I.A.No.2 of 2020 in O.S.No.86 of 2019 is allowed. The suit in O.S.No.86 of



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2019 is struck off from the file of the learned Sub Judge, Perambalur.

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In the result, this Civil Revision Petition is allowed. The Respondents are directed to pay Rs.1,00,000/- (Rupees one lakh only) to the Petitioner in this C.R.P for abuse of process of the Court committed by the Respondents. Consequently, connected miscellaneous petition is closed.

26.08.2022

Index : Yes / No
Internet : Yes / No
Speaking Order/Non-Speaking Order
kmm
To
The Subordinate Judge, Perambalur.

SATHI KUMAR SUKUMARA KURUP, J.

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Pre-Delivery Order in
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