



A.No.3019 of 2021 in C.S.No.32 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2022

PRONOUNCED ON : 24.03.2022

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

A.No.3019 of 2021

in

C.S.No.32 of 2021

ORDER

This application has been filed by the defendants 1 to 5 in the suit in C.S.No.32 of 2021 to reject the plaint in C.S.No.32 of 2021.

2.The learned counsel for the applicants would submit that the respondents/plaintiffs have not filed any supporting documents to substantiate the loan transactions. Even assuming that the plaintiffs transferred the fund of Rs.60,20,000/- to the 1st defendant Trust on 16.11.2013, 03.12.2013, 14.02.2014 and 06.02.2014, the suit should have been filed within 3 years from the date of the loan transaction whereas, it has been filed only in the year 2021 which is beyond the period of



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limitation. Therefore, the suit is barred by limitation. Further, the plaintiffs have not filed any documents covering the loan transaction and there is no cause of action to file the suit and that the plaint does not disclose the clear right or material to sue and only creating an illusion of cause of action by clever drafting. The deed of cancellation of lease entered into between the plaintiffs and the 1st defendant Trust on 27.08.2018 registered as Document No.4687/2018 on the file of the S.R.O., Padappai, has been conveniently omitted by the plaintiffs purposefully. The respondents/plaintiffs have merely stated about the balance sheet of the 1st defendant Trust for the assessment years from 2013-2014 to 2018-2019 to show as if, the suit is within limitation. But the balance sheet is not an acknowledgment of debts which will not save the limitation to file the suit. The 2nd respondent/2nd plaintiff who was the Managing Trustee of the 1st defendant Trust, under the guise of purchasing a land for the 1st defendant Trust in Manimangalam Village, by way of two sale deeds dated 09.05.2013 registered as Document No.4159 and 4160 on the file of SRO Padappai, in his own name viz., V.Krishnamoorthy instead of purchasing the same in the name of the 1st defendant Trust. The intention of the 2nd respondent/2nd plaintiff to cheat the



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themselves have admitted the loan granted by the 1st respondent/1st plaintiff for purchasing Thoraipakkam property i.e. the suit property. Therefore, the plaintiffs have disclosed the cause of action in the suit. With regard to limitation, as to whether the suit is barred by limitation, it is a mixed question of law and fact and it can be decided only after recording evidence and not at this stage. Since the applicants/defendants themselves admitted the money transactions between them, the plaint cannot be rejected at the threshold, when the plaint discloses the cause of action.

4. Heard both sides and perused the records.

5. According to the learned Counsel for the applicants/defendants, the plaintiffs have not disclosed the cause of action and the suit is barred by limitation and the Registry should not have taken the suit on file and that there is no document to substantiate the loan transaction between the applicants/defendants and the respondents/plaintiffs and therefore, the plaint is liable to be rejected. The further contention of the applicants/defendants is that the Trustees have acted against the object of the Trust. As per the Trust deed, they cannot lend money and therefore, it is against the object of the Trust. Hence, it is barred by law.



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6. According to the respondents/plaintiffs, the applicants/defendants themselves have admitted the loan transaction in paragraph 32 of their counter filed in application to attach the property. Further they have filed documents to prove that there was a loan transaction between the applicants and the respondents and also the suit is not barred by limitation and therefore, the application has to be dismissed and the plaint has to be proceeded further.

7. Admittedly, there is a loan transaction between the applicants/defendants and the respondents/plaintiffs. In one place, the applicants have stated that it is a donation and not a loan transaction. Whether it is a loan transaction or donation that has to be decided only after trial and not at this stage. As far as limitation is concerned, it is a mixed question of law and fact and that can be decided only after trial and not at this stage. It is settled proposition of law that at the time of deciding the application under order 7 Rule 11 CPC, the Court has to see the averments in the plaint and the documents annexed with that and not the defense taken by the defendants.



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8. A careful reading of the plaint itself clearly shows that the plaintiffs have disclosed the cause of action against the defendants. Even as rightly pointed out by the learned Counsel for the respondents/plaintiffs that the applicants/defendants in Paragraph 32 of the counter affidavit filed by them for the application in A.No.319 of 2021 filed by the respondents/ plaintiffs, have admitted the loan transaction from the 1st plaintiff for purchasing the suit property. Whether the Trustees have acted against the object of the Trust and whether the 1st defendant Trust can lend money, can be decided only after the trial and not at this stage. As stated above, the plea of limitation is only a mixed question of law and fact and therefore, the plaint cannot be rejected on that ground. Therefore, this Court finds that the respondents/plaintiffs have disclosed the cause of action and the applicants/defendants have not made out any ground to reject the plaint. Therefore, the application is liable to be dismissed.

9. Accordingly, this application is dismissed.

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P.VELMURUGAN,J.

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Pre-Delivery Order in
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