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A.No.3545 of 2021 and A.No.5108 of 2017
in C.S.No.183 of 2017

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Pronounced on : 15.11.2022

N.SESHASAYEE. J.,

The plaintiff has laid the suit questioning certain release deeds and settlement deeds pertaining to the suit properties. The first defendant, and defendants 2 and 3 have taken out separate applications in A.No.3545 of 2021 and A.No.5108 of 2017 for rejection of plaint.

2.1 The plaint could have had a easy narrative with precise dates accompanying the documents referred to for a convenient reading. It meant that the Court had to relate the documents, associate it with the dates, and then with the prayers. If this is kept aside, the contention of the plaintiff is that:

- B-schedule property was purchased by the plaintiff's husband out of his earnings in her favour. He was working in Airport Authority of India, somewhere in the north India. In 2001, the plaintiff returned to Chennai along with her family.
- A-schedule contains several items of properties belonging to her father,



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and they included couple of lodges too. On his demise on 12-05-2007, these devolved equally on all his heirs: His widow, the fourth defendant, and his children, the plaintiff, the first and second defendants. (Of them, the first defendant is the son and the other two are the daughters).

- While so, after the demise Sathurappan, in January, 2008, the first and the second defendants had taken the plaintiff to the Mylapore Sub Registry and forced her into signing some document. (No date given in paragraph 9 of the plaint). And passive pressure on the plaintiff was brought about by the plaintiff's mother too, the fourth defendant herein. This apart they also persuaded the plaintiff to part with 50% of her right over the B schedule property on the promise of expanding lodging business left by the father. The plaintiff trusted and obliged and executed two separate settlement deeds in favour of defendants 1 and 2, settling 25% right of the plaintiff in the B schedule property to each of these defendants. (Again no dates given in paragraph 10 of the plaint).
- In the meantime, the plaintiff has been demanding the first defendant and the fourth defendant to disclose the documents pertaining to the various properties of her father. That was evaded by these defendants. She



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thereafter attempted to obtain certified copies from the Sub Registry and that was refused to her, that she ultimately obtained after considerable hardship.

- Defendants 1 and 2 did not share the profits of the lodging businesses. The plaintiff realised that she was clearly duped. In this circumstances, and realising that the plaintiff was being cheated, plaintiff's mother, the 4th defendant chose to settle 50% of her share in one of the properties, but when it was attempted to presented for registration on 06-10-2016, the attempt failed since the original title deed which was required to be produced by the Registry official could not be produced. This original title deed was with the first defendant.

2.2(a) Having felt that she was duped and cornered, the plaintiff came up with the suit seeking as many as 17 prayers. The principal ones which are currently relevant are: For a decree declaring that the release deeds dated 21-01-2008, which she had executed along with her sister, the 2nd defendant and her mother, the 4th defendant is null and void; that the two settlement deeds, both dated 11.04.2008, executed by her respectively in favour of defendants 1 and 2.



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2.2(b) Earlier, some properties in Svikasi that belonged to the father of the plaintiff was sold by the first defendant one in 2009 to the 5th defendant, and the other in 2010 to the 6th defendant. A declaration is sought that these sale deed would not bind the plaintiff.

2.2(c) The plaintiff would now seek a declaration of her 1/3 title in the A schedule items of properties. (This is because the mother of the parties has since died and the plaintiff claims that her 1/4 share has enlarged into 1/3)

The first defendant and the defendants 2 and 3 have filed separate applications in A.No.3545 of 2021 and A.No.5108 of 2017 for rejection of plaint under Order VII Rule 11 CPC. Indeed, the mother of the principal parties to this litigation, the fourth defendant had earlier filed a similar application for rejection of plaint but that came to be closed on her demise.

4. The essence of the contentions taken up in both the applications, the defendants allege that the reliefs seeking to nullify a release deed and the two settlement deeds that the plaintiff had executed in 2008 is barred by limitation, since the suit was laid only in 2016, well beyond the three years time stipulated



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for cancelling the documents. In addition, the first defendant would contend that prior to the institution of the present suit, the plaintiff has laid O.S.No.5209 of 2016 before the IV Assistant City Civil Court, Chennai for permanent injunction to restrain the first defendant from alienating or encumbering any of the suit property (i.e., Item No.II of Schedule-A in C.S.No.183/2017) and that the present suit is barred under Order II Rule 2 CPC.,

5. These is opposed by the plaintiff and she has filed her counter to both these applications.

6. Heard both sides. A dispute is over the estate of a certain Sathurappan who died possessed of several items of properties and businesses, and also left him behind surviving him his four heirs, who were to litigate for the properties later. His widow is the fourth defendant, and their children are the plaintiff and defendants 1 and 2. The plaintiff claims as many as 17 prayers, which includes a declaration of her 1/3 share in Schedule-A properties and also for cancellation of certain settlement deeds and sale deeds. Then there is a B schedule property, which was in the name of the plaintiff but she shared it with first and second



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defendants under separate settlement deeds which she now challenges.

7.1 There are two aspects to the plea seeking rejection of the plaint: First is founded on a plea of limitation and the other is founded under Order II Rule 2 CPC. Turning to the point on limitation, a plea of limitation is generally considered as a mixed question of law and facts and a plaint cannot be rejected easily on point of limitation. Turning to the facts as alleged in the plaint, a underlining fact which though not heard in apt levels of amplification but still conveyed reasonably is that the plaintiff has been duped and that she realised the intent of the defendants/applicants herein several years later. It should not be forgotten that the plaintiff and the defendants 1 and 2 are siblings, and according to the plaintiff there was that best of times when she trusted them and executed a few documents in 2008, and then came the worst of times when she realised the design to dupe her. In plain terms, her grievance is that she trusted her siblings in 2008 but later found that they betrayed and cheated her. Given the relationship between the parties, and assuming that the facts as narrated in the plaint to be true, which the Court is mandated to presume when dealing with an application under Order VII Rule 11 CPC, could the clock be



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considered as ticking from the date on which the plaintiff had executed the release deed and the two settlement deed? There are intermediary facts involved which have to be considered. In the context of the facts pleaded by the plaintiff, the question on limitation appears as a mixed question of law and fact and not a straight forward case on bar of the suit on grounds of limitation. This plea therefore fails.

7.2 The second aspect is about Order II Rule 2 CPC. The suit in O.S. No.5209 of 2016 before the IV Assistant City Civil Court, Chennai, is for bare injunction, and that cannot take away the right to go for a substantial suit on title. The injunction suit in the context is filed to preserve a certain status quo on the title to the properties involved, but it cannot affect the right to institute the suit on and for title. Hence this plea too fails.

8. In conclusion, this Court does not find merit in both the applications, and they are dismissed. No Costs.

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