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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.2134 of 2021

and

C.M.P.Nos.16196 and 21801 of 2021

V.Mangammal

... Petitioner/Defendant

Vs.

O.V.Krishnan

... Respondent/Plaintiff

PRAYER: Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, praying to set aside the order and decretal order dated 16.08.2021 passed in I.A.No.19 of 2020 in O.S.No.7 of 2020 on the file of the learned District Munsif, Tambaram and allow the Civil Revision Petition as prayed for.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.AL.Ganthimathi

For Respondent : Mr.T.Ayyasamy

O R D E R

Challenge in this Revision is to the order of the trial Court made in I.A.No.19 of 2020 filed under Order VII Rule 11(d) of the Code of Civil Procedure seeking rejection of the plaint.

2. The suit was filed by the respondent herein seeking a declaration of his title and for consequential permanent injunction restraining the defendant/ petitioner herein from interfering with his possession of the suit property.

3. The plaintiff had contended that the properties belonged to his father late Venkatavaradha Reddy, having been allotted to him under a partition that took place on 15.02.1970. On the death of the said Venkatavaradha Reddy on 24.04.1991, the same devolved on his legal heirs viz., his wife, three sons and four daughters. Varalakshmi Ammal W/o. Venkatavaradha Reddy died on



27.04.1991. Contending that the other brothers and sisters executed a release deed dated 09.12.2003, the plaintiff would claim that he has become the absolute owner of the property. Claiming that the defendant who has right over the property, claiming under the Will allegedly executed by Venkatavaradha Reddy, is attempting to interfere with his possession, the plaintiff would seek the aforesaid relief. The prayer for recovery of possession was also included by way of amendment.

4. The defendant resisted the suit contending that the deceased Venkatavaradha Reddy had executed a Will on 14.01.1990 in favour of the defendant and the legal heirs of Venkatavaradha Reddy viz., the plaintiff and his siblings had executed a consent letter acknowledging the execution of the Will on 01.06.1990. Therefore, the defendant would contend that she is entitled to the property.

5. Pending suit, the defendant came up with the instant application in IA.No.19 of 2020 seeking rejection of the plaint on the ground that it does not disclose cause of action and that it is barred by limitation. The trial Court dismissed the application on the conclusion that the claim regarding limitation will have to be gone into only after trial as it is a mixed question of facts and law. Taking note of the denial of the execution of the consent letter by the plaintiff, the trial Court held that the Will has to be proved in a manner known to law and therefore the plaint cannot be rejected on the ground of limitation. The trial Court also concluded that it is for the plaintiff to prove the Will and establish the execution of the consent letter in a manner known to law. Aggrieved by the dismissal of the application, the defendant has come up with this Revision.

6. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner would point out that the Will is of the year 1990. The Testator died in April 1991. The plaintiff and his siblings executed the consent letter in 1992 and therefore the alleged release deed dated 09.01.2003 executed by the siblings of the plaintiff cannot confer any right on the plaintiff. He would also point out that in view of the long lapse of time, the suit itself is barred by limitation.

7. I am unable to accept the submission of the learned Senior Counsel. No doubt, this Court as well as the Hon'ble Supreme Court have held that limitation can be a ground for rejection of the plaint under Order VII Rule 11 of the Code of



Civil Procedure. At the same time it should not be dependent on proof of any fact.

8. Admittedly the plaintiff is a Clause - I heir of the original owner of Venkatavaradha Reddy. The title of the Venkatavaradha Reddy is not in dispute. On the death of Venkatavaradha Reddy, the property, in the normal course, would have devolved on the plaintiff and his siblings. The plaintiff claims that his siblings have executed a release deed in his favour and the plaintiff would also contend that the Will and the consent letter are not true. Therefore, there is an express denial of the execution of the Will by Venkatavaradha Reddy and consent letter by the plaintiff and his siblings. The defendant is a stranger, if at all the defendant would get any right over the property, it can be only under the Will. Therefore, it becomes incumbent on the defendant to prove the Will in a manner known to law. While it is open to the defendant to raise a plea of limitation, on the facts of this case, I do not think that the suit can be said to be, on the face of it, barred by limitation. While considering an application under Order VII Rule 11 (d) of the Code of Civil Procedure, the Court cannot look into the defence. It has to proceed on the assumption that the allegations in the plaint are true.

9. Therefore, the trial Court had rightly refused to look into the defence and held that, on the face of it, the suit does not appear to be barred by limitation. I see no reason to interfere with the conclusion of the trial Court. Hence, the Revision fails and it is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed. It is open to the defendant to raise all defences available to her before the trial Court and the trial Court will decide on it, however without being influenced by any observations made either in the order impugned in this Revision or in this order of mine.

10. It is seen that this Court had directed the trial Court to dispose of the suit within a time frame. Due to the pendency of the Revision, it has been delayed. Therefore, there will be a direction to the trial Court to dispose of the suit within a period of six (6) months from the date of receipt of a copy of the order.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

dsa



To

The District Munsif,
Tambaram.

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Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.7940

+1cc to M/s.T.Ayyasamy, Advocate, S.R.No.7293

C.R.P.No.2134 of 2021

AJS (CO)
SU(18/02/2022)