



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD)No.1251 of 2021

and

C.M.P. (MD) No.7210 of 2021

1.N.Ganeshan
2.N.Suresh
3.N.Thiruppathi

... Petitioners/ Petitioners/
1 to 3rd Defendants

-vs-

S.Periyakaruppan

... Respondent/Respondent/
Plaintiff

Prayer :- Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the learned District Munsif, Madurai Taluk at Madurai in I.A.No.66 of 2019 in O.S.No.16 of 2017 dated 24.03.2021 by allowing this revision petitioner with costs.

For Petitioners : Mr.S.Selvakumar

For Respondent : Mr.Babu Rajendran

ORDER

The defendants 1 to 3 aggrieved by dismissal of their application to reject the plaint in the suit in O.S.No.16 of 2017 on the file of the District Munsif, Madurai Taluk at Madurai, are the revision petitioners before this Court.

2.The facts in brief are as follows:-

(i) The plaintiff/respondent herein has filed the above referred suit for a declaration that he is the absolute owner of the suit property and also for a permanent injunction restraining the defendants, their men and agents from interfering with his peaceful possession and enjoyment of the property subject matter of the above suit. The plaintiff would rest his case on the fact that the suit property is their ancestral property and that patta in respect of



the same, stood in the name of his grandfather Muthukaruppan. On the death of the Muthukaruppan, his son Samayan, the plaintiff's father, had inherited the property and was in enjoyment of the same till his death, intestate, in the year 2015. Samayan had left behind him surviving the plaintiff, his wife and four daughters, who have been shown as defendants 4 to 8, as their legal representatives. The plaintiff's case is that his sisters and mother had relinquished their right in respect of suit property in his favour and therefore, the plaintiff alone is the absolute owner of the suit property. However, by way of abandon caution, he has also impleaded them as party defendants to the suit.

(ii) It was the case that the defendants, who had no right title or interest in the suit property, were attempting to interfere and trespass into the suit property which was prevented with the help of the other villagers. Originally, his father had filed the suit in O.S.No.587 of 2010 against the defendants 1 to 3 for the relief of permanent injunction. The defendants 1 to 3 had entered appearance in the suit and filed the written statement in December 2010. Thereafter, the plaint in O.S.No.587 of 2010 was returned for presenting the same before the jurisdictional Court. The plaintiff would submit that neither he nor his father were made aware about the return of the said suit. Therefore, they had not followed up the same. In the 1st week of December, 2016, the defendants 1 to 3 had once again caused interference in the possession and when the plaintiff had approached his counsel, the counsel was not able to give proper particulars and on 29.01.2017 the defendants 1 to 3 came to the suit property and stated that there was no suit pending and therefore, they had every right to interfere with the plaintiff's possession.

(iii) In the earlier suit, the defendants 1 to 3 in the written statement claimed a right under three sale deeds. The plaintiff would submit that when he had applied for encumbrance certificate, there was no such entries in the encumbrance certificate. Further, the suit property never belongs to the vendor of the defendants 1 to 3. Therefore, since a cloud has been cast on his title to the suit property, he has come forward with the above suit.

(iv) The defendants 1 to 3 had filed a detailed written statement in which the primary defence was that the suit was barred by limitation on account of the fact that even in the earlier suit in O.S.No.587 of 2010, the defendants 1 to 3 had denied the title of the plaintiff to the suit property and therefore, the limitation had started running from the date of filing of the written statement in the earlier suit. Without following up the earlier suit, the plaintiff has come forward with the present suit, which according to them, has to be dismissed *in limini*. The defendants 1 to 3 had further submitted that defendants father Nagamalai had other legal

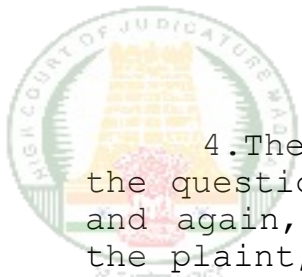


heirs besides the defendants 1 to 3, who also had to be impleaded as parties to the suit. Therefore, the suit was clearly barred by limitation, non-joinder of necessary parties as well as for want of cause of action. The written statement was filed on 20.11.2017. Thereafter, the defendants 1 to 3 have come forward with the impugned petition on 06.12.2018 for rejecting the plaint. The defendants 1 to 3 had filed impugned petition seeking to reject the plaint on the ground of limitation and in the passing have also stated that the suit is barred by non-joinder of necessary party as well as want of cause of action.

(v) The plaintiff had filed a counter *inter alia* contending that they were under the impression that the earlier suit was being taken care of by their lawyer and they were informed that the suit had been returned for want of jurisdiction. The said information came to their knowledge only when the defendants 1 to 3 had started once again interfering with their possession in the year 2017. The plaintiff would further submit that the issue of limitation is a mixed question of law and fact, which can be ascertained only after trial.

(vi) The learned District Munsif, Madurai, after hearing arguments and perusing the papers, have proceeded to dismiss the said petition on the ground that the issue of limitation, which being a mixed up question of law and fact, has to be considered only at the time of trial. Challenging the same, the revision petitioners/defendants 1 to 3 are before this Court.

3. The learned counsel appearing for the petitioners/defendants 1 to 3 would submit that even as early as in the year 2010, the defendants 1 to 3 have denied the plaintiff's right to the suit property and therefore, the limitation had started running since then. He would further submit a mere perusal of the plaint in the instant case would clearly establish the above fact, since the plaintiff has referred to the earlier suit. Therefore, in the light of the above admission, the plaint definitely had to be rejected. He would submit that even in the plaint, the plaintiff has stated that in the first week of December 2016, the defendants 1 to 3 had caused interference in his possession and when the plaintiff had reminded the above earlier suit, they had fled away. Therefore, the learned counsel would submit that the plaintiff had knowledge even then. In the counter statement, the plaintiff has contended that he was under impression that his suit was pending for disposal and only after the defendants 1 to 3 had started openly asserting a right in the property, he had come to know about the fate of the earlier suit and immediately, he has come forward with the present suit for seeking a declaratory relief.



4.The issue as to whether the suit is barred by limitation, is the question which has to be established during trial. It is, time and again, held that while considering the petition for rejecting the plaint, the Court should also only consider the contents of the plaint and the attendant documents therein and only if on the face of the same it is crystal clear that the suit is barred by limitation, then the plaint can be rejected. In the instant case, the plaintiff has narrated as to why they had not processed the earlier suit and the cause of action for filing the instant suit. The contentions raised by the have to be established by them.

5.The learned counsel for the petitioner has relied upon several judgments. Even in the recent judgment of the Hon'ble supreme Court, relied upon by the counsel for the petitioner, reported as **Rajendra Bajoria and others Vs Hemand Kumar Jalan and others**, the Hon'ble Supreme Court has held that while considering an application to reject the plaint, the conditions enumerated in Order VII Rule 11 of CPC, have to be strictly adhered to. This is on account of the fact that the power conferred on the Court to terminate a civil action, has a drastic steps. If from a perusal of the plaint along with the documents filed therein a cause of action is disclosed, then the Court should hesitate to reject the plaint. The power conferred under Order VII Rule 11 is one to end frivolous litigation. Therefore, the Court has to be very circumspect while dealing with the power under the provision of Order VII Rule 11. Of course, the Court should be able to see through an astute drafting, while considering the petition for rejecting the plaint.

6.In the instant case, the plaintiff has not suppressed the earlier suit, but on the contrary, has proceeded to explain the circumstances, in which, the present suit has been filed. The issue of limitation therefore has to necessarily be established by both parties by letting in evidence. Therefore, I do not find any reason to disagree with the order of the trial Court.

7.It is also informed that this petition for rejecting the plaint has been filed when the matter has been posted for cross examination of PW1 and another factor that has to be considered is that the suit is filed for the reliefs both for declaration as well as for injunction. The main ground on which the petition under Order VII Rule 11 of CPC has been filed is on the ground that the declaratory relief is barred by limitation. It is needless to state that the plaint cannot be rejected in part, Since the relief of permanent injunction is a continuing cause of action as each act of interference gives a fresh cause of action.

8.With the above observations, this Civil Revision Petition is dismissed. Considering fact that the suit is at the stage of cross examination of the plaintiff, the learned District Munsif, Madurai



Taluk, Madurai, is directed to dispose of the suit in O.S.No.16 of 2017 on or before 30.04.2022. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The District Munsif,
Madurai Taluk at Madurai

+1 CC to M/s.BABU. RAJENDRAN, Advocate (SR-523[F] dated 06/01/2022)

C.R.P. (MD)No.1251 of 2021

and

C.M.P. (MD) No.7210 of 2021

Dated: 05.01.2022

MGJ(28.01.2022) 5P 3C