



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.04.2022

CORAM

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

A.S. (MD)No.52 of 2018

R.Kumanan

... Appellant/1<sup>st</sup> Respondent/  
Plaintiff

**Vs.**

1.Uma Maheswari

2.Vijay Balaji

... Respondents 1 & 2/  
Petitioners / Defendants 4 & 5

3.K.Valliannan

... 3<sup>rd</sup> Respondent/2<sup>nd</sup> Respondent/  
6<sup>th</sup> Defendant

**Prayer :** Appeal Suit filed under Section 96 of Civil Procedure Code, against the fair and decreetal order dated 31.08.2017 made in I.A.No.89 of 2017 in O.S.No.72 of 2016 on the file of the Principal District Court, Karur.

For Appellant : Mr.R.Devaraj

For Respondents : Mr.E.K.Kumaresan for R1 & R2

No appearance for R3

**JUDGMENT**

This Appeal Suit has been preferred challenging the fair and decreetal order dated 31.08.2017 made in I.A.No.89 of 2017 in O.S.No.72 of 2016 by the Principal District Judge, Karur.

2.The appellant is the first respondent/plaintiff; the suit has been filed by the plaintiff for the relief of specific performance based upon three sale agreements alleged to have been executed by the defendants; after this case was taken on file, the defendants 4 and 5 have preferred a petition under Order 7 Rule 11(d) of the Civil Procedure Code by stating that the suit itself is barred by limitation; the contention of the respondents 1 and 2/petitioners/defendants 4 and 5 is that the sale agreements are forged one and an earlier suit in O.S.No.505 of 2007 itself, the genuineness of the sale agreements was denied by them by way of filing written statement; the second respondent herein filed written statement in the said suit on 02.01.2008 and the first respondent herein filed written statement on 19.06.2009; the above pleadings raised by the respondents 1 and 2/petitioners/defendants 4 and 5 in the above suit would amount to refusal of the sale agreements; under such circumstances, it is obligatory on the appellant/first respondent/plaintiff to file a suit of this kind within a period of three years i.e., 19.06.2012. Since the suit has been filed on 21.09.2015, it is barred by limitation.



3. Unfortunately, the appellant/first respondent/plaintiff did not file any counter; the learned trial Judge had accepted the statement made by the respondents 1 and 2/petitioners/defendants 4 and 5 and allowed the petition filed under Order 7 Rule 11(d) of the Civil Procedure Code and recorded a finding that the suit is barred by limitation; aggrieved over that the appellant/first respondent/plaintiff has preferred this Appeal Suit.

4. The learned counsel for the appellant submitted that as per the averments made in the plaint, a legal notice was issued to the defendants by calling upon them to perform the terms of the agreement on 19.05.2014; the respondents 1 and 2/petitioners/defendants 4 and 5 have chosen to send reply notice on 03.07.2014 and in which, they denied the validity of the impugned sale agreements; according to the averments of the plaint, the limitation starts from 03.07.2014 and the suit should have been filed within the period of limitation; as against the judgment and decree passed in the earlier suit in O.S.No.505 of 2007, A.S.No.87 of 2011 was filed and the same was allowed and as against the said appeal, Second Appeal has been filed and it is still pending and hence, there are lot of facts of law involved in this case; under such circumstances, it is not lawful to reject the plaint.

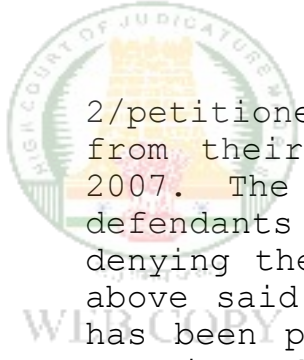
5. The learned counsel for the respondents 1 and 2/petitioners/defendants 4 and 5 submitted that the filing of the earlier suit in O.S.No.505 of 2007 was not denied; as per the pleadings of the defendants of that suit, the suit sale agreements are not genuine and the defendants therein need not execute the sale; so the refusal for the sale agreements had been exhibited in the year 2008 itself by way of filing written statement in the earlier suit; hence, the limitation is barred; the learned trial Judge had rightly appreciated the facts surrounding the point of limitation and rightly rejected the plaint.

6. The following points for consideration are relevant for the purpose of deciding this Appeal Suit:-

*"Whether the learned trial Judge is right in allowing I.A.No.89 of 2017 in O.S.No.72 of 2016 is fair and proper?"*

7. Heard the learned counsel for the appellant and the learned counsel for the respondents and went through the evidence on record.

8. The petition filed by the respondents 1 and 2/petitioners/defendants 4 and 5 under Order 7 Rule 11(d) of the Civil Procedure Court on the point of limitation was allowed and in view of that the suit got rejected. The respondents 1 and

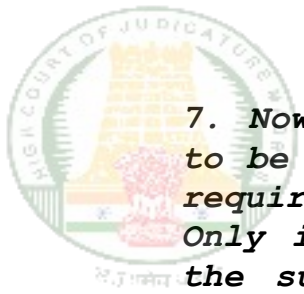


2/petitioners/defendants 4 and 5 had drawn the point of limitation from their pleadings filed in the earlier suit in O.S.No.505 of 2007. The respondents 1 and 2 herein along with some of the defendants in the above suit had filed their written statement by denying the genuineness of the sale agreements. The pendency of the above said suit is not disputed but the fact that a second appeal has been preferred against the said suit and the same is pending.

It is submitted by the learned counsel for the appellant that interim order for suspending the injunction granted in the above suit had also been granted. Now the present suit has been filed for the relief of specific performance in which, it is alleged that the point of limitation starts from 03.07.2014. When the respondents denied the genuineness of the sale agreements in their reply notice and when the earlier suit was pending and it did not attained finality, the learned trial Judge ought not to have taken the pleadings of the earlier suit as the basis for calculating the limitation for this suit.

9. But the appellant should also be blamed for not filing the counter in the contesting petition filed under Order 7 Rule 11(d) of Civil Procedure Code in a proper manner. But that cannot be allowed to defeat the ends of justice. For the issue raised in the impugned order, the evidence of both side is necessary. If the defendants were allowed to file their written statement, the appellant/plaintiff would have got the opportunity to file the reply statement. Even the submissions made before this Court would show that many questions of law and facts should be appreciated that could not have been done in the absence of other party. The learned trial Judge had opted to read the plaint averments and arrived at a finding for dealing the petition under Order 7 Rule 11(d) of the Civil Procedure Code. Though it is not wrong to reject the plaint, if it is barred by limitation by invoking the powers of the Court under Order 7 Rule 11(d) of Civil Procedure Code, if the issue of limitation is seen to be having mixed questions of facts and law, it is better to give opportunity to the parties for completing their pleadings.

10. In this context, the learned counsel for the appellant drew the attention of this Court to the judgment of the Honourable Supreme Court held in **Civil Appeal No.1848 of 2022 (Sri Biswanth Banik & Another Vs. Smt.Sulanga Bose & Others)**. In the said judgment, it is held that while deciding the issue, the learned trial Judge should read the pleadings on the whole and it should not be read in isolation. Reference of the earlier case of **Rama Prakash Gupta Vs. Rajiv Kumar Gupta and Others** reported in (2007) 10 SCC 59 is also made in the above judgment. The relevant portion of the judgment is extracted as under:-



7. Now, so far as the issue whether the suit can be said to be barred by limitation or not, at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order VII Rule 11(d) CPC on the ground of limitation. At this stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole. As observed and held by this Court in the case of Ram Prakash Gupta (supra), rejection of a plaint under Order VII Rule 11(d) CPC by reading only few lines and passages and ignoring the other relevant parts of the plaint is impermissible. In the said decision, in paragraph 21, it is observed and held as under:-

"21. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The abovementioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No. 424 of 1989 titled Assema Architect v. Ram Prakash was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for declaration and in the alternative for possession. It is not in dispute that as per Article 59 of the Limitation Act, 1963, a suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed by the High Court. While deciding the application under Order 7 Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint."

7. From the aforesaid decision and even otherwise as held by this Court in a catena of decisions, while considering an application under Order VII Rule 11 CPC, the Court has to



***go through the entire plaint averments and cannot reject the plaint by reading only few lines/passages and ignoring the other relevant parts of the plaint.***

**11.** In the present case also, it appears that are some mixed questions of law and fact need to be dealt for rendering a finding on the point of limitation. Since the earlier suit is pending and it has not yet attained finality, the learned trial Judge ought to have allowed the parties to file their pleadings and then framed issues for trial.

**12.** In the result, this Appeal Suit is allowed and the fair and decreetal order dated 31.08.2017 passed in I.A.No.89 of 2017 in O.S.No.72 of 2016 by the Principal District Judge, Karur is set aside. The learned trial Judge is directed to take the suit on file and conclude the trial in accordance with law as expeditiously as possible. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:  
The Principal District Judge,  
Karur.

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The Record Keeper,  
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Madurai Bench of Madras High Court,  
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+1 CC to M/s.R. DEVARAJ, Advocate ( SR-17602[F] dated 08/04/2022 )

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