



Application No.243 of 2022 and
Application No.1564 of 2023
in C.S.No.253 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2023

PRONOUNCED ON : 30.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Application No.243 of 2022 and
Application No.1564 of 2023
in C.S.No.253 of 2013

Application No.243 of 2022

1.Susila
2.Loganayagi
3.Jagadees
4.Meera
5.T.Balaji
6.T.Kumaravel
7.T.Sakthivel
8.T.Baskar
9.Ravindaranath
10.K.Ananthapathbanaban
11.T.Devaraj
12.T.Sathish
13.P.Mani
[amended as per order dated 31.01.2023 in Application No.243/2022 in C.S.No.253 of 2013]

...

Applicants / Defendants

versus

Nelson

...

Respondent / Plaintiff



Application No.243 of 2022 and
Application No.1564 of 2023
in C.S.No.253 of 2013

PRAYER: Application filed under Order XIV Rule 8 of O.S. Rules read with Order VII Rule 11 of CPC, praying to grant an order to reject the plaint in C.S.No.253 of 2013.

For Applicants : Mr.R.C.Manaoharan

For Respondent : Mr.S.N.Narasimhulu

Application No.1564 of 2023

Nelson ... Applicant / Plaintiff
versus

T.Krishnasamy (Deceased)

P.Saratha (Deceased)

1.Susila

2.Loganayagi

3.Jagadees

4.Meera

5.T.Balaji

6.T.Kumaravel

7.T.Sakthivel

T.Baskar (deceased)

8.N.Ravindarnath

9.K.Ananthapathbanaban

10.T.Devaraj

11.T.Sathish

12.P.Mani

... Respondents/Defendants

[Legal heirs of the 1st defendant and 2nd defendant brought on record and also 10th defendant recorded as death as per order dated 25.08.2022 in Application No.3611 of 2022 in C.S.No.253 of 2013]

PRAYER: Application filed under Order VII Rule 7(3) C.P.C. r/w Order 14 Rule 8 of Original Side Rules, praying to to file additional documents (i) certified copy



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of sale deed in document No.425 of 1959, Thiruveethi executed at registered sale deed in favour of one Balaraman; (ii) certified copy of encumbrance of suit property; (iii) certified copy of E.P.No.430 of 1985 in O.S.No.525 of 1958; (iv) judgment in O.S.No.3392 of 2010 (online copy); (v) judgment in O.S.No.8553 of 2011 (web copy); and (vi) written statement in O.S.No.8553 of 2011 (photo copy).

For Applicant : Mr.S.N.Narasimhulu

For Respondents : Mr.R.C.Manaoharan

COMMON ORDER

Application No.243 of 2022 has been filed by the applicants / defendants to grant an order to reject the plaint in C.S.No.253 of 2013. Application No.1564 of 2023 has been filed by the respondent / plaintiff to file the following additional documents:-

“(i) certified copy of sale deed in Document No.425 of 1959, Thiruveethi executed at registered sale deed in favour of one Balaraman; (ii) certified copy of encumbrance of suit property; (iii) certified copy of E.P.No.430 of 1985 in O.S.No.525 of 1958; (iv) judgment in O.S.No.3392 of 2010 (online copy); (v) judgment in O.S.No.8553 of 2011 (web copy); and (vi) written statement in O.S.No.8553 of 2011 (photo copy).”



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2. Heard the learned counsels for the applicants / defendants and the respondent / plaintiff and perused the materials available on record.

3. The applicants are the defendants and it is submitted by the learned counsel for the applicants that the respondent / plaintiff has filed a suit for specific performance in respect of the suit property on the basis of a registered sale agreement dated 20.06.2008; even according to the plaintiff, the first instalment was paid on 20.06.2008, the second instalment was paid on 20.07.2008 and the third instalment was paid on 20.08.2008 and the time fixed in the sale agreement was till 20.08.2008 and on which date the plaintiff had agreed to pay the balance sale consideration of 70% and register the sale deed; the plaintiff has not come forward to pay the balance sale consideration but has filed the suit on 08.03.2013 after a period of three years from the crucial date of 20.08.2008 and the plaintiff has alleged that he had paid an amount of Rs.1,50,000/- on 10.08.2009. Even for the sake of arguments, if the period of limitation is computed from 10.08.2009, the suit ought to have been filed on or



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before 09.08.2012; the plaint on the face of it does not have any cause of action and it is liable to be rejected under Order VII Rule 11 (d) of C.P.C.

4. The learned counsel for the respondent / plaintiff submitted that the applicants / defendants having remained silent for nine years have filed the application for rejection of plaint; the plaintiff has made various payments totalling to Rs.29,50,000/- towards the sale consideration of the suit property; his final payment was made on 10.08.2009; when the plaintiff visited the suit property during 2010, he found that some unknown third parties had put up a house and were residing there; on enquiry, he came to know that they claim ownership over the suit property; so immediately the plaintiff enquired the defendants and they stated that some third parties have trespassed into the property and that he had also taken steps to vacate them; since the defendants were delaying the execution of the sale deed, the respondent issued a legal notice on 15.09.2012 and for which the defendants issued a reply notice by stating that the suit sale agreement is barred by limitation; after receiving the reply notice, the



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plaintiff issued a rejoinder on 11.10.2012 by expressing his willingness to pay the entire sale consideration and execute the sale deed.

5. The suit has been filed by the respondent / plaintiff for the relief of specific performance. As per the averments in the plaint it is seen that there is a sale agreement between himself and the defendants on 20.06.2008. The said sale agreement is a registered sale agreement and the total sale consideration was agreed at Rs.1,60,00,000/-. According to the plaintiff, on the date of sale agreement, he had made a payment of Rs.14,00,000/- and thereafter, he paid a sum of Rs.1,50,000/- on 10.08.2009. Even when the legal notice was issued by the plaintiff on 15.09.2012, the defendants sent a reply notice by stating that the sale agreement is not enforceable as it is barred by limitation.

6. The time for completing the sale transaction as per the sale agreement is dated 20.06.2008 i.e. on or before 20.08.2008. Even though the sale agreement has stated three months time between 20.06.2008 and 20.08.2008 that



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would comprise only two months. So in such case the limitation would start from 20.08.2008, from which date the plaintiff gets the cause of action to file the suit against the defendants for specific performance.

7. However, it is submitted that the defendants have received payments even subsequent to 20.08.2008 and it is stated that the defendants are said to have received the last payment on 10.08.2009. Since the outer limit for completing the sale transaction was fixed at 20.08.2008, the limitation will start from 20.08.2008 and extend upto three years and thus it would expire on 09.08.2012.

8. Even if the period is computed from 10.08.2009, the three years period would expire on 09.08.2012. However, the plaintiff has filed the suit only on 08.03.2013. Since three years time expires on 09.08.2012, the plaintiff cannot claim that he has got the period of limitation even beyond the said period. The plaintiff has issued the legal notice on 15.09.2012 and for which the defendants sent a reply notice by stating that the sale deed is barred by limitation.



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9. The applicants / defendants had filed this at a belated stage. But that cannot be the reason to hold a plaint which is barred by limitation. The learned counsel for the respondent / plaintiff submitted that the powers of the Court can be exercised under Order VII Rule 11 of C.P.C. at any stage before the conclusion of the trial. Between the period from 10.08.2009 to 09.08.2012, the respondent / plaintiff has not sent any written communication to the applicants / defendants calling upon them to execute the sale deed in his favour. In this regard, the learned counsel for the applicants / defendants attracted the attention of the judgment of the Hon'ble Supreme Court held in *Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and Others* reported in (2020) 7 SCC 366 and in the said case it is held as under:-

“23.1. We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:

“11. Rejection of plaint.—The plaint shall be rejected in the following cases—

(a) where it does not disclose a cause of action;



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(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”



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23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315, followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)



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Section 54 of the Limitation Act would prescribe three years from the date fixed for the performance, or, if no such date is fixed, it is from the date when the plaintiff has notice about the refusal of the performance.

12. As per the case of the plaintiff, he has entered into a registered sale agreement with the defendants on 20.06.2008 and the time agreed to perform the contract is till 20.08.2008. So the period of limitation would start from 20.08.2008 and expire on 19.08.2011. For the sake of arguments, even if it is considered that the period of limitation is presumed to have started from 10.08.2009 on which date the last date payment is alleged to have been made by the plaintiff to the defendants, the limitation would expire on 09.08.2012. But the suit has been filed on 08.03.2013 on which date the suit is clearly barred by limitation.

13. Article 54 of the Limitation Act would bar suits filed after the expiry of limitation and the expiry of limitation is patent on the face of the plaint. Hence



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it is right for the defendants to claim that the suit should be rejected because it is barred by limitation, without having the trouble of proving any other facts.

14. Under Order VII Rule 11(d) of C.P.C. no plaint can be maintained after the cause of action is lost. The case in hand the cause of action is lost by the plaintiff due to expiry of limitation. Hence the suit is scopelessly barred by limitation and it is liable to be rejected.

15. In the result Application No.243 of 2022 is allowed and the plaint is rejected. Consequently, Application No.1564 of 2023 is dismissed.

30.03.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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R.N.MANJULA, J.

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Pre-Delivery Common Order made in
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