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C.R.P.No.2545 of 2015
and M.P.No.1 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM:

MR.JUSTICE N.SESHASAYEE

C.R.P.No.2545 of 2015
and M.P.No.1 of 2015

R.M.Manivasakam

.. Petitioner

Versus

1.C.K.Shanmugam
2.S.Bagyalakshmi
3.M.Gandhimani
4.P.Manoharan
5.S.Mariyappan
6.H.Nazar
7.S.Ramakrishnan

.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, seeking to set aside the Order dated 13.03.2015 made in I.A.No.108/2014 in O.S.No.642/2012 on the file of the IV Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.S.Mukunth, Senior Counsel
for M/s.Sarvabhauman Associates

For Respondents : Mr.G.Rajagopalan, Senior Counsel
for Mr.P.Thiagarajan, R1 & R2

ORDER

The first defendant in O.S.No.642 of 2012 has approached this Court in the



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present revision challenging the order passed in I.A.No.108 of 2014, dismissing his application for rejection of plaint under Order VII Rule 11(d) of CPC.,

2. The minimum facts that are required for the present are as below :

- The first plaintiff was the owner of Item-I of the suit property and the second plaintiff was the owner of Item-II of suit property, and that they are husband and wife. They together constituted the second defendant as their Power of Attorney.
- On 09.4.2001 and 10.04.2001, the second defendant, as the Power of Attorney respectively of plaintiffs 1 and 2, sold items 1 and 2 properties respectively to the first defendant. Years rolled by, the plaintiffs would now institute a suit for recovery of possession of the suit property in 2012.
- The first defendant would now take out an application in I.A.No.108 of 2014 for rejection of plaint on the ground that the plaintiffs ought to have sought cancellation of the sale deeds dated 09.04.2001 and 10.04.2001, but if only they had to seek the



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same, that should have been done latest by 09.04.2004 and 10.04.2004. Since they missed the bus then, they have come forward with a suit for recovery of possession based on title, to bring the suit within limitation.

- This application was contested by the plaintiffs and the trial Court found that this is a issue fit for trial, since the issue of limitation is a mixed question of law and fact, hence, the revision by the first defendant.

3. Heard Mr.S.Mukunth, learned Senior Counsel for the first defendant / revision petitioner.

4. The learned counsel submitted that :

- While generally limitation is considered as a mixed question of law and fact, yet it has to be understood in the context whether any finding on fact is required for considering the plea of limitation, but not when certain facts are admitted or cannot be disputed.



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- In the context of the case, the significant dates are 09.04.2001 and 10.04.2001. Inasmuch as these sale deeds are executed by the Power of Attorney of the plaintiffs, these sale deeds would bind the plaintiffs and has to be construed as if they had executed the same. Therefore, the duty is cast on them to seek cancellation of these sale deeds or any other similar remedy which may have a similar effect before seeking the remedy for possession.
- It is an admitted fact that the plaintiffs cannot lay the suit for cancellation of sale deeds beyond the period of three years. By an ingenious method, the plaintiffs couched the relief as one for recovery of property, wherein they would require the trial Court to investigate on the legal validity of the sale deeds executed in favour of the first defendant. But inasmuch as the plaintiffs are bound by the sale deeds referred to above, without seeking cancellation, they cannot sustain a suit for recovery of possession.

5. Per contra, Mr.G.Rajagopalan, learned Senior Counsel appearing for the respondents/plaintiffs submitted that the present suit cannot be read in



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isolation and it has to be understood in the context of the Common Order dated 06.08.2010 passed by this Court in CMA No.3184 of 2008 and connected CRP Nos. 3521 of 2008 and 1414 of 2009.

6. Providing the backdrop for the present suit, the learned Senior Counsel submitted that the plaintiff Mr.C.K.Shanmugam has a brother by name Mr.Manickam. This Manickam had borrowed a sum of Rs. 6.5 lakhs from the first defendant for which, the plaintiff had executed a promissory note dated 08.09.1999 along with that, the original title deeds of the properties were also entrusted with the first defendant. Besides, the plaintiffs also executed a Joint Power of Attorney in favour of the second defendant, who is none other than the sister of the first defendant. Now, on the strength of this Joint Power of Attorney, the second defendant had sold the property to the first defendant and subsequently, the first defendant had sold the portion of the property, so-purchased, to the third defendant. The property sold to the third defendant by the first defendant is described as Item No. II in the plaint.



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7. In the meantime, the first defendant had instituted a suit in O.S. No. 1109 of 2002 on the file of Sub-Judge, Coimbatore, which was later transferred to FTC-III, Coimbatore, wherein, it was taken on record as O.S.No.225 of 2003 for realising the money due on the promissory note dated 08.09.1999 against the present plaintiffs. In that suit, the present plaintiff as defendant pleaded about the borrowings made by Mr.Manickam etc., Ultimately that suit came to be decreed by the Trial Court. The plaintiffs had thereafter laid E.P.No.61 of 2008 for executing the money decreed that they had obtained in O.S.No. 225 of 2003. The Execution Court had ordered sale of the property. At that time, the present plaintiffs had taken up E.A.No.18 of 2011 for adjourning the same under Order 21 Rule 83 of CPC.

8. At that point of time, the first defendant/decreed holder in O.S.No.225 of 2003 made a statement before the Court that by sale of the property, vis-a-vis the power of attorney executed in favour of the second defendant, the decree holder had realised the decretal amount and accordingly that Execution Petition was terminated.



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9. Taken aback by this move of the decree holder, the present plaintiff as defendant challenged the same in CMA No.3184 of 2008 along with CRP Nos. 3521 of 2008 and 1414 of 2009 that came to be disposed of by this Court by order dated 06.08.2010, wherein, this Court found that there is no prima facie illegality in the order of the execution Court warranting interference, but, granted leave to the plaintiffs to institute a separate suit for preserving its right.

10. In the meantime, the first defendant had settled the property purchased through the Power of Attorney of the plaintiffs and the same was in challenge in CMA No.3184 of 2008 and connected CRP Nos. 3521 of 2008 and 1414 of 2009 and that came to be disposed of by this Court vide its Order dated 06.08.2010. Upholding the said transfer by settlement of documents, this Court had held as follows:

"...20. Following the principles laid down in the said decisions relied on by the learned Counsel for the Respondent, I do not find any infirmity in the orders passed by the Executing Court while dismissing the Applications filed by the



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Revision Petitioner since the sale of Goundapalayam property is a different transaction. Even if the Revision Petition feels that the Respondent/decreed holder had gained benefit out the sale consideration, they are at liberty to file a Suit for recovery of the said amount and the said transaction cannot be agitated in the present proceedings. Under such circumstances, both the Revision Petitions are bereft of merits and are bound to fail."

11. However, subsequently, pending E.P.No.61 of 2008, the Judgment Debtor therein (petitioner herein) had taken out E.A.No.18 of 2021 seeking adjournment of the sale order by the Court.

12. The learned counsel added that in the plaint the plaintiffs had taken out an alternative prayer for payment of compensation for half share of the property.

13. Per contra, responding to the same, Mr.Mukund, learned Senior Counsel for the revision petitioner submitted that the Order passed in CMA No.3184 of 2008 along with CRP Nos. 3521 of 2008 and 1414 of 2009 must be



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understood in the context in which was made. In the judgment in O.S No. 225 of 2003, which is made available in the additional typedset of papers of the respondent, nowhere, the plaintiffs have pleaded anything about the Power of Attorney dated 27.01.1999 given to the second defendant.

14. After carefully weighing the rival submissions, this Court finds that the facts are intertwined and they cannot be picked up for consideration in isolation. It will, therefore, be appropriate that the entire matter is tried and adjudicated by the Court. The Revision Petitioner/Defendant will have all the right to press into service all the contentions that they have taken which may include the right to file any written statement, if so required.

15. Since, the suit is into its 11th year of its institution, this Court requires the trial Court to expedite the process of the Trial and dispose of the same at the very earliest.



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16. In conclusion, this Revision is dismissed. No costs. Consequently,
connected miscellaneous petition is closed.

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N. SESHASAYEE, J.

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Copy to:

1. The Presiding Officer,
The IV Additional District and Sessions Judge,
Coimbatore.

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