



S.A.No.259 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.No.259 of 2022

1. T.Muruganandagukan
2. T.Raambai
- 3.T.Shanmugapriya
- 4.Salai Govindammal
- 5.C.Dayalan

... Appellants

Vs.

1. Gopalakrishnan
2. M.C.Muruganandam
3. The Sub Registrar,
Tirutani

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 25.10.2021 passed in A.S.No.18 of 2018 on the file of the Sub Judge, Tiruttani, reversing the judgment and decree dated 08.06.2018 passed in I.A.No.288 of 2017 in O.S.No.4 of 2017 on the file of the District Munsif Court, Tiruttani.



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For Appellants : Mr.E.J.Ayyappan
For Respondents : Mrs.A.L.Gandhimathi
Senior Counsel for R1 & R2
Dr.S.Suiya,
Additional Government Pleader for R3

J U D G M E N T

This second appeal has been filed by the defendants 1 to 5 in the original suit against the judgment and decree dated 25.10.2021 passed in A.S.No.18 of 2018 on the file of the learned Sub Judge, Tirutani, reversing the judgment and decree dated 08.06.2018 passed in I.A.No.288 of 2017 in O.S.No.4 of 2017 on the file of the District Munsif Court, Tirutani.

2. For the sake of convenience, the parties are referred to by their respective ranks in the original suit.

3. The plaintiffs have filed a suit in O.S.No.4 of 2017 before the learned District Munsif, Tirutanni, seeking to declare the sale deeds dated 05.06.1972 and 14.12.1973 executed in favour of the 4th defendant namely Solai Govindammal registered as document No.3413/1973 by the 6th respondent / Sub Registrar, Tirutani, in respect of the suit schedule property of the family as null and void and not binding on the plaintiffs and to grant



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permanent injunction restraining the defendants 1 to 5, their men, servants and agents not to alienate the suit schedule property. In the plaint, apart from making various allegations, the plaintiffs had contented that they came to know about the sale deeds dated 05.06.1972 and 14.12.1973 only on 18.01.2016 and thereby, they had filed a suit on 06.01.2017. In the plaint, the plaintiffs had referred to a sale agreement between the plaintiffs and the defendants 1 to 3 dated 15.02.2012 and a photo copy of the sale agreement dated 15.02.2012 was filed as suit document No.7 under Order VII Rule 1 of C.P.C.

4.The defendants had filed a written statement contending that the suit was time barred and filed after a lapse of more than 40 years. It was also contended that the plaintiffs' brother late M.C.Thanikachalam got assignment of the suit schedule property in the year 1968 and he was the absolute owner and was in absolute possession and enjoyment of the same without any inherence and that absolute title, right and interest were confirmed by the learned District Munsif, Tiruttani in O.S.No.215 of 1985 by its judgment and decree dated 23.07.1997 and later, confirmed by the judgment and decree of the learned Additional District Judge, Fast Track Court, Thiruvallur in A.S.No.92 of 1997 by its order dated 24.10.2007. The defendants had further



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contended that the plaint document No.7 i.e., the sale agreement dated 15.02.2012 filed by the plaintiffs is a manipulated one for the purpose of bringing the suit within the period of limitation and it is further contended that the plaintiffs have not come to the Court with clean hands. The defendants thus raising the point of filing manipulated document and that the suit was also time barred and have filed an application in I.A.No.288 of 2017 seeking to reject the plaint under Order 7 Rule 11 C.P.C.

5.The plaintiffs have filed a counter and after conducting an enquiry, the trial Court holding that the suit is barred by limitation had rejected the plaint.

6.Against the order passed in I.A.No.288 of 2017, dated 08.06.2018, in O.S.No.4 of 2017, by the learned District Munsif, Tiruttani, to rejecting the plaint, the plaintiffs filed A.S.No.18 of 2018 before the learned Sub Judge, Tiruttani and the Appellate Court holding that the question of limitation is a mixed question of fact and law had allowed the appeal and set aside the order passed by the trial Court and directed restoration of the suit.

7.Against the reversal finding of the Appellate Court, this Second



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Appeal had been filed by the defendants 1 to 5.

8.The Second Appeal had been admitted by this Court on 21.03.2023, on the following substantial questions of law:

"(i) Whether the suit is barred by limitation when the suit itself is filed to declare the nullity of sale deeds dated 05.06.1972 and 14.12.1973, especially when the plaintiff had the knowledge about the sale deeds as evident from the documents?

(ii) When it is established that the document which was filed as Document No.7 in the plaint is demonstrated to be a fabricated document produced by the respondents to suppress the factum of knowledge of the two sale deeds dated 05.06.1972 and 14.12.1973, is not the Lower Appellate Court committed an error in allowing the Appeal?"

9.Today by consent of both the parties, the appeal is taken up for final hearing.

10.The learned counsel for the appellants/defendants 1 to 5 would submit that the plaintiffs have filed a suit seeking to declare the sale deeds dated 05.06.1972 and 14.12.1973 executed in favour of the 4th defendant as null and void. Subsequently, a sale agreement was entered into between the



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plaintiffs, the defendants and a third party on 15.02.2012 and that the plaintiffs are well aware of the sale deeds dated 05.06.1972 and 14.12.1973 as early as on 15.02.2012 whereas suppressing the same and making a false averment, the suit has been filed much belatedly on 06.01.2017, that too by annexing a manipulated document as suit document No.7. He would further submit that though the Appellate Court had felt that the issue of limitation is a mixed question of fact and law, taking into consideration that the attempt has been made to play fraud on the Court by filing manipulated/forged document when the original sale agreement dated 15.02.2012 is very much available, the question of limitation can be taken as a preliminary issue and the parties can be permitted to adduce evidence relating to the question of knowledge of registration of the sale deeds and the sale agreement dated 15.02.2012 and thereby, the issue of limitation can be decided as a preliminary issue so as to avoid the delay.

11.The learned counsel would submit that in such situation, the order of the Appellate Court can be modified and the trial Court may be directed to decide the question of limitation as a preliminary issue and enquiry may be conducted and parties may be directed to adduce evidence



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with regard to sanctity of suit document No.7 and the question of limitation.

If the defendants are able to prove that the plaintiffs were aware of the sale deeds dated 05.06.1972 and 14.12.1973 as early as on 15.02.2012 and that suit document No.7 is a fabricated one and the suit can be rejected on the ground of limitation. Though limitation is a mixed question of law and facts, it is a foundational fact operating against the plaintiffs and when the starting point of limitation is decided by the Court, it would avoid further protraction of trial.

12.The learned counsel for the appellants/defendants would further submit that the original of the document No.7, which has been filed by the plaintiffs before the trial Court is available with the defendants and in such circumstances, the settlement of other issues may be postponed till determination of the preliminary point of limitation alone. In support of his contentions, the learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of *Sukhbiri Devi and others Vs. Union of India and others* reported in 2022 *LiveLaw (SC)* 810.

13. In reply, Mrs.A.L.Gandhimathi, learned Senior Counsel for the



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respondents would submit that the plaintiffs have filed the suit within the time and the issue of deciding limitation is a mixed question of law and fact and the plaint cannot be rejected for the same. The plaintiffs deny the averments that the plaint document No.7 is a forged one. Without there being any enquiry conducted with regard to the genuineness of the suit document No.7, the averments of the defendants cannot be considered. However, she would concede that the respondents/plaintiffs have no objection in taking the question of limitation as a preliminary issue and the other issues can be postponed till then.

14. Heard the learned counsel on either side and perused the materials available on record.

15. It is the case of the defendants that the suit is time barred and barred by limitation and that in order to bring the suit within the period of limitation, the plaintiffs have filed a forged document as plaint document No.7 in the suit. Whereas it is the claim of the plaintiffs that copy of suit document No.7 is genuine. If it is proved that the plaint document No.7 is forged one and that the plaintiffs were aware of the sale deeds dated



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05.06.1972 and 14.12.1973 by virtue of the sale agreement dated 15.02.2012, the suit would be barred by limitation. However, the question of limitation being a foundational fact in the suit for determining the starting point of limitation can be taken as a preliminary issue. As per Order 7 Rule 2(ii) CPC, the issue of limitation can be framed as a preliminary issue to decide the suit. However, in this case, it has not been taken as a preliminary issue and the parties have not been allowed to let in evidence with regard to that aspect. It is useful to refer the relevant portion of the judgment of the Apex Court in the case of *Sukhbiri Devi and others Vs. Union of India and others* reported in 2022 *LiveLaw* (SC) 810 and the same is extracted hereunder:

"18. We referred to the said provisions and decisions only to stress upon the point that the appellants cannot legally have any dispute or grievance in taking their statements in the plaint capable of determining the starting point of limitation for the purpose of application of Order XIV Rule 2(2)(b) of the CPC. Though, limitation is a mixed question of law and facts it will shed the said character and would get confined to one of question of law when the foundational fact(s), determining the starting point of limitation is vividly and specifically made in the plaint



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averments. In such a circumstance, if the Court concerned is of the opinion that limitation could be framed as a preliminary point and it warrants postponement of settlement of other issues till determination of that issue, it may frame the same as a preliminary issue and may deal with the suit only in accordance with the decision on that issue. It cannot be said that such an approach is impermissible in law and in fact, it is perfectly permissible under Order XIV Rule 2(2)(b) CPC and legal in such circumstances. In short, in view of the decisions and the provisions, referred above, it is clear that the issue limitation can be framed and determined as a preliminary issue under Order XIV Rule 2(2)(b) CPC in a case where it can be decided on admitted facts."

16. In view of the above, the Second Appeal stands partly allowed and while confirming the order of the Appellate Court, holding that the question of limitation is a triable issue, the trial Court is directed to frame the issue of limitation as a preliminary issue and postpone settlement of other issue and the trial Court shall permit the parties to let in evidence with regard to genuinity of the suit document No.7 and the limited question of limitation and pass orders in accordance with law. It is also made clear that the trial Court shall not be influenced by any observations made by this Court while



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deciding this appeal. No costs.

04.08.2023

vr

Index : Yes / No

Speaking / Non-speaking

Neutral Citation: Yes/No

To

- 1.The Sub Judge, Tiruttani.
- 2.The District Munsif, Tiruttani.
- 3.The Section Officer, VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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