



A.Nos.2884, 2885 of 2022

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in C.S.No.D6938 of 2019

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SENTHILKUMAR RAMAMOORTHY, J.

By these applications, the applicant / defendant assails an order dated 02.03.2022 of the learned Master by which the application to reject the plaint was dismissed.

2. Oral arguments on behalf of the applicant were addressed by Mr.P.V.Balasubramaniam, learned senior counsel, and on behalf of the respondent by Mr.N.Poovanalingam, learned counsel.

3. The first contention of learned senior counsel for the applicant was that an application to reject the plaint is maintainable even prior to the numbering of the suit. In support of this proposition, the judgment of the Supreme Court in *Solomon Selvaraj and others v. Indirani Bhagawan Singh and others (Solomon Selvaraj)*, 2022 SCC OnLine SC 1665, was relied upon. The next contention of learned senior counsel was that R.C.O.P.No.464 of 2012 was filed by the applicant against the son of the



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respondent herein. The said proceedings culminated in an eviction order dated 30.06.2014. The said order was carried in appeal by filing R.C.A.No.429 of 2014. The said RCA was rejected by order dated 29.04.2015. Pursuant to the order in the RCA, the applicant took possession of the relevant immovable property. Therefore, it was submitted that the present suit is barred by limitation inasmuch as the respondent was aware of the eviction proceedings and, in fact, was a witness in such proceedings. Learned senior counsel submitted that the period of limitation would run at least from the date of the order dated 30.06.2014. If computed from such date, the suit for declaration is barred in terms of Article 58 of the schedule to the Limitation Act 1963 (the Limitation Act). In this connection, learned senior counsel further submitted that the primary relief in the present suit is for declaration and that the relief of possession is ancillary or consequential thereto. By relying on the judgment of the Supreme Court in *Padhiyar Prahladji Chenaji -vs- Maniben Jagmalbhai (Padhiyar Chenaji)*, 2022 SCC Online SC 258, particularly paragraph 36 thereof, he contended that once it is held that the primary relief of declaration is barred by limitation, the consequential relief would also be barred by limitation.



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4. The third contention was that an earlier suit, O.S.No.4234 of 2016, was filed by the respondent herein for a permanent injunction. Such suit was laid on the basis of the unregistered settlement deed dated 07.09.1994. In those circumstances, an application under Order 7 Rule 11 CPC was filed in the said suit. Upon considering the submissions relating to the invalidity and inadmissibility in evidence of the said document, both under the Indian Registration Act, 1908 and the Indian Stamp Act, 1899, he submitted that the Court rejected the plaint on that basis. Although the said order could be appealed against, admittedly, no appeal was filed by the respondent herein. Therefore, the said order has attained finality. Learned senior counsel contended that the same document forms the foundation of the present suit. In support of the contention that an unregistered document cannot be relied upon, learned senior counsel pointed out that the respondent admitted in the plaint filed in the earlier suit that rights were created under the unregistered settlement deed. Therefore, by placing reliance on the judgments in *Ammamuthu Ammal and others v. Devaraj and others*, 2011-1-L.W.842, particularly paragraphs 20 and 22 thereof, and *Shyam Narayan Prasad -vs- Krishna Prasad and others*, MANU/SC/0665/2018, particularly paragraph



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12 thereof, it was submitted that the plaint is liable to be rejected on the ground of *res judicata*. Learned senior counsel further submitted, in this regard, that obtaining leave under Order 2 Rule 2(3) CPC does not make any difference as regards the above contention.

5. The last contention of learned senior counsel was that the plaint is liable to be rejected both on the ground of abuse of process of law and re-litigation. In support of this contention, the judgment of this Court in *V.Gowrishankar and another v. Balakumar and others*, 2021(2) CTC 829, and that of the Supreme Court in *Dahiben v. Arvind Bhai Kalyanji Bhanusali (GAJRA) dead through legal representative and others*, (2020)7 SCC 366, were relied upon.

6. In response to these contentions, learned counsel for the respondent submitted that none of the grounds canvassed by learned senior counsel for the applicant justify rejection of the plaint. He opened his submissions by dealing with the ground of limitation. As regards this ground, he submitted that the respondent/plaintiff has prayed for not only declaration but also for



the relief of possession. Consequently, he submitted that Article 65 and not Article 58 of the Limitation Act would apply. In support of this contention he relied upon the judgment of the Andhra Pradesh High Court in *Ashok Kumar and others v. Gangadhar and another*, 2007(2) ALD 313, particularly paragraphs 20 and 24 thereof, and the judgment of the Supreme Court in *Sopanrao and another v. Syed Mehmood and others (Sopanrao)*, (2019) 7 SCC 76, particularly paragraph 9 thereof. Learned counsel contended that it was held in both these judgments that Article 65 (and not Article 58) of the Limitation Act would govern if both declaration and possession are prayed for. Accordingly, he submitted that the suit would not be barred by limitation since the plaintiff is entitled to the limitation period of 12 years from the date of dispossession.

7. As regards the plea of *res judicata*, learned counsel submitted that an application for leave under Order 2 Rule 2(3) CPC was filed and leave was granted in the earlier suit. With regard to the admissibility of the unregistered settlement deed, he submitted that such settlement deed is in the nature of a family arrangement and does not require registration. He



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also submitted that the decision in the Order 7 Rule 11 application on 16.08.2017 does not constitute *res judicata* because such decision was at the pre-issues and pre-trial stage.

8. The first aspect to be considered is the maintainability of the application to reject the plaint at the pre-numbered stage. On this issue, learned senior counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in ***Solomon Selvaraj***. The respondent/plaintiff was unable to refute this contention. In fact, learned Master also concluded in the impugned order that the application to reject the plaint is maintainable at this stage.

9. The next contention to be considered is the contention that the suit is barred by *res judicata*. The settled position is that an application to reject the plaint should be decided based on the statements in the plaint. If the plaint in this suit is looked at, it is evident that the respondent/plaintiff has referred to the eviction proceedings and the suit filed by the respondent previously. Therefore, the said proceedings may be looked into for the purposes of this application. The contesting parties admit that leave was



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obtained in the earlier suit by filing an application under Order 2 Rule 2(3)

CPC. Therefore, the only question that remains, in this regard, is whether the decision in the application to reject the plaint in O.S.4234 of 2016 would constitute *res judicata* because the said decision has attained finality. While learned senior counsel for the applicant contended that the issue was dealt with in considerable detail in paragraphs 11 to 17 of the said order, learned counsel for the respondent submitted that the said findings were recorded even before issues were framed. Therefore, he submitted that the said findings would not bind the respondent in this suit. Whether the findings in the order dated 16.08.2017 constitute issue estoppel is a matter to be examined in course of adjudication of the suit. However, by taking into account that leave was obtained in the earlier suit under Order II, Rule 2(3) CPC, it is not a valid basis to reject the plaint at this juncture. The validity and admissibility of a document are also not material considerations while deciding an application to reject the plaint.

10. The next ground on which rejection of plaint was prayed for is



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limitation. Learned senior counsel relied upon the judgment of the Hon'ble Supreme Court in ***Padhiyar Chenaji*** to contend that if the relief of declaration, which is the primary relief, is held to be barred by limitation, then the same result would apply as regards the consequential relief. The said judgment was not in an application to reject the plaint and the relevant conclusions, which are relied upon, were drawn in appellate proceedings arising out of a final disposal. Therefore, the said judgment does not advance the cause of the applicant at this juncture. Learned counsel for the respondent placed before this Court the judgment of the Supreme Court in *Sopanrao* to contend that Article 65 and not Article 58 of the Limitation Act would govern because both the relief of declaration and possession have been prayed for. By taking into account that the relief of possession has been claimed and Article 65 of the Limitation Act is relied on by drawing support from the judgment in *Sopanrao*, the plaint cannot be rejected as barred under the law of limitation on the basis of statements made therein. It is, however, unnecessary to draw definitive conclusions as to the applicability of Article 58 or 65, at this juncture, because it would work prejudice to both parties. Such issue should be examined after issues are



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11. The last ground on which rejection was prayed for is abuse of process/re-litigation. Learned senior counsel pointed out that the respondent was fully aware of the eviction proceedings against her son and even participated in such proceedings as a witness. He also pointed out that the applicant recovered possession of the property pursuant to the orders passed in the R.C.A. and that the present suit is clearly an abuse of process. The said contentions cannot be brushed aside and merit consideration while the suit is taken up for disposal. However, at this juncture, given the limited scope of Order 7 Rule 11 CPC, and the conclusion that the suit is not barred by law on the basis of statements in the plaint, I am not inclined to reject the plaint on the basis of the said contention.

12. For reasons set out above, the order of the learned Master is affirmed and these applications stand rejected.

24.01.2023

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SENTHILKUMAR RAMAMOORTHY, J.

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