



A.No.6106 of 2015 in CS.No.573 of 2012

WEB COPY

A.No.6106 of 2015
in CS.No.573 of 2012

RESERVED ON : 20.09.2023

PRONOUNCED ON : 22.12.2023

A.A.NAKKIRAN, J.

ORDER

1. This application has been filed by the Defendants 1 and 3 to reject the Plaint under Order VII Rule 11 of the CPC and to award costs.
2. The case of the Applicant is as follows:-
 - (a) The above suit has been filed by the 1st Respondent for specific performance of an alleged agreement of sale and for injunction restraining the Applicants and the Respondents 2 to 6 from alienating or encumbering the suit property and for declaring the settlement deed dated 01.12.2008 entered into between the Respondents 3 and 4 as null and void and not binding on the 1st Respondent.
 - (b) One Late L.K.Markandeyan founded the 6th Respondent Partnership Firm, namely, M/s.Sree Gopikrishna Paradise. The sons of the said Late L.K.Markandeyan are the 1st Applicant and the 2nd Respondent. The 2nd Applicant/3rd Defendant is their mother and the wife of the said Late L.K.Markandeyan. The 6th Respondent Firm was originally a Partnership between Late Mr. L.K.Markandeyan and his sons. Upon the demise of their father, their mother was inducted into the Partnership Firm. The last constitution of the 6th Respondent Partnership Firm was the 1st



WEB COPY



A.No.6106 of 2015 in CS.No.573 of 2012

Applicant (44%), his elder brother/2nd Respondent (45%) and their mother/2nd Applicant (11%). The Respondents 4 and 5 are the wife and daughter respectively of the 2nd Respondent. The 1st Respondent is the father-in-law of the 2nd Respondent, father of the 4th Respondent and the maternal grandfather of the 5th Respondent.

- (c) It is stated in paragraph 8 of the plaint that "Payment made to the 2nd Defendant by Settlement - Rs. 75 Lakhs." In paragraph 10 of the Plaint, it is stated that "The Plaintiff had on many occasions called upon the Defendants 1 to 3 to discharge the liabilities and execute the sale deed as agreed and receive the balance consideration. But, the Defendants were pleading time on some pretext or other. Considering the relationship that the Plaintiff's daughter viz. the 4th defendant is given in marriage to the 2nd Defendant, he patiently waited. In the meantime, there were certain disputes between the Plaintiff's daughter, the 4th defendant and the 2nd Defendant and the Plaintiff taking into consideration the possibility of settlement and being father of the 4th defendant, who is married to the 2nd Defendant, did not want to precipitate." In paragraph 17 of the plaint, it is stated that "The suit is filed within the period of limitation and no part of the suit claim is barred by limitation. As stated supra, the parties had specifically given a go-bye to the time (i.e. clause 4 of the Memorandum of Agreement dated 11/4/2004 as per the endorsement made therein) and there was no time fixed for performance. The Plaintiff treats the 1 Defendant's notice dated



WEB COPY

23.05.2012 and newspaper publication dated 02.06.2012 as first notice of refusal and is immediately approaching this Court with this suit. Hence, the suit is well within limitation.”

(d) From the above pleadings of the plaint, it can be inferred that the Plaintiff and the 4th Defendant reside at the same address. Particulars of the disputes between the Plaintiff's daughter, Defendants 2 and 4 deliberately have not been explained or pleaded since the same throw light on the unexplained silence of the Plaintiff to seek performance from 2008 until the filing of the suit. Last payment by Plaintiff was made in 2008 or thereafter to the 2nd Defendant vis Plaintiffs son-in-law only and is described as "Settlement Amount". The 2nd Defendant against whom specific performance has been sought, has settled his 25% share of the suit property to the Defendants 4 and 5 on 01.12.2012 vide a Registered Settlement Deed. The particulars of payment made to the 2nd Defendant by "Settlement" has also not been explained. Although chronologically, the same has been stated after 18.03.2005 which is admittedly the last payment. It is pertinent to state that the Deed of Settlement by the 2nd Defendant in favour of the defendants 4 and 5 is dated 01.12.2008. The execution of a Deed of Settlement by a Party who had already executed an Agreement to sell the same property, per se amounts to "Refusal to perform". Therefore, the Settlement Deed dated 01.12.2008 between the Defendants 2, 4 and 5 is the Notice of Refusal to perform as per Article 54 of the Limitation Act.



WEB COPY

(e) Therefore, the Plaintiff had knowledge of the settlement deed between the Defendants 2, 4 and 5, which admittedly runs counter to the right of the Plaintiff under the Memorandum of Agreement, dated 11.06.2004 and/or seek specific performance in respect thereof. Therefore, the averment of the Plaintiff that the execution of the settlement deed came allegedly to the knowledge of the Plaintiff only on 17.07.2012, ie. the day before the filing of the suit is false and vexatious. In any event, the Plaintiff has not even pleaded how the Plaintiff came to know of the settlement deed exactly a day before the filing of the suit.

(f) No cause of action has been pleaded for setting aside the settlement deed dated 01.12.2012. The plaint ought to be rejected on this ground also. As per Article 54 of the Limitation Act, 1963, the suit ought to have been filed on or before 30.11.2011, whereas the Plaint has been presented only on 18.07.2012. For this reason, the suit is barred by limitation. Hence, this application has been filed seeking the relief as stated above.

3. This court heard both sides and also perused the documents available on record.

4. It is contended by the learned counsel for the applicants that the



A.No.6106 of 2015 in CS.No.573 of 2012

alleged settlement deed executed by the 2nd defendant in favour of 4th and 5th defendants is dated 01.12.2008 and the execution of a deed of settlement by a party who had already executed an agreement to sell the same property, per se amounts to “Refusal to perform” and therefore, the suit ought to have been filed on or before 30.11.2011, whereas the plaint has been presented only on 18.07.2012 which is clearly barred by limitation and hence the plaint deserves to be rejected.

5. The suit was instituted by the first respondent for specific performance and for declaration, declaring the settlement deed dated 01.12.2008 executed by the 2nd defendant in favour of the 4th and 5th defendants as null and void. The applicants herein filed this application for rejection of plaint under Order VII Rule 11 of C.P.C on the ground that the suit is barred by limitation.

6. This Court is of the considered opinion that the ground of limitation raised for rejecting the plaint under the provision of Order VII, Rule 11 of CPC is a mixed question of facts and law and therefore, the issue could be decided on consideration of the evidences to be adduced on both sides only at the time of trial. Further, the plaintiff is having an arguable case with regard to the submissions made by the learned counsel for the



A.No.6106 of 2015 in CS.No.573 of 2012

applicants. Therefore, this Court is not inclined to accept the submissions made by the learned counsel for the applicants. I find that the applicants/defendants 1 and 3 have not made out any ground within the ambit of Order VII, Rule 11 of CPC. Hence, this application deserves to be dismissed.

7. In fine, this application is dismissed. No costs.

22.12.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm /uma



WEB COPY



A.No.6106 of 2015 in CS.No.573 of 2012

A.A.NAKKIRAN, J.

Srcm/uma

Pre-Delivery Order in
A.No.6106 of 2015
in CS.No.573 of 2012

22.12.2023