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Application Nos.2142 & 2143 of 2023
in C.S.No.43 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2023

PRONOUNCED ON : 27.09.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Application Nos.2142 & 2143 of 2023
in C.S.No.43 of 2023

Application No.2142 of 2023

C.R.Gayathri	...	Applicant / 1 st Defendant
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versus

1.C.Prema Raju	...	1 st Respondent / Plaintiff
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2.A.C.Raju	...	2 nd Respondent / 2 nd Defendant
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PRAYER: Application filed under Order VII Rule 11 of the Code of Civil Procedure read with Order XIV Rule 8 of Original Side Rules, praying to reject the plaint in C.S.No.43 of 2023.

For Applicant : Mr.C.T.Murugappan

For Respondents : Mr.S.S.Rajesh



Application No.2143 of 2023

A.C.Raju

...

Applicant /
2nd Defendant

versus

1.C.Prema Raju

...

1st Respondent /
Plaintiff

2.C.R.Gayathri

...

2nd Respondent /
1st Defendant

PRAYER : Application filed under Order VII Rule 11 of the Code of Civil Procedure read with Order XIV Rule 8 of Original Side Rules, praying to reject the plaint in C.S.No.43 of 2023.

For Applicant : Mr.R.Siva

For Respondents : Mr.S.S.Rajesh

COMMON ORDER

These Applications have been filed by the applicants to reject the plaint in C.S.No.43 of 2023.

Applications in brief:-

2. The applicants are the defendants 1 and 2. They have filed a separate application to reject the plaint on the submission that the first respondent / plaintiff has filed the suit to declare the settlement deed dated



11.09.2014 as null and void and for permanent injunction. The said settlement was executed by the applicants along with the first respondent / plaintiff in favour of the second defendant. The suit has been filed by stating that the first respondent came to the Sub-Registrar Office by believing that she is going to execute a Power of Attorney but later she came to know that it is a settlement deed.

3. The suit is barred by limitation in view of the fact that the settlement deed was executed on 11.09.2014 and the suit for declaration has to be filed within three years from the date on which the right to sue accrues. The first respondent being a party to the document and admitting the execution of document cannot claim that the document was registered without her knowledge. Admittedly the settlement deed was jointly executed by the applicants and the first respondent and it is irrevocable. Hence, it has to be rejected.

Counter of the first respondent / plaintiff in brief:-

4. The issue of limitation is a mixed question of law and facts. The first respondent / plaintiff seeking for the cancellation of her 50% share



in the property and the settlement deed was obtained by playing fraud. The period of limitation would start only from the date of knowledge, when the plaintiff came to know about the fraudulent registration. Hence, the applications are liable to be dismissed. In support of his submissions, the learned counsel for the applicant has relied on the following decisions:-

- “i. Shantha Devi and another Vs. D.Purushothaman and others [2021 SCC Online Mad 2692]*
- ii. Dahiben Vs. Arvindhbai Kalyanji Bhanusali [(2020) 7 SCC 366]”*

5. The learned counsel for the first respondent / plaintiff submitted that the cause of action would arise only from the date on which the plaintiff gained knowledge of the essential facts about the fraudulent act of the defendants. She had chosen to file the suit to declare the settlement deed dated 11.09.2014 as null and void. The suit has to be read only on the averments made therein. Only if the applicants are allowed to participate in the trial it will be possible for the plaintiff to prove her claim. The defendant's defence cannot be examined even before the trial is completed.



In support of the above contentions, the learned counsel for the first respondent has relied on the following decisions:-

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- “i. Salim D.Agboatwala and others Vs. Shamalji Oddhavji Thakkar and others [(2021) SCC Online SC 735]*
- ii. P.V.Guru Raj Reddy and another Vs. P.Neeradha Reddy and others [(2015) 8 SCC 331]*
- iii. Chhotanben and another Vs. Kiritbhai Jalkrushnabhai Thakkar and others [(2018) 6 SCC 422]”*

Discussion:-

6. The categorical contention of the plaintiff is that she was taken to the Sub-Registrar Office on the instructions that only a document of Power of Attorney is going to be registered and she came to know later that what was registered was not a Power of Attorney document but it was a settlement deed in favour of the second defendant. The first defendant who is also a joint executor of the document has filed an independent application to reject the plaint by stating that herself and the first respondent / plaintiff had knowingly executed the settlement deed.



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7. The plaintiff has pleaded that the point of limitation would arise only when she came to know that the settlement deed has been registered fraudulently. In the plaint filed by the plaintiff it is pleaded that only on 25.12.2022, when she had taken a Encumbrance Certificate in order to settle her share in favour of her eldest son Prakaash Kumar and she came to know about the fact that the document executed on 11.09.2014 was a settlement deed and not a Power of Attorney as believed by her and the burden to prove these facts is on the plaintiff. In this regard, it is appropriate to refer the judgment of the Hon'ble Supreme Court held in ***Chhotanben and another Vs. Kiritbhai Jalkrushnabhai Thakkar and others*** reported in (2018) 6 SCC 422. In the said case, it is held as under:-

“15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18-10-1996. The limitation to challenge the registered sale deed ordinarily would start



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running from the date on which the sale deed was registered. However, the specific case of the appellant-plaintiffs is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers, original Defendant 1 and 2, in favour of Jaikrishnabhai Prabhudas Thakkar or Defendants 3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original Defendants 1 and 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realised that the original Defendants 1 and 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the trial court opined that it was a triable issue and declined to accept the application filed by Respondent 1-Defendant 5 for rejection of the plaint under Order 7 Rule 11(d). That view commends to us.”



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8. Though it is correct to state that the suit has to be filed within three years from the date on which the document was executed, the plaintiff specifically pleaded that she had the knowledge about the fraud only recently and for the purpose of maintainability of the suit, the starting point for limitation should be taken from the date of knowledge. It is also worthwhile to refer the judgment of the Hon'ble Supreme Court held in *Salim D.Agboatwala and others Vs. Shamalji Oddhayji Thakkar and others* reported in (2021) SCC Online SC 735 in this regard. In the said case, the Hon'ble Supreme Court has referred the earlier judgment on rejection of plaint held in *P.V.Guru Raj Reddy and another Vs. P.Neeradha Reddy and others* reported in (2015) 8 SCC 331 in approval.

9. Since the power of rejection of plaint is very drastic, especially on the ground of limitation and the plaintiff claims that she came to know about the document only recently, I feel it is not fair to reject the plaint. Instead, the parties should be allowed to participate in the trial.



10. In view of the above stated reasons, the applications in
A.Nos.2142 and 2143 of 2023 are dismissed.

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27.09.2023

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
Application Nos.2142 & 2143 of 2023
in C.S.No.43 of 2023

27.09.2023