



A.No.3286 of 2023

in

CS.No.32 of 2023

R.N.MANJULA, J.

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The applicants are the defendants 1 to 3. The suit has been filed by the 1st respondent/plaintiff seeking for the relief of partition and separate possession of her alleged 1/6th share in the suit scheduled property. As per the allegations of the plaint the suit property was originally owned by the father of the plaintiff by name Narayana Aiyar Venkata Subramanian as his self acquired property. The 1st defendant is the only brother of the plaintiff. The plaintiff, defendants 1, 11, 12, 13 and one deceased Prema are the children of late Narayana Aiyar Venkata Subramanian. The relationship between the above said parties were not denied by the applicants herein. The applicants have filed this application to reject the plaint.

2.The application has been filed to reject the plaint on two grounds; one on the point of limitation and another on the point of the payment of deficit Court Fee.

3. Heard the submissions made by Mr.R.Parthasarathy, learned senior counsel for the applicants/defendants and Mr. V.Jeevanram, learned counsel for the respondent and perused the materials available on record.



4. Mr. R. Parthasarathy, learned senior counsel for the applicants/defendants submitted that the plaintiff herself has stated in her averments of the plaint that the 1st defendant was always inclined to grab the family property including the suit scheduled property along with movables such as gold and silver jewelleryes belonging to their late father and that would show that the cause of action has arisen much earlier.

5. The learned senior counsel for the applicants/defendants has also attracted the attention of this Court that document No.5 which is the copy of the email written by the 1st respondent/plaintiff to the 1st defendant and claimed that the email itself would show that the 1st defendant had denied the 1st respondent/plaintiff's right in the suit property and hence it has to be presumed that the cause of action for the suit has arisen as early as in the year 2010; Since the 1st respondent/ plaintiff has not chosen to file the suit for partition within three years from 10.12.2012 the suit is barred by limitation;

6. The further contention of the learned counsel for the applicant is that the 1st respondent /plaintiff had never been in joint possession of the suit property and hence, she cannot take the advantage of paying the court fee under Section 37(2) of the Court fee Act and the fees ought to have been paid on *ad valorem* basis under Sec.37(1).

7. In respect of the above contention the learned counsel for the



applicant cited the decision of the Hon'ble Supreme Court made in the case of *Krishna Pillai Rajasekharan Nair (dead) by Lrs Vs.*

Padmanabha Pillai (dead) by Lrs. And others reported in (2004) 12 Supreme Court Cases 754.

8. Mr. V.Jeevanram, learned counsel for the respondent submitted that the suit is well within the period of limitation and the suit has been filed within 3 years from the date when the right to sue accrued. Since the 1st respondent/ plaintiff recently came to know about the execution of certain documents by the 1st applicant from the year 2021 by obtaining fraudulent legal heirship certificate, the plaintiff has filed this suit. The 1st respondent had never relinquished her right by way of executing any release deed in favour of the 1st applicant. The suit has been valued properly and further the question of joint possession and limitation cannot be decided at the threshold stage itself. Hence the application is liable to be rejected.

Discussion:

9. The relationship between the parties is not in dispute. The defendants 14 to 16 are the children of his predeceased sister by name Prema and the said fact is also not denied. The prime contention of the learned counsel for the applicant is that the plaintiff has made allegations



in her own plaint that the 1st defendant was always in a denial mode for partition and hence the right to sue had arisen much earlier immediately upon the death of the father. But the first respondent had failed to file any suit for partition.

10. The allegation of the 1st respondent/plaintiff is that the 1st defendant was always inclined to grab the family properties upon himself. Such an averment cannot be considered as an unequivocal terms of denial sent to the first respondent/plaintiff by the first defendant. From the mail alleged to have been sent by the 1st respondent/plaintiff to the applicant/1st defendant, it can only be conceived that the plaintiff was trying to persuade the 1st defendant to maintain cordial relationship with the siblings and to come forward to reach out an agreement in respect of division of the properties between the siblings.

11. It is pertinent to note that the mail sent by the 1st respondent/plaintiff did not generate any reply from 1st defendant. Even the 1st applicant/1st defendant also did not claim that he had sent any reply to the mail he received from his sister. Even if the 1st applicant/1st defendant taken out a plea of ouster, then it is obligatory on the 1st defendant to establish from when onwards the 1st respondent/plaintiff or other siblings have been ousted from the joint possession over the suit property.

12. The possession of one co-owner has to be considered as



possession on behalf of other co-owners as well. Just because some of the siblings are not residing or physical possession of the suit property, it cannot be claimed that they have been dispossessed by the other sharers.

13. Even for the sake of arguments, if it is right for the applicant/1st defendant to claim that the 1st respondent /plaintiff and all other siblings have been ousted from the suit property and their right to sue did not subsist until the suit was filed, they are more matter of facts than matter of law. Unless the parties are allowed to go for trial and agitate their claim in a manner known to law, it cannot be presumed at the threshold itself that the suit is barred by limitation.

14. Admittedly, the plaintiff has challenged some seven transactions which were made by the applicant /1st defendant between the period from 2021-2022. According to the 1st respondent /plaintiff such kind of action upon the 1st applicant/ 1st defendant in creating interest in favour of the third parties by executing documents is the starting point for limitation. Even if the Article 113 is considered to be applicable to the case of 1st respondent/plaintiff, the 1st respondent has filed a suit within 3



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years from the year 2021 and hence, the 1st applicant / 1st defendant cannot claim that the suit is barred by limitation or the 1st respondent/ plaintiff and all other siblings have been ousted from the joint possession of the suit property.

15. In view of the above stated reasons, this application is **dismissed.**

However, it is up to the applicants/ defendants to raise whatever contentions now raised in this application, as his defense in the suit and cause the relevant issues framed for trial and agitate.

23.08.2023

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