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S.A.No.587 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.587 of 2017

1.A.Kandasamy
2.M.Vijayalakshmi
3.K.Senthil Kumar
4.K.Vellaiangiri
5.K.Bhaskar
6.Papa @ Muniammal

...Appellants

Vs.

V.Palanisamy

...Respondent

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 22.04.2016 in A.S.No.16 of 2016 on the file of Principal District Judge, Salem, confirming the judgment and decree dated 27.10.2015 in O.S.No.294 of 2015, on the file of I Additional District Munsif Court, Salem.

For Appellants : M/s.P.Jagadeesan

For Respondent : M/s.A.Murugan



S.A.No.587 of 2017

WEB COPY

JUDGMENT

The plaintiff is the appellant. The suit was filed for declaration that sale deed dated 27.02.2007 allegedly executed by the plaintiff in favour of defendant was null and void and for consequential permanent injunction. The suit was dismissed by the trial Court and the findings of the trial Court was confirmed by the First Appellate Court. Aggrieved by the same, the plaintiff is before this Court.

2. According to the plaintiff, the suit property originally belongs to one Kulla Gounder and after his death, the same was devolved on his sons viz., Arumuga Gounder and others. The first plaintiff is the son of Arumuga Gounder and other plaintiffs 2 to 5 are children of first plaintiff and 6th plaintiff is the sister of first plaintiff. They filed a suit for partition in O.S.No.1479 of 2004 on the file of the Principal District Munsif, Salem. The said suit was decreed and preliminary decree for partition was passed in favour of the first plaintiff. Thereafter, the final decree application was filed in I.A.No.177 of 2005 and the suit property was divided as per the mode of division suggested by the Advocate Commissioner. When the plaintiffs approached their lawyer for the purpose of taking possession of the property



S.A.No.587 of 2017

allotted to them in the partition suit they were asked to get an encumbrance certificate regarding the property. After getting encumbrance certificate regarding the suit properties it came to the knowledge of the plaintiff that a forged sale deed dated 27.02.2007 had been executed in the name of plaintiffs 1 and 6 in favour of defendant. Immediately, the plaintiffs were constrained to file a suit for the above said relief.

3. The respondent herein filed a written statement, *inter alia*, raising plea of limitation. It was the specific case of the respondent that the sale deed was executed by plaintiffs 1 and 6 out of their own volition and the suit filed for cancellation of the said sale deed, after three years is barred by limitation.

4. The trial Court framed preliminary issues with regard to the question of limitation and has considered the same. On behalf of the plaintiffs, the first plaintiff was examined as PW.1 and Sub Inspector of Police of District Crime Branch, Salem was examined as PW.2 and eight documents were marked on behalf of the appellant as Exs.A1 to A8 and the defendant was examined as DW.1 and nine documents were marked on behalf of the



S.A.No.587 of 2017

defendants as Exs.B1 to B9. Through PW.2 official witness, two documents were marked as Exs.X1 and X2.

5. The Trial Court on appreciation of evidence available on record came to the conclusion that the suit filed by the appellant/plaintiff is barred by limitation. Aggrieved by the same, the appellant filed an Appeal in A.S.No.16 of 2016. The First Appellate Court also concurred with the findings of the trial Court and dismissed the appeal. Aggrieved by the same, the appellants are before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law by order dated 23.10.2017:

(i) Whether the Lower Courts right in holding that the suit is barred by law of limitation?;

(ii) When the plaintiffs categorically proved that they had knowledge about the execution of sale deed dated 27.02.2007 (Ex.B6) only when they had perused the encumbrance certificated on 19.03.2015 (Ex.A6), whether the Lower Courts right in holding that the suit is a time barred one?.



S.A.No.587 of 2017

7. The learned counsel appearing for the appellants by drawing the attention of this Court to Article 59 of Limitation Act, submitted that the limitation for filing a suit for cancellation of documents is three years from the date of knowledge regarding the entitlement of the plaintiff to have the instrument set aside or cancelled. The learned counsel appearing for the appellants submitted that the plaintiffs acquired knowledge about the impugned sale deed only on 19.03.2015 after getting encumbrance certificate from Sub Registrar's Office under Ex.A6. Therefore, the suit having been filed on 10.04.2015 is very much within limitation period. The learned counsel further submitted that the Courts below on appreciation of oral and documentary evidence available on record came to a factual conclusion that the suit was filed within three years from the date of knowledge regarding the impugned sale deed. However, the first Appellate Court committed an error of law in non-suiting the plaintiffs on the ground that the suit was not filed within three years from the date of execution of the sale deed.

8. The learned counsel appearing for the respondent submitted that the appellants failed to lead any evidence to show that the signature found in the impugned sale deed is not that of the plaintiffs 1 and 6. When



S.A.No.587 of 2017

plaintiffs miserably failed to prove their case that the document was not executed by them and the same was registered by impersonation, the judgment and decree passed by the Courts below, dismissing the suit need not be interfered with.

9. The trial Court framed preliminary issues with regard to the question of limitation and non-suited the plaintiffs only on the ground of limitation. Therefore, the plaintiffs were not given opportunity to lead evidence with regard to the other issues arising for consideration. ExA5 is a Police complaint preferred by the plaintiffs against the respondent with regard to the sale deed in question. Though in Ex.A5 the date was mentioned as 10.07.2009 in the first page, in the body of the complaint, a reference was made with regard to the encumbrance certificate obtained by plaintiffs on 07.02.2013. Therefore, the First Appellate Court found that the date mentioned in first page of Ex.A5 as 10.07.2009 is not correct. Further, the Police Officer who received the complaint under Ex.A5 was examined as PW.2. He deposed that the complaint was given by the plaintiffs only on 02.04.2013. Therefore, if 02.04.2013 is taken as date of knowledge then the suit is very well within three years from the date of knowledge as per Article



S.A.No.587 of 2017

59 of Limitation Act. The First Appellate Court also in its judgment observed that the suit has been filed by the plaintiffs within three years from the date of knowledge regarding the sale deed. However, it proceeded to dismiss the appeal on the ground that the plaintiffs failed to file a suit for cancellation of instrument within three years from the date of execution of document.

10. Article 59 of Limitation Act reads as follows:

"To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or the contract rescinded first become known to him."
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11. A perusal of the above said provision would make it clear that the limitation for filing a suit to cancel or set aside an instrument is three years from the date of acquiring knowledge about the facts entitling the plaintiff to have the instrument set aside or cancelled. As per the plaintiff averments, the plaintiffs acquired knowledge about impugned document only in the year 2015. Even assuming the date of Police complaint is taken as the starting point for limitation as per the evidence of PW.2, the Police complaint



S.A.No.587 of 2017

was received only on 02.04.2013 not in the year 2009 as mentioned in the first page of the complaint. Therefore, the suit is filed within time and all substantial questions of laws are answered in favour of appellants.

12. Therefore, the conclusions arrived by the Courts below that the suit is barred by limitation is not correct and accordingly the same is set aside. Since the findings of the Court below is with regard to the preliminary issue of limitation, the matter is remanded back to the trial Court with direction to the trial Court to frame other issues with regard to all the controversies arising out of the pleadings and dispose of the suit on merits by considering all the issues arising for consideration within a period of nine months from the date of receipt of copy of this order.

13. In nutshell,

(i) this Second Appeal is allowed by setting aside the judgments and decrees passed by the Courts below;

(ii) the matter is remanded back to the file of trial Court with direction to frame other issues based on pleadings of parties and dispose of suit on all such issues;



S.A.No.587 of 2017

(iii) The suit shall be disposed of within nine months from the date of receipt of this order;

(iv) In the facts and circumstances of the case, there shall be no order as to costs.

10.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The Principal District Judge, Salem
- 2.The I Additional District Munsif Court, Salem.



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S.A.No.587 of 2017

S.SOUNTHAR, J.
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S.A.No.587 of 2017

10.10.2023