



C.R.P(MD)No.2064 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.04.2023

DELIVERED ON : 01.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.2064 of 2015

Coastal Gujarat Powerjen Private Limited,
R.Muralikumar

... Petitioner

Vs.

- 1.Lakshmanan
- 2.M.Karuppasamy
- 3.M.Subramani
- 4.T.Thangasamy
- 5.K.Palani
- 6.K.Perumadayan
- 7.M.Palani
- 8.S.Palani
- 9.S.Kumarandi
- 10.N.K.Balaji
- 11.V.Anaiveeran @ Vellasamy
- 12.V.Thangapandi
- 13.V.Thangamariappan
- 14.V.Ganesan
- 15.V.Marimuthu
- 16.V.Ramar
- 17.V.Lakshmi



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18.The District Collector,
Thoothukudi District,
Office at Tirunelveli Road,
Thoothukudi.

19.The Tahsildar,
Ottapidaram Taluk,
Office at WGC Road,
Thoothukudi.

20.The Sub-Registrar,
Keezhur SRO,
Office at New Bus Stand,
Thoothukudi.

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 20.07.2015 passed in I.A.No.2133 of 2014 in O.S.No.108 of 2014 on the file of the Principal District Munsif Court, Thoothukudi.

For Petitioner : Mr.Selva Adithya
for Mr.G.Prabhu Rajadurai

For R-1 & R-10 : No appearance

For R-2 to R-9 &
For R-11 to R-17 : No Appearance

For R-18 to R-20 : Mr.P.T.Thiraviyam
Government Advocate



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ORDER

This Civil Revision Petition has been filed assailing the order passed by the learned Principal District Munsif Court, Thoothukudi in I.A.No.2133 of 2014 in O.S.No.108 of 2014. I.A.No.2133 of 2014 was filed by the 10th defendant under Order VII, Rule 11 (d) of the Code of Civil Procedure, 1908, seeking to reject the plaint. For the sake of convenience, the parties herein are referred to as arrayed in I.A.No.2133 of 2014 in O.S.No.108 of 2014.

2. The suit in O.S.No.108 of 2014 was filed by one A.Lakshmanan as against 20 defendants, of which M/s.Coastal Gujarat Powerjen Private Limited is the 10th defendant. The suit is one for declaration and injunction. The declaration sought for is to declare the sale deed dated 12.07.2007, registered as document No.2314/2007 in the name of the 10th defendant as null and void. The 10th defendant had filed I.A.No.2133 of 2014 seeking to reject the plaint in O.S.No.108 of 2014 for the reason that the same is barred by limitation.



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3. This case came up for hearing before me on 24.02.2023, 03.03.2023, 30.03.2023, 18.04.2023 and 26.04.2023. The learned Counsel for the petitioner was present in all those hearings. However, there was no representation for the respondents in all those five hearings. This Court heard the submissions of petitioner on 24.02.2023 and 03.03.2023. Despite several chances given, the learned Counsel for the respondents 1 to 17 did not turn up. Hence, this Court reserved orders in this petition on 26.04.2023.

4. Heard Mr.Selva Adithya for Mr.G.Prabhu Rajadurai, learned Counsel for the petitioner and Mr.P.T.Thiraviyam, learned Government Advocate for the respondents 18 to 20 carefully and perused the available materials on record. The learned Counsel for the petitioner took me through the various grounds of the Civil Revision Petition and the contents of the documents which he relied.

5. It is averred in the plaint in O.S.No.108 of 2014 filed by the respondent / plaintiff that the defendant Nos.11 to 17, who got leave to file a fresh suit on the same cause of action in the earlier suit in I.A.No.2417 of 2010 in O.S.No.149 of 2008 dated 25.03.2011 did not file any suit and the



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three years period is about to lapse. He had contested the earlier suit which was withdrawn, to establish his title and since the 11th to 17th defendants in the earlier suit failed to file a fresh suit as undertaken during the withdrawal, he was constrained to file the present suit.

6. It is further stated in the said plaint that the cause of action for the present suit started even on 13.03.2008, when the defendants 11 to 17 filed a civil suit in O.S.No.149 of 2008 on the file of the Principal District Munsif, Tuticorin and on 14.12.2010, when the respondent / plaintiff has filed written statement in the earlier suit in O.S.No.149 of 2008. Even at the very instance of receiving the summons in the earlier suit, the respondent has the knowledge about the sale deed dated 12.07.2007, registered as document No.2314/2007 in favour of the petitioner / 10th defendant.

7. The learned Counsel for the petitioner vehemently argued that the suit is liable to be rejected under Order VII, Rule 11 (d) of the Code of Civil Procedure, 1908 on the ground that the suit is barred by limitation.



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8. He further relied on the judgment passed by this Court, reported in **2012 (2) MWN (Civil) 235 (Thulasi Ammal and Others Vs. A.Sivakumar and Others)** dated **21.03.2012**, the relevant portion of which is derived as follows:

“17. According to the third column of Article 58, time will begin to run from the day 'when the right to sue first accrues'. As per the specific admission of P.W.1, in his cross-examination saying that the plaintiffs knew the execution of the sale deed even on 28.08.1989. Therefore, it is crystallised that the right to sue first accrues on 28.08.1989. As per the second column of Article 58, the period of limitation, within which the suit shall have to be filed is three years. But, it is crystal clear that the suit has been filed by the plaintiffs only on 28.09.1995 i.e. after more than six years instead of filing it on or before 28.08.1992.”

9. He also relied on the judgment passed by the Hon'ble Supreme Court of India reported in **[MANU/SC/0922/2015] L.C.Hanumanthappa Vs. H.B.Shivakumar** dated **26.08.2015**, the relevant portion of which is derived as follows:



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“13.While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.”

10. The provisions of Order VII, Rule 11 of the Code of Civil Procedure 1908, is as follows:

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff,



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on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

11. Under clause (d) of Rule 11, Order VII, plaint may be rejected, where the suit appears from the statement in plaint to be barred by any law. Hence as per Order VII, Rule 11(d) of the Code of Civil Procedure, a plaint shall be rejected, if the suit is barred by limitation. It is the duty of the Court to see whether there is non disclosure of the cause of action or whether the plaint is barred under any law. But the computation of the period of limitation is a mixed question of law and facts. While reading Order VII, Rule 11 of the Code of Civil Procedure, it is palpable that the jurisprudence



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around Order VII, Rule 11 revolves around Rule 11(d), which has provisions relating to the rejection of plaint in cases, where the plaint is barred by law.

In cases where the conclusion of the embargo of law is a mixed question of law and facts, the Court normally does not order the rejection of plaint, because a mixed question of law and fact cannot be determined on the sole basis of a plaint and necessitates proper consideration of evidence by the Court. Hence, the learned Trial Court dismissed the interlocutory application seeking rejection of plaint, the relevant portion of which is derived as follows:

“6. On the perusal of the entire case records this petitioner has not produced any documents to prove the contents of the petition and this Court has not able to ascertain the facts that the suit in O.S.No.149 of 2008 was filed and the same was withdrawn and the present plaintiff has received the Court summons and postal summons for the suit on 19.03.2008 and 26.03.2008. And further he was appeared before this Court through Advocate and filed his written statement. And there is no material records is filed and marked by the petitioner to prove the entire contents of the petition averments. And so without any material records placed before this Court how this Court can ascertain the facts as what stated by this petitioner / 10th defendant. And further the petition stated averments are



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not only the pure question of law, it is a mixed question with the facts of the case. And so it has to be ascertained not only from the material records and also with the strength of the oral evidence. And from that if this suit is filed and barred by limitation it should be taken as a preliminary issue in the main suit. And it will be decided with the help of material records and the evidence in the suit in O.S.No.108 of 2014. At this stage, this Court cannot ascertain the said averments of the petition from the material records and this Court could not able to come to the conclusion that this suit is barred by limitation.

In the result, for the foregoing discussed reasons this petition is dismissed without costs.”

12. However, the learned Trial Court failed to appreciate the essence of Order VII, Rule 11 (d) of the Code of Civil Procedure, 1908, which explicitly provides that the plaint is liable to be rejected, where the suit appears from the statement in the plaint, to be barred by any law. Therefore, the primal duty of any Court dealing with an application filed under Order VII, Rule 11 (d) of the Code of Civil Procedure, 1908, is to scrutinize the statement in the plaint and analyze whether the same is barred by any law. In this case, the Trial Court without fully scrutinizing the plaint, in a hurry has proceeded to dismiss the interlocutory application, seeking to reject the

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plaint, by observing that the petitioner did not produce any document to prove the contents of the interlocutory application and concluded that the said Court could not come to a conclusion that the suit is barred by limitation. It is perhaps unfortunate to understand that the Trial Court did not apply its mind in the statement in the plaint.

13. For the better adjudication of this case, certainly it is necessary to keenly go through the contents of the plaint in O.S.No.108 of 2014. The suit was one for declaring the sale deed dated 12.07.2007, registered as document No.2314/2007 as null and void and permanent injunction restraining the defendants 1 to 17 from alienating or encumbering the plaint schedule property.

14. In paragraph No.8 of the plaint, it is pleaded that the defendants 11 to 17 had filed a civil suit in O.S.No.149 of 2008, on the file of the Principal District Munsif Court, Thoothukudi against the 10th defendant and the plaintiff in respect of the plaint schedule property and other extent totally 7 acres and 40 cents on 13.03.2008. In paragraph No.9 of the said plaint, it is further pleaded that the plaintiff filed his written statement in the



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said suit as against the defendants 11 to 17, without mentioning the date of filing of the written statement. In paragraph No.11 of the said plaint, he admitted that he came to know about the registration of the alleged sale deed dated 12.07.2007 in the name of the 10th defendant Company only after the filing of the said suit and hence he contested the said suit vehemently to prove his valid title, interest and rights over the plaint schedule property. But a perusal of the written statement filed by the plaintiff in O.S.No.149 of 2008 would reveal that no counter-claim was sought for by him in that suit. However, in paragraph No.8 of the said written statement dated 24.03.2009, he had reserved his right to take separate legal action against the first sellers and the tenth defendant herein referred in Sale Deed dated 12.07.2007. Thus it is quite clear that he has taken separate legal action only on 17.03.2014 by filing O.S.No.108 of 2014 on the file of the Principal District Munsif Court, Thoothukudi.

15. Moreover, though in paragraph No.9 of his plaint, he evaded from mentioning the date of filing of his written statement in O.S.No.149 of 2008, in paragraph No.19 of the said plaint in 'the cause of action' paragraph he had stated that he filed his written statement in O.S.No.149 of 2008 on 12/20



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14.12.2010. A quick glance of the written statement in O.S.No.149 of 2008 produced by the revision petitioners herein would reveal that the respondent herein has filed his written statement in O.S.No.149 of 2008 on 24.03.2009.

16. That apart, he cannot step into the shoes of defendants 11 to 17, who failed to file a fresh suit, after withdrawing O.S.No.149 of 2008, with a liberty to file a fresh suit. The reason is obvious that, he ought to have either initiated separate legal action within three years from 24.03.2009, which is the date of filing of written statement in O.S.No.149 of 2008 or he ought to have pleaded a counter-claim in the said suit. Having not done the same, he is not entitled to knock the doors of justice after a period of six years. In addition to that he has specifically pleaded in his counter affidavit to the grant leave petition to withdraw in I.A.No.2417 of 2010 in O.S.No.149 of 2008 that, “there is no need for the petitioners to bring a fresh suit on the same subject matter of that suit.”

17. A careful perusal of the written statement of the second defendant in O.S.No.149 of 2008 would reveal that the same was filed on 24.03.2009. But in his plaint in O.S.No.108 of 2014 in paragraph No.19, he has stated



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that he filed his written statement in O.S.No.149 of 2008 on 14.12.2010.

This itself would suffice to observe that he has not approached this Court with clean hands and his intentions could not be *bona fide*.

18. Precisely the admission made by the plaintiff in paragraph Nos.8, 9, 11 and 19 of the plaint in O.S.No.108 of 2014 would suffice to prove that the suit is barred by limitation. It is pretty clear that the plaintiff came to know the factum of the registration of sale deed dated 12.07.2007 on 13.03.2008 itself, that is, the date on which O.S.No.149 of 2008 was filed by the defendants 11 to 17 in O.S.No.108 of 2014. Article 58 of the Limitation Act, clearly bars the filing of the suit for declaration and injunction on the expiry of three years from the date on which, the right to file the suit accrues. In this case, a combined reading of paragraph Nos.8 and 11 of the plaint in O.S.No.108 of 2014 filed by the respondent herein would make it clear that he came to know of the registration of the alleged sale deed dated 12.07.2007 on 13.03.2008, that is, on the date of filing of O.S.No.149 of 2008. Thus from the combined reading of paragraph Nos. 8, 9, 11 and 19 of the plaint in O.S.No.108 of 2014 itself, it is clear that the suit is barred by limitation, since the same is filed beyond the period of

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three years from 13.03.2008. As such, this Court could clearly arrive at a conclusion that the right to file a suit to set aside the alleged sale deed dated 12.07.2007 accrued on 13.03.2008, being the date of knowledge of the alleged sale deed to the respondent and hence the suit in O.S.No.108 of 2014, which is filed on 17.03.2014 is barred by limitation, since the same is filed beyond the limitation period of three years from the date of accrual of knowledge of the alleged sale deed dated 12.07.2007 by the respondent.

19. The relevant portion of the judgment of the Hon'ble Supreme Court of India reported in *[MANU/SC/3911/2007] Ram Prakash Gupta Vs. Rajiv Kumar Gupta and Others* dated **03.10.2007** is extracted as follows:

“14. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill MANU/SC/0521/1982 : (1982) 3 SCC 487 only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

15. In Raptakos Brett & Co. Ltd. v. Ganesh Property MANU/SC/0595/1998 : AIR1998SC3085 , it was observed that



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the averments in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order VII was applicable.

18. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order VII Rule 11(d), it is but proper to verify the entire plaint averments.”

20. The relevant portion of the judgment of the Hon'ble Supreme Court of India reported in **[MANU/SC/0383/2022] Saranpal Kaur Anand Vs. Praduman Singh Chandhok and Others** dated **28.03.2022** is extracted as follows:

“22. Consequently, on application of the principle of demurrer, it has to be held, on the basis of the averments made in the plaint and the documents relied upon and admitted by the Plaintiff, that even prior to 2008, the Plaintiff was aware and had knowledge of the sale deed dated 23rd August 1969 by which the ownership rights were transferred to Tej Kaur. The Plaintiff did not, in 2008, question and challenge the transfer, though she was fully aware that Tej Kaur had acquired ownership rights.

23. We have denoted the ambit and conditions of Section 17(1) of the Limitation Act, which is to protect rights of a party



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defrauded from lapse of time till he remains in ignorance of the fraud, or with reasonable diligence could have discovered the fraud. Section 17(1) does not assist a person who merely shuts his eyes in spite of circumstances requiring him to ascertain facts on which he would have discovered the fraud. Section 17(1) of the Limitation Act saves rights of the party defrauded from lapse of time as long as the party is not at fault on his own account. In the aforesaid factual background, it is apparent that the Plaintiff was aware and had knowledge in October 2008 about execution and transfer of the ownership rights in favour of late Tej Kaur vide sale deed dated 23rd August 1969 executed by Defendant No. 3, Gurdev Singh Anand. Unadorned assertion in the plaint feigning ignorance as to the sale deed would not help, as in the facts as pleaded and accepted in the plaint, the Plaintiff was required to state and indicate that ignorance was not due to failure to exercise reasonable diligence.”

21. An application for rejection of the plaint can be filed if the allegations made in the plaint, even if given face value and taken to be correct in their entirety, appear to be barred any law. The question as to whether a suit is barred by limitation or not would therefore, depend upon the facts and circumstances of each case. For the said purpose, only the



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averments made in the plaint are relevant. At this stage, this Court cannot consider the case of the defence.

22. Though the question of limitation is a mixed question of law and facts, *ex facie* in the present case on the reading of the plaint, it is palpable that the suit is barred by limitation. Admittedly, Order VII, Rule 11 (d) of the Code of Civil Procedure has limited application. It must be shown that the suit is barred under any law and such a conclusion must be drawn from the averments made in the plaint. For the purpose of invoking Order VII, Rule 11 (d) of the Code of Civil Procedure, no amount of evidence can be looked into. The real test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree could be passed. In this case, the pleadings made in the plaint in its entirety would be sufficient to pass a decree, that the suit is barred by limitation even without considering the case of the defence.

23. In view of the above discussions, this Court is of the considered view that the learned Trial Court ought not to have dismissed the I.A in I.A.No.2133 of 2014 on the file of the Learned Principal District Munsif



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Court, Thoothukudi in O.S.No.108 of 2014 dated 20.07.2015. Hence this Court is inclined to set aside the order passed by the learned Principal District Munsif Court, Thoothukudi in I.A.No.2133 of 2014 in O.S.No.108 of 2014, thereby rejecting the plaint in O.S.No.108 of 2014.

24. In the result, this Civil Revision Petition stands allowed. There shall be no order as to costs.

01.06.2023

NCC : Yes
Index : Yes
Internet : Yes
BTR

To

- 1.The Principal District Munsif Court,
Thoothukudi.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

BTR

Order made in
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