



S.A.(MD).No.51 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2023

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

S.A.(MD).No.51 of 2023

1.Chinna Karuppan

2.Muthu Kumar

... Appellants/Appellants/Plaintiffs

Vs.

1.Government of Tamil Nadu,
Represented through its Chief Secretary,
Secretariat,
Chennai.

2.The Director General of Police,
Department of Police,
Chennai,
Tamil Nadu.

3.The District Collector,
Collectorate,
Virudhunagar.

4.The District Superintendent of Police,
Virudhunagar.

5.Veerasamy,
Sub Inspector,
Amathur Police Station,
Virudhunagar.

... Respondents/Respondents/Defendants



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Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 07.04.2022 passed in A.S.No.41 of 2019 on the file of the Sub Court, Virudhunagar confirming the judgment and decree dated 22.09.2017 passed in O.S.No.27 of 2017 on the file of the District Munsif, Virudhunagar and allow the Second Appeal.

For Appellants : Mr.C.K.M.Appaji
For R-1 to R-4 : Mr.D.Ghandiraj,
Special Government Pleader.

JUDGMENT

The plaintiffs are the appellants in the above Second Appeal. They had filed a suit praying for compensation of Rs.50,000/- for malicious prosecution against the respondents herein.

2. According to the plaintiffs/appellants, they were prosecuted for an offence under Section 294(b) IPC by the fifth respondent in S.T.C.No.3016 of 2019 before the learned Judicial Magistrate No.II, Virudhunagar. After trial, the learned Judicial Magistrate acquitted the plaintiffs/appellants by holding that the prosecution has not proved its case beyond reasonable doubt. The judgment of the learned Judicial Magistrate was delivered on 10.02.2016. The appellants/plaintiffs claimed that the suit was filed on 01.03.2017 and submitted that the suit was well within limitation provided under Article 74 of



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the Limitation Act. The appellants had stated that the judgment was delivered on 10.02.2016. They had applied for copy of the judgment on 12.01.2017 and obtained the same on 25.01.2017. According to the plaintiffs, if 13 days time is deducted for computation of limitation, the suit is not barred by limitation.

3. The respondents filed a written statement in which they had stated that the suit was barred by limitation as the suit ought to have been filed on or before 09.02.2017. Adding the time taken of 13 days in furnishing the copy to the appellants, the suit ought to have been filed on or before 22.02.2017. However, the suit was filed only on 01.03.2017 and therefore, barred by limitation as per Article 74 of the Limitation Act. The respondents also filed an application under Order 7 Rule 11(a)(b) of CPC praying for rejection of plaint on the ground that the suit was barred by law, since even as per the plaint, the copy application was made on 12.01.2017 and the judgment copy was delivered to the appellants on 25.01.2017.

4. The appellants herein filed a counter in the said application stating that they had explained in the plaint that the suit was filed within limitation in paragraph 6 of the plaint in which they had stated that from 25.01.2017 to 28.02.2017, there are 34 days and in which 13 days have to be excluded for the



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time taken for obtaining the copy application and hence stated that it was within limitation.

5. The Trial Court on perusal of the application and counter held that for computing the period of limitation, the date of acquittal, namely, 10.02.2016, has to be taken into consideration. The appellants ought to have filed the suit on or before 09.02.2017, i.e., within one year as prescribed under Article 74 of the Limitation Act. The time taken for furnishing the copy to the appellants was 13 days. Even if those 13 days are added to 09.02.2017, the appellants ought to have filed the suit on or before 22.02.2017. The calculation given by the appellants is wrong and by their calculation, they had deducted 13 days twice to bring it wrongly within the period of limitation. Aggrieved, the appellants/plaintiffs preferred an appeal before the Appellate Court. The Appellate Court found that the calculation made by the appellants was wrong on the admitted facts. The Appellate Court held that the suit filed by the appellants was barred by limitation and hence, the Trial Court was right in rejecting the plaint under Order 7 Rule 1 of CPC.

6. (i) The learned counsel for the appellants submitted that the ground of limitation is a question of law and fact and hence, the Courts below ought to



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have allowed the parties to let in evidence to establish that the suit was filed within limitation. The learned counsel further submitted that since the respondents have already raised the point on limitation in their written statement, the Courts below ought not to have allowed the rejection of plaint.

(ii) The learned counsel for the appellants relied upon the judgment of the Hon'ble Supreme Court in the case of ***C.Natarajan Vs. Ashim Bai and another*** reported in ***(2008) 1 MLJ 1278 (SC)***, wherein, it was held as follows:

“...In the present case the plea of the plaintiff that he came to know about the mistake regarding the boundary description in the sale deed dated 14-9-1979 only on whether he had knowledge earlier is question of fact to be considered during the trial in the suit. As such the plaint on ... is a mixed question of fact and law to be considered during the trial by casting the issue suitably.”

7. This Court has perused the orders passed by the Courts below. The admitted facts are that the appellants had faced a prosecution in S.T.C.No.3016 of 2013, which ended in acquittal on 10.02.2016. The appellants ought to have filed the suit for malicious prosecution on or before 09.02.2017. The appellants were present before the Trial Court on the date of judgment. It is not their case that they were not aware of the judgment of acquittal. Even as per the plaint,



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they had applied for copy of the judgment only on 12.01.2017 and the copy was furnished by office of the Magistrate on 25.01.2017. On the admitted facts, we can see that these 13 days have to be excluded. If so excluded, the suit ought to have been filed on or before 22.02.2017 (09.02.2017 + 13 days). However, the appellants had made a very strange and unusual plea stating that 13 days have to be once again excluded from 25.01.2017 when the copy was made ready. Both the Courts below have rightly rejected that unusual strange plea. Therefore, there are no disputed facts in the instant case for the Trial Court to record evidence. The suit is clearly barred by limitation on the admitted facts. Therefore, the judgment relied upon by the learned counsel for the appellants in the case of ***Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust and others*** reported in (2006) 5 SCC 658, wherein, it was held that in certain cases, the question of limitation may be a mixed question of fact and law, is not applicable to the facts of this case. In the instant case, the facts are admitted and the appellants' strange manner of computation of limitation does not require any adjudication on facts.

8. It is well settled that there cannot be an absolute proposition that an application under Order 7 Rule 11(d) CPC can never be based on the law of limitation. When ex facie on the reading of the plaint, it is clear that the suit is



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barred by limitation, then relegating the parties to trial would not be in the interest of justice. Even in the case cited by the learned counsel for the appellants reported in **(2006) 5 SCC 658 (Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust and others)**, the Hon'ble Supreme Court on the facts of that case found that limitation is a mixed question of law and fact. However, the Hon'ble Supreme Court further added that,

“8. ...Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time.”

In the instant case, there are no disputed facts and on the admitted facts in the plaint, the suit is barred by limitation.

9. The next contention raised by the learned counsel for the appellants was that since the respondents have taken a plea in the written statement, both the Courts ought to have allowed the trial to go on after framing issues. This argument is also stated only to be rejected. There is no necessity for a trial when the suit is clearly barred by law. The argument of the learned counsel for the appellants is clearly opposed to the object of Order 7 Rule 11 CPC. Hence, this Court finds no ground in the above Second Appeal. No substantial questions of law have been raised to entertain the Second Appeal.



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10. Hence, the Second Appeal is dismissed. There shall be no order as to costs.

09.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Lm



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To

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1. The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Chennai.
2. The Director General of Police,
Department of Police,
Chennai,
Tamil Nadu.
3. The District Collector,
Collectorate,
Virudhunagar.
4. The District Superintendent of Police,
Virudhunagar.
5. The Sub Inspector,
Amathur Police Station,
Virudhunagar.
6. The Sub Court,
Virudhunagar.
7. The District Munsif Court,
Virudhunagar.
8. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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