



S.A.No.854 of 2023

WEB COPY **IN THE HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON: 23.02.2024

PRONOUNCED ON: 16.04.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.854 of 2023

and

C.M.P.No.27071 of 2023

1. S.Gomathi
2. Amudhavani

...Appellants

vs

S.Balasubramanian

...Respondent

Prayer : Second Appeal is filed under Section 100 of C.P.C against the judgment and decree passed in A.S.No.238 of 2017 dated 15.09.2022 on the file of the IV Additional Judge, City Civil Court, Chennai, reversing the judgment and decree passed in O.S.No.6422 of 2013 dated 21.08.2017 on the file of the XII Assistant Judge, City



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Civil Court, Chennai.

For Appellants : Mr.K.Sukumaran

For Respondent : Mr.R.Raghunath
for M/s.Magarani
Caveator counsel

JUDGEMENT

The legal representatives of the defendants are the appellants before this Court.

2. The appeal arises in respect of the judgment and decree passed by the learned IV Additional Judge, City Civil Court, Chennai in A.S.No.238 of 2017 in and by which the learned Judge has reversed the judgment and decree passed by the XII Assistant Judge, City Civil Court, Chennai in O.S.No.6422 of 2013.



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3. The suit is filed for the following relief:

“to declare the unilateral revocation dated 28.02.2006 Doc.No.832 of 2006 SRO; Anna Nagar, cancelling the settlement deed dated 14.07.2004 Doc.No.2934 of 2004 SRO; Anna Nagar is illegal, invalid, null and void not binding on the plaintiff”

4. The facts are set out in a nutshell below and the parties are hereinafter referred to in the same ranking as before the trial Court.

FACTS OF THE CASE:

5. The defendant is the father of the plaintiff and he had purchased the suit property from the Tamil Nadu Housing Board on 05.12.1984. Thereafter, along with the plaintiff's contribution,

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construction had been put up in the premises. The plaintiff would submit that his father, the defendant and himself were residing in the said property. The plaintiff would submit that he has two sisters(appellants herein) who have been given in marriage, spending substantial amounts. It is the plaintiff's case that, on account of the love and affection and the fact that the plaintiff was taking care of the defendant, the defendant had executed an irrevocable settlement deed dated 14.07.2004 in respect of the suit schedule property in favour of the plaintiff. The plaintiff would submit that he has mutated the revenue records in his name and he has also permitted the defendant to occupy the premises along with him.

6. While so, all of a sudden on 28.02.2006, the defendant had cancelled the settlement deed and this had come to the knowledge of the plaintiff in December 2009 and the plaintiff has immediately



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issued a legal notice to the defendant on 27.12.2009. On 17.01.2010, the defendant had sent a reply containing false allegations and also stating that the settlement deed was executed as a collateral security and not voluntarily out of the free will of the defendant as alleged by the plaintiff. The plaintiff would further submit that in May 2011, the defendant, in the presence of the well wishers, had undertaken to cancel the revocation deed and execute a settlement deed in favour of the plaintiff, subject to the condition that the plaintiff would alienate a part of the vacant site measuring 6 acres in Thakolam Village, Arakonam and to give Rs.10,00,000/- from out of the sale consideration to the defendant. The plaintiff had kept his promise and paid Rs.10,00,000/- to the defendant. However, the defendant went back on his words and refused to cancel the revocation deed. Once again, a panchayat was convened where the defendant flatly refused to revoke the cancellation deed. Hence the suit.



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WRITTEN STATEMENT OF THE DEFENDANT:

7. The defendant had filed a written statement *inter-alia* denying the allegations contained in the plaint and raising the issue of limitation. The plaintiff would submit that the suit has been filed after a period of 3 years 10 months from the date of knowledge of the execution of the settlement deed. Even as per the plaintiff's statement, he had come into knowledge about the cancellation of the settlement deed in December 2009. However, the suit has been filed only on 25.10.2013. Further, the defendant had pleaded that the plaintiff had defrauded him into executing the settlement deed. The defendant has, in clear and categoric terms, denied receipt of the sum of Rs.10,00,000/- which the plaintiff would submit has been paid to the defendant. He would submit that the suit is bereft of any cause of



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action and barred by Limitation. Therefore, the suit is liable to be dismissed.

TRIAL COURT

8. The trial Court had framed the following issues.

- 1. Whether the plaintiff is entitled for the relief of declaration as prayed for?*
- 2. To what other relief?*

9. The plaintiff was examined as P.W1 and one Gandhi, who is the attesor of the settlement deed dated 14.07.2004 was examined as P.W.2 and Exs.A1 to A8 have been marked on the side of the plaintiff. The defendant had neither entered the box nor filed the documents.

10. The learned XII Assistant Judge on considering the evidence



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on record and taking note of the fact that despite having knowledge about the cancellation of the settlement deed in the month of December 2009 and issuing a reply notice dated 27.12.2009, the plaintiff had not taken any steps to institute the proceedings but has waited till 2013 to file the suit. The learned Judge had observed that the plaintiff has failed to prove the alleged settlement talk and the payment of Rs.10,00,000/- to the defendant. The learned Judge had also observed that Article 58 of the Limitation Act would apply and under this Article, the suit ought to have been filed within a period of 3 years from the date of the knowledge. Therefore, the suit ought to have been filed in December 2012. However, the suit has been filed on 25.10.2013 much beyond the period of limitation. Further the learned Judge observed that the plaintiff, who claimed to be in possession of the property and claimed the mutation of revenue records, had not filed the documents to prove the same. On the



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contrary, the documents relied upon by the plaintiff to support his claim of possession are post the filing of the suit. Therefore, the learned Judge had dismissed the suit on the ground that it was barred by limitation. Challenging the said judgment and decree, the plaintiff had filed A.S.No.238 of 2017 on the file of the IV Additional Judge, City Civil Court, Chennai.

LOWER APPELLATE COURT

11. The learned IV Additional Judge, City Civil Court, Chennai had framed the following points for consideration.

- 1. Whether the respondents/defendants are entitled to unilaterally cancel the settlement deed dated 14.07.2004 in Doc.No.2934 /2004?*



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2. *Whether the trial Court is justified in coming to the conclusion that the suit is barred by limitation?*

3. *Whether the decree and judgment of the trial Court is in accordance with law or it is liable to be set aside?*

The learned Judge took the view that the unilateral cancellation of the settlement deed was void. The learned Judge has also observed that the trial Court had passed the judgment, stating that the suit is barred by limitation without even framing an issue in this regard. Further, the learned Judge had observed that the conclusion of the trial Court that the suit is barred by limitation cannot be countenanced since the right to sue accrues only on the refusal of the defendant to cancel the revocation deed, which had taken place only in the month of

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September 2013. Therefore, the appellate Court had proceeded to reverse the judgement and decree of the trial Court. Challenging the same, the defendants are before this Court.

SUBSTANTIAL QUESTIONS OF LAW

12. The second appeal was admitted on the following substantial question of law on 01.12.2023.

“(i) Whether or not the First Appellate Court is correct in giving a finding that the suit filed by the plaintiff/respondent on 25.10.2023, on the face of the specific admission in the plaint that the plaintiff came to know about the deed of cancellation of the settlement deed in December 2009, is not barred by limitation on the face of the Article 58 and Article 59 of the Limitation Act?”

“(ii) Whether or not the First Appellate Court is correct in giving a finding that the words “when the right to sue first accrues”, in Article 58, arose not on the date of the



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knowledge of the settlement deed but on and after the receipt of the reply notice dated 17.01.2013?

(iii) Whether or not the suit filed by the respondent is clearly barred by limitation on the face of the Article 58 and Article 59 of the Limitation Act?

(iv) Whether or not the First Appellate Court in reversing the Judgment and Decree passed in O.S.No.6422 of 2013 on the file of the XII Assistant Judge, City Civil Court, Chennai, by misinterpreting the statutory provisions viz., Article 58 or Article 59 of the Limitation Act? ”

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANTS / DEFENDANTS:

13. Mr.K.Sukumaran, learned counsel appearing on behalf of the appellants /defendants would place his arguments only on the ground of limitation. He would submit that the suit is clearly barred by limitation, since the relief claimed is one to set aside the instrument and the article that would apply is Article 59 of the



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Limitation Act, which reads that, to cancel or set aside an instrument or decree or for the rescission of a contract, the same has to be done within a period of 3 years from the date on which the plaintiff came to knowledge about the document that has to be set aside. Learned counsel would submit that even according to the plaintiff, he had come to know about the revocation of the settlement deed in the month of December 2009 and a legal notice had been issued by the plaintiff on 27.12.2009. Therefore, the suit ought to have been filed as per the provisions of Article 59 of the Act on or before 28.12.2012 whereas the suit in question has been filed on 25.10.2013 nearly 10 months after the period of limitation had come to an end. Therefore, the suit deserves to be dismissed. The lower appellate Court has erred in reversing the judgment and decree of the trial Court. That apart, the plaintiff has not pleaded fraud in respect of the cancellation of the settlement deed. The word “fraud” has been used only in the



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passing. He would also submit that in the case of fraud, specific pleadings have to be made with reference to the fraud that has been committed. In the absence of the same, the plaintiff cannot rest upon the allegation of fraud to get over limitation. He would rely upon the following judgments:

1	(2006) 5 Supreme Court Cases 353 [Prem Singh and Others Vs Birbal and Others]
2	(2009) 12 SCC 454 Sham Lal alias Kuldip Vs. Sanjeev Kumar and Others
3	(2009) 6 SCC 160 [Abdul Rahim and Others Vs. Sk.Abdul Zabbar and Others]
4	Manu/TN/1881/2016 in O.S.A.No.295 of 2006 [A.Annapporani Vs.A.Mani and Others]
5	(2016) 10 SCC 767 Satya Pal Anand Vs. State of Madhya Pradesh and Others
6	Civil Appeal No.7464 of 2021 [Amuduhavali and Others Vs P.Rukmani and Others]
7	2022 (1) TLNJ 243(Civil) M/s.Sreedevi Video Corporation, Rep by its Partner Mr.Ganshyam Hemdev Vs.M/s.SaReGaMa India Ltd.

**SUBMISSIONS OF THE LEARNED COUNSEL FOR THE
RESPONDENT / PLAINTIFF:**

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14. Per contra, Mr.Raghunath, learned counsel for the respondent / plaintiff has filed into Court his written arguments. In the written arguments, the plaintiff would contend that it is only Article 58 of the Limitation Act which would apply in the instant case and therefore, the limitation would start from the date on which the right to sue first accrues. He would submit that right to sue accrued only when there is an infringement of right. He would argue that a mere knowledge of the infringement does not give a right to sue and it is only when there is a denial or refusal that an infringement takes place giving rise to the cause of action for instituting the proceedings. He would submit that under the settlement deed, the plaintiff had become the absolute owner of the property and had acquired an absolute right, title and interest over the property settled upon him. The settlement deed cannot be unilaterally revoked. If a person



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desires to revoke a deed, he has to invoke the provisions of the Specific Relief Act by approaching the Civil Court for cancellation of the document. He would further submit that even in such cases, the person approaching the Court has to prove the fraud, mistake undue influence etc., and only on proof of the same, the Court would order cancellation. If an unilateral cancellation is accepted, it would open up a Pandora's box. He would submit that unilateral cancellation is *per se* void. He would submit that in the instant case, as Article 58 would be a relevant article for calculating limitation, the suit filed on 25.10.2013 is not barred as the right was infringed by the defendant in the month of May 2011. Therefore, the suit filed on 25.10.2013 was very much within limitation. The trial Court, according to the learned counsel, was wrong in relying upon Article 59 to arrive at a conclusion that the suit was barred by limitation. He would rely upon the judgment of this Court reported in **2020 (4) CTC 898 [Zee**



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***Telefilms Limited (now known as Zee Entertainmnet Enterprises Limited) vs. Suresh Productions and Others]* and 2010 (1) CTC 843 [*Daya Singh And Another vs. Gurdev Singh (Dead) by Lrs. And Others*].** Therefore, he would submit that the suit is not barred by limitation and a mere existence of a revocation deed and knowledge of it would not give rise to the cause of action till such time as the infringement of the right is asserted. Therefore, he would submit that there is no error in the order of the lower appellate Court and the second appeal be dismissed.

DISCUSSIONS:

15. The short point that arises for consideration in this second appeal and which has been set out more fully in the substantial question of law is which Article would govern limitation in the instant case; whether the provision of Article 58 or Article 59 of the schedule



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appended to the Limitation Act would apply. If Article 58 is applied, then the Limitation would start from the date on which the right to sue would accrue and if the provisions of Article 59 is applicable, then the Limitation would commence on the date of knowledge. The document in respect of which the present suit is filed is the revocation deed dated 28.02.2006 filed by the defendant in and by which, he has unilaterally cancelled the settlement deed dated 14.07.2004 executed by the defendant in favour of the plaintiff. The plaintiff would submit that he had come into knowledge about the cancellation in December 2009 and had issued a legal notice dated 27.12.2009 calling upon the defendant to desist from further creating illegal documents and contending that the cancellation would not invalidate the lawful legal right, title and interest of the plaintiff as the settlement deed was an irrevocable one. From the very contention of the plaintiff in his plaint, it appears that a reply was sent on 17.01.2010 which was



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followed by negotiation between the plaintiff and the defendant. The plaintiff would further submit that the parties had decided to compromise the dispute in and by which the defendant, in the presence of the panchayatars, had agreed to revoke the cancellation deed, however subject to the payment of a sum of Rs.10,00,000/- by the plaintiff to the defendant upon the sale of his property at Thakolam Village, Arakonam. Therefore, from the conduct, it appears that the plaintiff has accepted and condoned the cancellation and agreed to the conditions imposed by the defendant for executing the revocation deed. The suit has been filed only on 25.10.2013. Even as per the conditions of the plaintiff, knowledge about the cancellation was in the month of December 2009. The suit in question is filed to declare the unilateral revocation deed as illegal, invalid and null and void. Therefore, it is clearly evident that the suit is filed to cancel an instrument. The time period for such a suit begins



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on the day the instrument has first come to the knowledge of the plaintiff, which in the instant case was December 2009.

16. The argument advanced by the plaintiff is that the unilateral cancellation of the settlement deed is a void document and does not require to be set aside. Therefore, the question of limitation would not come into play. However, the Hon'ble Supreme Court, in the judgment reported in **2006(5) SCC 353 [Prem Singh and Others Vs. Birbal and Others]** had observed in paragraph Nos. 11 and 12 as follows:

“11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby,



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limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

12. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the Articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed.”

The learned Judges observed that when a document is a valid, there is



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no question of its cancellation. However, when a document is void, there is no necessity for setting aside it as it becomes nullity. However, once a suit is filed by the plaintiff for cancellation, then it would be governed by Article 59 of the Limitation Act irrespective of whether the document is a valid or a void one. Therefore, once Article 59 becomes applicable, then the suit could have been filed within 3 years from the date of knowledge, which in the instant case is December 2009. The principle underlining the above observation is that Section 31 of the Specific Relief Act forms the basis for cancelling an instrument and Section 31 does not make a distinction between a void and voidable document, since the language used is for both void and voidable written instrument. Since there is a specific provision relating to the cancellation of instruments, the necessity to fall back on Article 58 would not apply. The judgment relied upon by the learned counsel for appellants / defendants does not appear to be



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relevant to the discussion on hand. The lower appellate Court had observed that the trial Court had not framed any issue with reference to the Limitation. However, from a perusal of the judgment of the trial Court, it is clearly evident that the parties had taken up the issue of limitation and argued the said issue, which has led to the learned Judge decreeing the suit. Therefore, the appellate Court is not correct in stating that the issue had not been raised, particularly when parties have gone to trial Court, submitted documents and argued on the point of limitation. The lower appellate Court's observation that Article 58 would apply to the instant case is without any basis. Article 58 relates to declaratory suits, whereas Article 59 specifically deals with the suits filed for cancelling/setting aside an instrument. The relief claimed in the above suit is one for cancelling the revocation deed, which squarely falls within the four corners of Article 59. Therefore, the finding of the lower appellate Court that



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Article 59 would not apply and only the provision of Article 58 would apply is without any basis. As already stated, the instant case is governed under the provisions of Article 59 of the Schedule to the Limitation Act. As held by the trial Court for the reasons stated above, the substantial questions of law are answered in favour of the defendants. Another factor to be taken note of is that the plaintiff even after coming to know about the cancellation was ready to pay a sum of Rs.10,00,000/- after which the defendant was to execute the cancellation deed. However, there is no proof forthcoming from the plaintiff to show payment of this sum of Rs.10,00,000/- Therefore, the second appeal is allowed. The judgment and decree of the lower appellate Court is set aside. The suit is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



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Index : Yes/No

Speaking order/non-speaking order

srn

To

1. The IV Additional Judge, City Civil Court, Chennai.
2. The XII Assistant Judge, City Civil Court, Chennai.
3. The Section Officer, VR.Section, High Court, Chennai.



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