



CRP.No.1465 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2024

PRONOUNCED ON : 12.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP.No.1465 of 2023

and

CMP.No.9732 of 2023

1.K.Jaganathan
2.J.Damayanthi
3.A.Priya
4.A.Arul Gandhi

...

Petitioners

VS.

1.S.Vijayalakshmi
2.Minor Pooja
3.Minor Sanjana Sri
(Minors 2 & 3 rep.by mother &
Guardian 1st respondent
S.Vijayalakshmi)

...

Respondents

PRAYER : This civil revision petition has been filed under Article 227 of the Constitution of India against the fair and decretal order dated 28.03.2023 made in I.A.No.1 of 2021 in O.S.No.137 of 2020 on the file of the District Munsif Court, Kumarapalayam.

For Petitioners

...

Mr.N.Manoharan

For Respondents

...

Mr.G.Babu Ganesh



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ORDER

This civil revision petition has been filed against the fair and decretal order dated 28.03.2023 made in I.A.No.1 of 2021 in O.S.No.137 of 2020 on the file of the District Munsif Court, Kumarapalayam.

2.The fact of the case is that the petitioners are the defendants and the respondents are the plaintiffs in O.S.No.137 of 2020. The plaintiffs have filed the suit against the defendants for declaration of revocation of the Settlement deed dated 10.02.2009 vide document No.626 of 2009 is void and not binding on the suit property and for consequential permanent injunction. The suit schedule property was purchased by the 1st and 2nd petitioners by way of a registered sale deed dated 05.02.2004 (document No.389/2004) from one Prabakaran. On 28.11.2005, they executed a settlement deed in favour of their son K.J.Sivaraman, who is the husband of the 1st respondent. On 10.02.2009, the aforesaid settlement deed dated 28.11.2005 was cancelled by the 1st and 2nd petitioners. K.J.Sivaraman had executed a registered release deed dated 25.01.2010 vide document No.171/2010 in favour of the 1st and 2nd petitioners and that he lost his



right. Thereafter, he executed a settlement deed in favour of his wife/the first respondent on 20.04.2010 vide document No.2636/2010.

K.J.Sivaraman had died on 23.08.2017 leaving behind his mother, wife and two children as his legal heirs. The petitioners/defendants gave a police complaint against the respondents/Plaintiffs before the Anti Land Grabbing Special Wing. Thereafter, the respondents/plaintiffs filed a suit in O.S.No.73/2018 before the District Munsif Court, Tiruchengode. The case was then transferred to the District Munsif Court, Kumarapalayam and renumbered as O.S.No.137 of 2020. In that suit, the petitioners/defendants filed I.A.No.1 of 2021 in O.S.No.137/2020 praying to reject the plaint in exercise of power under Order 7 Rule 11 C.P.C. The learned trial Judge by an order dated 28.03.2023 dismissed the said application, aggrieved by that order, the present civil revision petition has been filed.

3.The learned counsel appearing for the petitioners submitted that the suit for declaration filed on 28.04.2018 to declare the deed of revocation of settlement deed dated 10.02.2009 is clearly hit by Article 58 of the Limitation Act since it has not been filed within three years from the



date on which the right to sue “first accrues”. Further, he contended that the settlement deed dated 28.11.2005 in favour of their son K.J.Sivaraman was cancelled on 10.02.2009. Thereafter, K.J.Sivaraman also executed a release deed dated 25.01.2010 by reaffirming the deed of cancellation and the title of his parents. Under such circumstances, this suit has been filed on 28.04.2018 after the death of their son K.J.Sivaraman by his wife. Therefore, the suit ought to have been filed within three years from the date on which the right to sue 'first accrues' as per Article 58 of the Limitation Act. Their son viz., K.J.Sivaraman died on 23.08.2017, till his death, he did not question the deed of cancellation dated 10.02.2009 or challenged the release deed executed by him on 25.01.2010. Now, his wife and two children have no right to challenge the cancellation deed executed by K.J.Sivaraman on 10.02.2009, which is also barred by limitation under Article 58 of the Limitation Act, 1963. The petitioners are competent to revoke the settlement deed and the suit being barred by limitation, the real cause of action is camouflaged. The mere reading of the plaint would indicate the fact that the plaint does not disclose the cause of action and it is barred by law and such plaint has to be rejected at the threshold as



abuse of process of law. The plaint ought to have been rejected under Order 7 Rule 11 CPC. The trial Court is not properly appreciated the fact, therefore, pleaded to allow the civil revision.

4.To support of his argument, the learned counsel appearing for the petitioners relied upon the following judgments viz.,

1.2020 SCC (Online) 482 (Shakti Bhog Food Industries Ltd.,) Vs. The Central Bank of India & Anr.

2.AIR 2022 SC 4724 (C.S.Ramaswamy Vs. V.K.Senthil and Ors)

3.(2020) 7 SCC 366 (Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and others)

4.2023 SCC OnLine SC 521 (Ramisetty Venkatanna and Another Vs. Nasyam Jamal Saheb and others)

5.(2020) 16 SCC 601 (Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) By legal representatives)

5. The learned Counsel appearing for the respondents supported the impugned order and contended that the dispute is with regard to the unilaterally cancellation of the settlement deed. Further, contended that while considering the application under Order 7 Rule 11 CPC praying for



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rejection of the plaint, only averment of the plaint or material can be taken into consideration and the averment made in the written statement cannot be considered and there is no reason to interfere with the impugned order and it is not barred by limitation, hence, pleaded to dismiss the civil revision.

6.I have considered the matter in the light of the submission made by the learned counsel on either parties and perused the materials available on record.

7.I have gone through the averments made in the plaint, it appears that the suit is filed for declaration of cancellation of the settlement deed dated 10.02.2009 vide document 6261/2009 and the plaint averments shows that the plaintiffs came to know about the deed of revocation of settlement deed dated 10.02.2009 through encumbrance certificate. In para 12 of the plaint, the plaintiffs had not stated when they applied for encumbrance certificate and when they came to know about the cancellation of the settlement deed, simply stated that when they applied



for encumbrance certificate, they came to know the cancellation of the settlement deed. Article 58 of the Limitation Act runs as follows:

“58. To obtain any other declaration. Three years. When the right to sue first accrues”

8.In view of the above, in terms of Article 58, the period of three years is to be counted from the date “ when the right to sue first accrues” In this case, a settlement deed was cancelled on 10.02.2009, thereafter, the settlee executed a released deed dated 25.01.2010. Thereafter, he died on 23.08.2017. It is to be noted that till his life time, he had not challenged the revocation of the settlement deed. Under these circumstances, the respondents/plaintiffs have no right to sue. Even though limitation may not have been set up as a defence, the suit is clearly barred by law of Limitation. The period of limitation will begin to run from the date when the right to sue first accrues. Therefore, If it is beyond the period of limitation from the date when the right to sue first accrues, the suit is not maintainable. It is no doubt true that the cause of action for filing the suit should consist of vital facts. Further, the suit being barred by limitation and



it also involves mixed question of facts and law. In the present case, the assertion in the plaint is that the first plaintiff came to know about the cancellation of settlement deed only after obtaining the encumbrance certificate and the plea taken by the plaintiffs is not genuine and legitimate as the cancellation of settlement deed came to the knowledge of the first plaintiff's husband. He executed a released deed dated 25.01.2010 vide document No.171/2010 it exposes the knowledge of cancellation of settlement deed to her husband, the plaintiffs had not stated anything about the release deed executed by the first respondent's husband in the plaint and that fact is suppressed by the plaintiffs. At this stage, it is relevant to observation of the Hon'ble Supreme Court in ***Ramisetty Venkatanna and Another Vs. Nasyam Jamal Saheb and others reported in 2023 SCC OnLine SC 521***, the relevant para 26 runs as follows:

26. In the case of [Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal](#), (2017) 13 SCC 174, this Court observed and held as under:

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under [Order 7 Rule 11 CPC](#) can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint



*only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under **Order 7 Rule 11 CPC**. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under **Order 7 Rule 11 CPC** to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under **Order 7 Rule 11 CPC** can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”*

9. In view of the above and for the reasons stated, the impugned order passed by the trial Court on 28.03.2023 on the application under Order 7 Rule 11CPC to reject the plaint is unsustainable, hence, the impugned order is hereby set aside. The present civil revision petition is



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allowed. Consequently, the plaint in O.S.No.137 of 2020 on the file of

District Munsif Court, Kumarapalayam is ordered to be rejected. No costs.

Consequently, the connected miscellaneous petition is closed.

Index : Yes/No

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Internet : Yes/No

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To

The District Munsif Court, Kumarapalayam.



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