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C.R.P.No.2434 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.07.2024
PRONOUNCED ON : 06.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2434 of 2024
and
C.M.P. No.12757 of 2024

R.Udayakumar

... Petitioner / 2nd Defendant

Vs.

R.Sivakumar

... Respondent / Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order, dated 22.04.2024 passed in I.A.No.3 of 2021 in O.S.No.1630 of 2020 on the file of XVII Assistant City Civil Court, Chennai.

For Petitioner : Mr.B.Arvind Srevatsa

For Respondent : Mr.N.Manoharan

O R D E R

Challenging the order passed by the learned XVII Assistant Judge, Chennai, in I.A.No.3 of 2023 in O.S.No.1630 of 2020, dated 05.12.2023, the petitioner is before this Court with the present Revision.



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2. Mr.B.Arvind Srevatsa, the learned counsel appearing for the petitioner / 2nd defendant would submit that the Interlocutory Application in I.A.No.3 of 2021 in O.S.No.1630 of 2020 is filed to reject the plaint under Order VII Rule 11 of CPC. The said interlocutory application has been dismissed on 22.04.2024 by the learned XVII Assistant Judge, Chennai. The learned Judge failed to consider that limitation is not a mixed question of fact and law in all cases. The learned Judge erred in holding that the plaint cannot be rejected in part with respect to prayers A and B. Prayers A and B of the plaint are wholly without any cause of action and the allegations made in connection therewith are based on surmises and conjectures. The reliefs sought for in the prayer C to F are in respect of documents dated 15.10.2003, 23.06.2004 and 24.06.2004, while the plaint is dated 09.12.2019. The documents mentioned in paragraphs C, D, E and F of the prayer in the plaint are registered documents and the suit thus is *ex facie* barred by limitation in accordance with the provisions of the Limitation Act, 1963. The prayers G and H of the plaint are merely consequential reliefs. As such, the plaint considered in its totality is liable to be rejected at the threshold. The Learned Judge thus clearly erred in dismissing the I.A. No. 3 of 2021



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in O.S. No. 1630 of 2020 on the ground that the plaint cannot be rejected in part.

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3. The learned counsel for the petitioner would further submit that the Learned Judge erred in holding that limitation is a mixed question of fact and law and that the question whether the suit is barred by limitation or not can be decided only after completion of trial. The respondent herein had complete knowledge of the execution of the documents mentioned in Paragraphs C, D, E and F of the prayer in the Plaint. The respondent at this stage cannot circumvent the facts to his whims and fancies to create an illusory cause of action, thereby creating a cloud of doubt on the date of knowledge and thus disregard the law of limitation. The Learned counsel relying on the Judgment of the Hon'ble Supreme Court in ***Rajendra Bajoria v. Hemant Kumar Jalan***, reported in ***(2022) 12 SCC 641*** would submit that, "It could thus be seen that this Court has held that reading of the averments made in the plaint should not only be formal but also meaningful. It has been held that if clever drafting has created the illusion of a cause of action, and a meaningful reading thereof would show that the pleadings are manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, then the court should exercise its



power under Order 7 Rule 11CPC, It has been held that such a suit has to be nipped in the bud at the first hearing itself." Hence, the learned counsel prayed for allowing the Revision.

4. Further, the learned counsel for the petitioner relied on the Judgment of the Hon'ble Apex Court in ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead, through Legal representatives and others*** reported in ***(2020) 7 SCC 366***, wherein it has been held as follows:-

“The remedy under **Order 7 Rule 11 CPC** is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.”



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5. Further, the learned counsel relied on the Judgment of the Hon'ble Apex Court in ***C.S.Ramaswamy Vs.V.K.Senthil and Others reported in 2022 SCC Online SC 1330***, wherein it has been *inter alia* observed that merely by stating that a fraud has been played would not be enough and the allegation of fraud ought to be specifically averred in the plaint. Merely by using the word 'fraud' the plaintiff may not be entitled to get away with the suit which is otherwise barred by limitation. Plaintiffs cannot be permitted to bring suits within period of limitation by clever drafting. It is his further submission that when a plaint does not disclose a cause of action, the Court cannot permit the respondent to unnecessarily protract the proceedings.

6. Mr.N.Manoharan, the learned counsel appearing for the respondent / Plaintiff would submit that plaintiff is a practicing Advocate. Plaintiff and the 2nd defendant are brothers. The learned counsel further submitted that the question of limitation is a mixed question of facts and law, which are to be proved by way of evidence. The cause of action is a bundle of facts involved on the case and it can be ascertained from the evidence. Hence, the learned counsel prayed



for dismissal of the Revision. The learned counsel, in support of his contention, has relied on the Judgment of the Hon'ble Apex Court in ***Shakti Bhog Food Industries Limited Vs. Central Bank of India and Another*** reported in ***(2020) 17 SCC 260***, wherein in paragraphs 20 and 22, it has been held as follows:-

“20. Similarly, in *Khatri Hotels Private Limited and Anr. v. Union of India and Anr.* (2011) 9 SCC 126, this Court considered the expression used in Article 58 in contradistinction to Article 120 of the old Limitation Act (the Indian Limitation Act, 1908). In paragraph 24, the Court noted thus:

24. The Limitation Act, 1963 (for short "the 1963 Act") prescribes time limit for all conceivable suits, appeals, etc. Section 2(j) of that Act defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 3 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary Article is applicable to every kind of suit not otherwise provided for in the Schedule.



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22. It is well established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order VII Rule 11 of the Code of Civil Procedure is ruled out. In the present case, the assertion in the plaint is that the Appellant verily believed that its claim was being processed by the Regional Office and the Regional Office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 8.5.2002 followed by another letter dated 19.9.2002 to the effect that the action taken by the Bank was in accordance with the Rules and the Appellant need not correspond with the Bank in that regard any further. This firm response from the Respondent-Bank could trigger the right of the Appellant to sue the Respondent-Bank. Moreover, the fact that the Appellant had eventually sent a legal notice on 28.11.2003 and again on 7.1.2005 and then filed the suit on 23.2.2005, is also invoked as giving rise to cause of action. Whether this plea taken by the Appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.”



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7. Further, the learned counsel relied on the Judgment of the Hon'ble Apex Court in ***Madhav Prasad Aggarwal and Another Vs. Axis Bank Limited and Another*** reported in ***(2019) 7 SCC 158***, wherein in it has been held as follows:-

“**11.**In view of this settled legal position we may now turn to the nature of reliefs claimed by Respondent 1 in the notice of motion considered by the Single Judge in the first instance and then the Division Bench of the High Court of Bombay. The principal or singular substantive relief is to reject the plaint only qua the applicant, Respondent 1 herein. No more and no less.

12.Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by Respondent 1 in the notice of motion(s) which commended to the High Court, is



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clearly a jurisdictional error. The fact that one or some of the reliefs claimed against Respondent 1 in the suit concerned is barred by Section 34 of the 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.

13.Resultantly, we do not wish to dilate on the argument of the appellant(s) about the inapplicability of the judgments taken into account by the Division Bench of the High Court or for that matter the correctness of the dictum in the judgment concerned on the principle underlying the exposition in *Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn.* [*Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn.*, (2009) 8 SCC 646 : (2009) 3 SCC (Civ) 481] to the effect that DRT and also the appellate authority cannot pass a decree nor is it open to it to enter upon determination in respect of matters beyond the scope of power or jurisdiction endowed in terms of Section 17 of the 2002 Act. We leave all questions



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open to be decided afresh on its own merits in accordance with law.

14.A fortiori, these appeals must succeed on the sole ground that the principal relief claimed in the notice of motion filed by Respondent 1 to reject the plaint only qua the said respondent and which commended to the High Court, is replete with jurisdictional error. Such a relief “cannot be entertained” in exercise of power under Order 7 Rule 11(d) CPC. That power is limited to rejection of the plaint as a whole or not at all.”

8. I have heard the learned counsels appearing on either side and perused the materials available on record.

9. It is seen from the records that the father and mother of the respondent died on 19.11.2000 and 23.01.2000 respectively, leaving behind their four sons, viz., R.Murugesan (7th defendant); R.Sivakumar (Plaintiff); R.Vijayakumar (1st defendant); R.Udayakumar (2nd defendant) and a daughter Jayakumari, who died on 16.10.2005. The Suit in O.S.No.1630 of 2020 is filed for declaration, declaring that the deceased Rajammal is not the wife of deceased T.K.Ramachandran; not the mother of defendants 1, 2, 7 and



Jayakumari and not the grandmother of the defendants 3, 4 and 8; declaring the Deed of Exchange, dated 15.10.2003 is nullity and being vitiate; declaration that the Sale Deed, dated 15.10.2003, is vitiated by fraud, Settlement Deed, dated 24.06.2004, is vitiated by fraud, mandatory injunction directing the defendants 9 to 11 to take appropriate action for the fraud committed in the deed of exchange, dated 15.10.2003, deed of sale, dated 15.10.2003, deed of settlement, dated 23.06.2004 and the deed of settlement dated 24.06.2004 and directs the 12th defendant to take action against the defendants 1 to 6.

10. Pending adjudication, the 2nd defendant filed the above application for rejection of plaint on the ground that the suit is barred by law of limitation and it does not disclose the cause of action. According to the respondent / plaintiff, the cause of action for the suit arose at Chennai; on 14.10.2003, when the respondent released his share over the said property; on the dates when the fraudulent documents were executed by the defendants 1 to 6; and the plaintiff attempted to get a criminal case registered and the defendants 1 to 6 prosecuted for appropriate offences; and when the fraud was discovered by the respondent; and the respondent brought the fraud to the notice of the defendants 9 to 12, and the defendants 9 to 12



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have not taken any action and all the subsequent dates when the fraud committed by the defendants 1 to 6 continues and within the jurisdiction of the Court. Whether the declaration is barred by law of limitation; whether the date of knowledge was, as stated by the respondent or not shall be decided only after trial. The partial plaint cannot be rejected. As rightly observed by the trial Court, the limitation point is mixed facts and question of law and the same shall be decided after trial.

11. In view of the forgoing reasons, the Civil Revision Petition stands dismissed. It is made clear that the Court has not expressed any opinion on the issue of limitation, cause of action or on the merits of the suit. No costs. Consequently, the connected miscellaneous petition is also dismissed.

06.12.2024

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes

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To

The XVII Assistant City Civil Judge,
Chennai.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER
IN
C.R.P.No.2434 of 2024

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