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C.R.P.No.2270 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2270 of 2020 and
C.M.P.No.14210 of 2020

1.A.Anbalagan
2.R.Ramanathan
3.S.K.Elangovan
4.V.Karuppannan
T.K.Palaniappan (Died)
5.Chellammal
Selvi (Died)
6.Sakthivel

... Petitioners

Vs.

N.Subramaniam
(Cause title accepted vide order
of Court dt.14.12.2020 made in
CMP.No.13590/2020 in
CRP.SR.No.84186/2020)

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order dated 19.10.2019 made in I.A.No.3 of 2019 in O.S.No.189 of 2012 on the file of the Principal District Judge, Salem.



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For Petitioners

: Mr.K.Duraisami

Senior Counsel

for Mr.A.Muthumani

For Respondent 1

:Mr.V.Sekar

ORDER

The defendants in the suit filed this revision petition challenging the order passed by the Court below dismissing the petition seeking consideration of certain issues as preliminary issues.

2. The respondent herein filed a suit seeking declaration that amendment carried out in Supplement Deed No.5 dated 10.11.2008 removing him from the post of trustee was null and void and not binding on him. The respondent also sought for injunction restraining the petitioners/defendants from in any manner preventing him from participating in the trust activities. He also sought for mandatory injunction directing the petitioners to allow the 1st respondent to participate in the trust activities.

3. Earlier, the petitioners filed an application for rejection of the plaint in I.A.No.41 of 2013 on the ground that the main suit prayer was barred by



limitation and also on the ground that there was no permission under Section 92 of CPC to file suit and on other aspects. The said application was allowed.

The plaint was rejected by the Trial Court. Aggrieved by the same, the respondent preferred an appeal in A.S.No.1125 of 2015 before this Court. The said appeal was allowed by directing the Court below to frame an issue with regard to the question of limitation, necessity for leave under Section 92 of CPC and all other aspects. The relevant observation of Hon'ble Division Bench in the above said judgment reads as follows:

“25. Therefore, we are of the opinion that catena of decisions relied upon by the learned counsel for the appellant/plaintiff would show that the suit cannot be dismissed on the ground that it is barred by limitation. Taking into consideration the above decisions we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Further, whether the appellant/ plaintiff has really got knowledge about the Supplement Deed No.5 only in the year 2010 or earlier is a purely disputed question of fact and the same can be decided



only after framing issue and conducting trial. Though the learned Senior Counsel for the respondents/defendants submitted that since the appellant/plaintiff has not obtained leave under Section 92 of CPC., it is the submission of the learned counsel for the appellant/plaintiff that in the present case the appellant/plaintiff is not agitating any public right and he is only vindicating his personal right. Therefore, leave is not necessary. However, we are of the opinion whether the appellant/plaintiff is agitating public or right personal right also has to be decided only during the course of trial.

26. Therefore, we are of the considered opinion that there is infirmity in the order passed by the trial court in allowing the application under Order 7 Rule 11 CPC, thereby rejecting the plaint. Therefore, we inclined to set aside the same. Accordingly, the order and decretal order dated 05.02.2015 in I.A.No.41 of 2013 in O.S.No.189 of 2012 passed by the Principal District Judge, at Salem is hereby set aside and the matter is remitted back to the trial Court. The learned Principal District Judge is directed to conduct trial



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after framing necessary issues with regard to the limitation and all other aspects and also with regard to the obtaining of leave under Section 92 of CPC, as well as all other relevant aspects and after recording the evidence on either side, dispose of the suit on merits, within a period of six months from the date of receipt of copy of this order. No costs. Consequently, M.P.No.1 of 2015 is closed”.

4. A perusal of the judgment passed by the Hon'ble Division Bench in the appeal filed against the rejection of the plaint would suggest that the Division Bench held that limitation in this suit is a disputed question of fact and the same can be decided only after framing of issues and recording of evidence. The learned Senior Counsel for the petitioners submitted that the document impugned in the suit was dated 10.11.2008 and admittedly, the suit had been filed on 17.07.2012 beyond the period of 3 years and therefore, the suit is hopelessly barred by limitation. In the plaint averment, it was stated by the respondent/plaintiff that he acquired knowledge about his removal and the document impugned in the suit only on 12.07.2010. Whether he acquired knowledge only on 12.07.2010 or acquired knowledge even prior to that is a



matter to be decided based on the evidence. Therefore, the question of limitation in this case cannot be decided without recording of evidence. Hence, I am unable to accept the submissions made by the learned Senior Counsel for the petitioner with regard to the question of limitation. Even with regard to the maintainability of the suit without leave under Section 92 of CPC, the Division Bench, in its order clearly held that the same should also be considered along with the other issues after recording of evidence. In fact, in its order, the Division Bench directed the Trial Court to frame necessary issues with regard to the limitation, question of leave under Section 92 of CPC and all other aspects and record evidence and dispose of the suit on merits. Therefore, the petitioners herein have not made out any case for taking up certain issues with regard to the limitation, maintainability of the suit etc., as a preliminary issue.

5. It is seen from typed set that petitioners/defendants filed written statement as early as 18.03.2013. In the written statement, the petitioners vaguely disputed valuation of plaint. On the date of filing of written statement itself, the petitioners filed I.A.No.41 of 2013 to reject the plaint on the grounds of limitation and absence of leave under Section 92 of CPC. Though under



Order 7 Rule 11 of CPC under valued, insufficiently stamped plaint is a ground to seek rejection of plaint, the petitioner consciously failed to raise any objection regarding valuation of plaint in petition for rejection of plaint. The said Order 7 Rule 11 petition was allowed and on appeal filed by plaintiff/respondent, the said order was set aside by Division Bench of this Court with direction to Trial Court to decide questions raised by petitioners herein by recording evidence and dispose of suit on merits within 6 months. The order of Division Bench was passed on 01.08.2017. After waiting for two years, the petitioners have come up with present petition on 17.09.2019 raising very same issues of limitation and maintainability of suit without leave under Section 92 of CPC. Besides, the petitioners also raised issue of Court fee in this petition seeking trial of preliminary issues. The petitioners are not entitled to raise objection in instalments so as to drag on the proceedings. Further, the maximum court fees payable under Section 28 of Tamil Nadu Court Fees and Suit Valuation Act is Rs.1000/- and the same has been paid by the petitioners. Hence, even if the valuation adopted by plaintiff is found to be erroneous and plaint is under valued, Court fee payable on such new value will remain as Rs.1000/-. Hence, any decision on value of plaint is not going to affect the



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Court fee payable by respondent/plaintiff. Further, the present suit is filed in District Court, which is having unlimited pecuniary jurisdiction. Hence, even if plaint is found to be under valued, the new higher value will not render the plaint outside the pecuniary jurisdiction of present Court in which suit is filed. Therefore, the dismissal of the petition filed by petitioners will not cause any prejudice to them and hence, this Court in it's revisional jurisdiction need not interfere with the same. As held by Division Bench in it's judgment, cited supra, all issues including questions relating to valuation can be tried along with other issues.

6. In view of discussions made earlier, I do not find anything to interfere with the order passed by the Trial Court and accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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To

The learned Principal District Judge, Salem.



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S.SOUNTHAR, J.

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