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S.A. No.702 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2024

DELIVERED ON :18.04.2024

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

S.A. No.702 of 2017
and C.M.P.No.8027 of 2017

Unnathal (died)

- 1.K.Ganesan
- 2.K.Gunasekaran
- 3.K.Balasubramaniam
- 4.K.Velusamy
- 5.K.Vanithamani

.... Appellants

Versus

Rayappan (died)

- 1.R.Banumathi
 - 2.R.Sarojini
 - 3.R.Subramaniam
 - 4.K.Chenniappan (died)
 - 5.Navamani
 - 6.Santhamani
 - 7.R.Manimekalai
 - 8..Loganathan
 - 9.R.Thamilarasu
- (RR.5 to 9 are brought on record as LR's of the deceased
4th respondent vide court order dated 16.11.2023 made
in CMP Nos.24720, 24722 and 24724 of 2023 in SA
No.702 of 2017)

..... Respondents



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WEB COPY Second Appeal filed under Section 100 of the Civil Procedure code, against the decree and judgment passed in A.S. No.8 of 2015 dated 22.06.2016 on the file of Second Additional Sub Court, Coimbatore, confirming the fair and decretal order dated 17.07.2014 in I.A.No.254 of 2014 in O.S.No.2170 of 2013 on the file of First Additional District Munsif, Coimbatore.

For Appellants	: Mr.T.R.Rajagopalan Senior Counsel for Mr.R.Siddharth
For Respondents	: Mr.AR.L.Sundaresan Senior Counsel for M/s P.C.Harikumar Associates For RR.1 to R.3 R.4 – Died Mr.Meiyappan Mohan For R.5 to R.9

JUDGMENT

The above Second Appeal throws up an interesting question of law as to whether the plea of limitation can be raised in an Order 7 Rule 11 application under the Code of Civil Procedure, when the Hon'ble Supreme Court had granted liberty to the plaintiffs to seek the relief of declaration of



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title. The parties are described as per their litigative status before the trial court.

2. The appellants are the plaintiffs, who suffered concurrent findings before the Courts below, in an application filed by the defendants to reject the plaint on the ground that it is barred by Limitation. The material facts of the case, for better appreciation of the facts and the legal position are culled out in brief hereunder:-

3. The suit property originally belonged to one Karuppa Gounder, who had purchased it under a sale deed dated 15.02.1933, from Sennimalai Gounder. Subsequent to the purchase, Karuppa Gounder sold the house property measuring 30 x 20 feet with specific boundaries to his daughter-in-law, Pechiammal, who is the wife of the first defendant in the suit, under a sale deed dated 21.08.1972. Thereafter, the first defendant and one Velusamy, jointly purchased the suit properties from the said Karuppa Gounder, from whom, the first plaintiff purchased the undivided $\frac{1}{2}$ share of Velusamy under sale deed dated 25.07.1974, and the husband of the second



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plaintiff and father of plaintiffs 3 to 7 purchased the other undivided $\frac{1}{2}$ share of the first defendant, in and by sale deed dated 30.12.1976.

4. The specific case of the plaintiffs is that they have mutated revenue records and they have been in peaceful possession and enjoyment of the suit property, paying kist to the revenue. After the execution of the two sale deeds in favour of the plaintiffs, the first defendant and Velusamy, who did not have any right, title or interest over the suit properties, illegally created a lease deed dated 03.07.1995 in favour of the first defendant and also a general power of attorney on 17.10.1997, in and by which, Velusamy empowered the first defendant to deal with his alleged $\frac{1}{2}$ share in the suit properties. According to the plaintiffs, neither the first defendant nor Velusamy had any right to execute the power of attorney or the lease deed as they had already sold their interest in the suit properties in favour of the plaintiffs. Both the documents were not binding on the plaintiffs and an earlier suit in O.S.No.80 of 2000 had been filed to declare the lease deed dated 03.07.1995 and the general power of attorney dated 17.10.1997 as null and void.



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5. It is also stated by the plaintiffs that in the said suit in O.S.No.80 of 2000, the plaintiffs filed an application in I.A.No.69 of 2005, seeking amendment of the plaint to include the prayer for declaration of title and also for mandatory injunction to remove the motor service connection installed in the well subsequent to filing of the suit in O.S.No.80 of 2000. However, the trial Court dismissed the application in I.A.No.69 of 2005 seeking amendment on 28.03.2005 and as against the same, the plaintiffs preferred a revision in CRP (PD)No.977 of 2005. The said revision was dismissed by this Court on 13.03.2006. The plaintiffs preferred a Special Leave Petition in C.C.No.8882 of 2006 and the same was also dismissed on 27.11.2006.

6. An application in I.A.No.225 of 2007 was subsequently filed before the District Munsif Court, Palladam, where the suit was pending, seeking permission to withdraw the suit in O.S.No.80 of 2000, with liberty to file a fresh suit on the same cause of action. The District Munsif Court granted permission to withdraw the said suit with liberty to file a fresh suit on the same cause of action. However, the defendants preferred a revision in CRP



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(PD) No.1480 of 2008 before this Court and the said revision was allowed by this Court on 19.05.2010, in and by which, the order passed in I.A.No.225 of 2007 dated 06.03.2008 was set aside. The plaintiffs challenged the order passed in the above revision before the Hon'ble Supreme Court in SLP No.1150 of 2011 and the Hon'ble Supreme Court on 29.09.2011 dismissed the SLP, observing that the plaintiffs would have liberty file a fresh suit for declaration of title.

7. On the strength of the liberty granted by the Hon'ble Supreme Court, the suit in O.S.No.2170 of 2013 was filed by the plaintiffs for the following reliefs:-

“ (a) Declaring that the plaintiffs are the absolute and exclusive owners of the plaint schedule mentioned properties and granting a consequential permanent injunction restraining the defendants, their men, agents, servants, assign etc., from in any manner preventing or interfering with the plaintiffs' peaceful possession and enjoyment thereon;



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(b) Declaring that the alleged lease deed dated 03.07.1995 and the alleged will dated 13.10.2004 which registered on 26.03.2008 are null and void and not bind upon the plaintiffs and granting a consequential permanent injunction restraining the defendants their men, agents, servants, assigns etc., from in any alienating or encumbering the suit properties;

(c) Granting the mandatory, directing the defendants to remove the service connection and motor pumpset installed in the well in Natham S.F.No.169 B (New S.F.No.254/9);

8. In the said suit, the first defendant filed a written statement stating that there is no cause of action for filing the suit and the suit is barred in view of the earlier suit in O.S.No.80 of 2000, being filed without the permission of the Court in terms of proviso to Order 23 Rule 3, sub rule (3) of Civil Procedure Code. The defendants also took out an application in I.A.No.254 of 2014 in O.S.No.2170 of 2013 under Order 7 Rule 11 read with Section 151 of Code of Civil Procedure to reject the plaint on the



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following grounds:-

- (a) the reliefs of declaration regarding the lease deed and the power of attorney were barred since they had already been sought for in O.S.No.80 of 2000 and permission to withdraw the said suit with liberty to file a fresh suit on the same cause of action was declined by this Court and also confirmed by the Hon'ble Supreme Court;
- (b) the suit is barred by limitation;
- (c) the plaintiffs have failed to comply with the provisions of Order 23 Rule 1 of Civil Procedure Code.

9. The plaintiffs filed a counter statement to the said application to reject the plaint, contending that in view of the liberty granted by the Hon'ble Supreme Court in SLP No.1150 of 2011 dated 29.09.2011, the application to reject the plaint was not maintainable and the suit being for declaration of title is also not barred by limitation.

10. The trial Court, finding that the plaint did not disclose any cause of



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action for filing the suit for declaration within three years, held that the plaintiff was liable to be rejected and barred by limitation as it was not filed within three years from the date of denial of plaintiffs' title.

11. Aggrieved by the rejection of the plaintiff, the plaintiffs preferred an appeal in A.S.No.8 of 2015 and the first Appellate Court confirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the concurrent findings, the present Second Appeal has been preferred at the instance of the plaintiffs.

12. On 20.11.2017, the Second Appeal was admitted by this Court on the following substantial questions of law:-

a) Whether the suit framed as such is maintainable in view of the liberty granted by the Hon'ble Supreme Court in SLP (C) No.1150 of 2011 dated 29.09.2011 irrespective of the order dated 11.01.2012 made in O.S.No.80 of 2000?



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b) Whether the Courts below are right in rejecting the plaint under Order 7 Rule 11 CPC for want of cause of action particularly when the plaintiffs have specifically elaborated the bundle of facts which resulted in infringement of their right and title over the suit property in Para 22 of the plaint?

c) Whether the Courts below erred in rejecting the plaint as barred by limitation particularly when the bar of limitation cannot be raised as a ground for rejection of the plaint under Order VII Rule 11 CPC, and it can be raised as a defence for dismissing the suit under Section 3 of the Limitation Act?

d) Have not the Courts below exceeded in exercising their jurisdiction to reject the plaint when the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be not barred by any law?



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13. I have heard Mr.T.R.Rajagopalan, learned Senior Counsel appearing for Mr.R.Siddharth, counsel for the appellants and Mr.AR.L.Sundaresan, learned Senior Counsel appearing for M/s P.C.Harikumar Associates, for respondents 1 to 3 and Mr.Meiyappan Mohan, learned counsel for the respondents 5 to 9.

14. The learned Senior Counsel, Mr.T.R.Rajagopalan would take me through the various orders in the earlier suit in O.S.No.80 of 2000 viz., starting from the amendment application in I.A.No.69 of 2005, the order in C.R.P.No.977 of 2005 and also the order in I.A.No.225 of 2007, seeking withdrawal of the suit in O.S.No.80 of 2000 with liberty to file a fresh suit and the order passed in C.R.P No.1480 of 2008. Learned Senior Counsel would also submit that a Memo came to be filed before the District Munsif Court, Palladam in O.S.No.80 of 2000, stating that in view of the order of the Hon'ble Supreme Court in S.LP (C) No.1150 of 2011, the suit may be dismissed as withdrawn, subject to the plaintiffs' right to file a suit for declaration of title. Despite the said Memo being filed, the District Munsif Court, Palladam did not record the Memo and merely dismissed the suit as



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withdrawn without granting any liberty. According to the learned Senior Counsel, even though the Court had not granted any liberty, in view of the fact that the Hon'ble Supreme Court had passed an order in SLP(C) No.1150 of 2011 on 29.09.2011, the plaintiffs did not require any liberty for filing the suit for declaration of their title. Learned Senior Counsel would fairly submit that insofar as the two reliefs for declaration regarding the lease deed and the power of attorney, there may be a bar in view of the liberty not being granted by the District Munisf Court, Palladam, by not recording the Memo and also in view of the fact that the order in the earlier application, seeking liberty to file a fresh suit on the same cause of action, has been confirmed upto the Hon'ble Supreme Court. In fact, the learned counsel appearing for the plaintiffs would file a Memo, seeking permission of this Court to withdraw the prayer (b) in the suit in O.S.No.2170 of 2013 which reads as follows:-

(b) Declaring that the alleged lease deed dated 03.07.1995 and the alleged Will dated 13.10.2004 which registered on 26.03.2008 are null and void



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and not bind upon the plaintiffs and granting a consequential permanent injunction restraining the defendants their men, agents, servants, assigns etc., from in any way alienating or encumbering the suit properties.”

15. Similar Memo has been filed by the respondents 4 to 8, who were also plaintiffs in O.S.No.2170 of 2013.

16. Learned Senior Counsel Mr.T.R.Rajagopalan would submit that insofar as the relief of declaration of title, in view of the liberty granted by the Hon'ble Supreme Court, the plaintiffs are entitled to file the present suit in O.S.No.2170 of 2013 and their right cannot be shut out at the nascent stage by taking out an application under Order 7 Rule 11 of Civil Procedure Code, especially, when the Hon'ble Supreme Court has observed that the plaintiffs can seek declaration of their title by filing an appropriate suit, despite the dismissal of the earlier suit and also the prayer for seeking liberty to file a fresh suit on the same cause of action being rejected and confirmed by the Hon'ble Supreme Court. Learned Senior Counsel would further



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contend that the title of the plaintiffs was never an issue in the earlier suit and therefore, the question of limitation will never arise for the plaintiffs to seek declaration of their title. Learned Senior Counsel would also state that even in the present proceedings, the title of the plaintiffs has not been denied and unfortunately, the Courts below have misdirected themselves in rejecting the plaint.

17. Learned Senior Counsel would place reliance on the following decisions:-

(i) *Saranpal Kaur Anand vs Praduman Singh Chandhok and others* reported in [(2022) 8 SCC 401]

(ii) *Balasaria Construction (P) Ltd vs Hanuman Seva Trust and Others* reported in [(2006) 5 SCC 658]

(iii) *Urvashiben and Another vs Krishnakant Manuprasad Trivedi* reported in [(2019) 13 SCC 372]

(iv) *Salim D.Agboatwala and Others vs Shamalji Oddhavji Thakkar and Others* reported in [(2021) 17 SCC 100]



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(v) Dega Jayalakshmi and 3 others vs Kapoor Enterprises rep by its Managing Partner R.M.Lakshman Dass and others reported in (2009) (5) CTC 837.

18. Learned Senior Counsel for the appellants would therefore, pray for the Second Appeal being allowed.

19. Per contra, the learned Senior Counsel Mr.AR.L.Sundaresan, appearing for the respondents 1 to 3 would mainly contend that the suit was barred by limitation and would take me through the cause of action paragraph in the plaint where, the plaintiffs themselves have referred to 22.06.2000, being the relevant date for the cause of action arising and admittedly, the suit has not been filed within a period of three years from the said date. Learned Senior Counsel would also invite my attention to the order of the Hon'ble Supreme Court, where liberty has been granted to the defendants to raise the plea of limitation as well. Learned Senior Counsel would also refer to the objections filed by the counsel for the respondents 1 to 3 to the Memo filed by the appellants and respondents 4 to 8. Learned



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Senior Counsel would contend that the Memo filed by the plaintiffs in O.S.No.80 of 2000 was not recorded by the trial Court and more over, the suit has been rejected already by two courts and therefore, there is no question of withdrawing a portion of the relief at this stage, which is totally impermissible in the eye of law. Learned Senior Counsel would also state that the plaint cannot be rejected in piecemeal and therefore, the Memo cannot be accepted.

20. Learned Senior Counsel would also place reliance on the decision of this Court in *A. Valiammal and others vs C.Madhuram and others (CRP (PD)No.3454 of 2017 dated 14.02.2022)*, where a learned Judge of this Court has referred to Articles 58, 64 and 65 of Limitation Act and held that as relief of declaration not provided otherwise for in the Limitation Act, it would fall under Article 58 and the limitation would be three years from the date of cause of action accruing. Learned Senior Counsel would also state that Articles 64 and 65, though relating to suit for possession of immovable property, the limitation would be 12 years only when the suit is for possession or any interest thereon based on title and admittedly, the cause of



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action for such suits would arise from the date of possession of the defendants becoming adverse to the plaintiffs. Learned Senior Counsel would state that in the present case, where, only a declaration of title is sought for and no recovery of possession is prayed and only Article 58 of the Limitation Act would apply. Further, even otherwise, according to the learned Senior Counsel Mr.AR.L.Sundaresan, even if the limitation is taken to be 12 years also, the suit is beyond the period of 12 years as it has been filed on 17.07.2013 only, whereas, according to the plaint, cause of action arose on 22.06.2000, which is clearly after the period of 12 years.

21. Learned Senior Counsel would also state that under Section 3 of the Limitation Act, a duty is cast upon the Court to see whether the suit has been filed in time and therefore, even if the plea of limitation has not been taken, the Court has to see whether the plaintiffs have approached the Court in time and if it is found that the suit is barred by limitation, then the plaintiffs have to be non-suited and therefore prays for dismissal of the Second Appeal, confirming the concurrent findings rendered by the Courts below.

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22. Learned Senior Counsel for the respondents would also place reliance on the following decisions:-

(i) *T.Arivandandam vs T.V.Satyapal and another* reported in (1977) 4 SCC 467

(ii) *V.Kumar and another vs R.Natarajan and others* reported in 2022 (1) MWN (civil) 340.

(iii) *Khatri Hotels Private Limited and another vs Union of India and another* reported in (2011) 9 SCC 126

(iv) *K.A.Ibrahim vs P.Kalaiselvi* reported in 2021 (3) MWN (civil) 7

(v) *Joseph Arokiados represented by Power Agent T.Kasi vs P.Pradeep* reported in 2011 (2) CTC 177

(vii) *Dahiben vs Arvinbhai Kalyanji Bhanusali (Gajr) (dead) through legal representatives and others* reported in [(2020) 7 SCC 366]

23. I have carefully considered the rival submissions advanced by the



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learned counsel on either side. I have also gone through the various orders in the earlier proceedings and also the pleadings in the present suit in O.S.No.2170 of 2013 and the application for rejection of plaint and counter filed thereto. I have also gone through the judgments of the trial Court as well as the first appellate Court, rejecting the plaint. I have also gone through the Memo filed by the appellants and the respondents 4 to 8, giving up the relief of declaration with regard to the lease deed and the Will and the objections filed to the said Memos.

24. The parties to the *lis* have a checkered history of litigation. The plaintiffs preferred a suit in O.S.No.80 of 2000, seeking the relief of declaration that the lease deed and the power of attorney were not binding on them. They have also sought for permanent injunction in the said suit to restrain the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property and also to restrain the defendants from alienating or encumbering the suit properties.

25. In the said suit, an application in I.A.No.69 of 2005 was filed



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seeking amendment of plaint to include the prayer for declaration of title and also for mandatory injunction to remove the motor service connection installed in the well. The said application for amendment of plaint was dismissed on 28.03.2005 and confirmed by this Court in CRP (PD)No.977 of 2005. The Special Leave Petition in SLP in CC No.8882 of 2006 filed before the Hon'ble Supreme Court came to be dismissed on 27.11.2006. In view of the dismissal of the amendment application, the plaintiffs thought it fit to seek permission to withdraw the suit with liberty to file a fresh suit on the same cause of action. Hence, they have filed an application in I.A.No.225 of 2007. The trial Court allowed the said application and granted permission to the plaintiffs to withdraw the suit in O.S.No.80 of 2000 with liberty to file a fresh suit on the same cause of action. On such liberty being granted, the plaintiffs preferred a fresh suit in O.S.No.183 of 2008. In the meantime, the defendants challenged the liberty granted to the plaintiffs by way of revision before this Court in CRP (PD) No.1480 of 2008 and the said revision was allowed by this Court on 19.05.2010 and as against the same, the plaintiffs preferred Special Leave Petition in SLP (C) No.1150 of 2011 and the Hon'ble Supreme Court, after hearing the parties, dismissed the SLP (C)



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No.1150 of 2011 dated 29.09.2011 and passed the following order:-

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“We find no reason to interfere in this special leave petition. It is accordingly dismissed. However, we make it clear that this will not come in the way of the petitioners filing a suit for declaration of their title as that was not the subject matter of the pending suit. It is needless to say that if and when such suit is filed, the defendants in such suit can have recourse to all defences including that of limitation.”

26. Pursuant to the said order of the Hon'ble Supreme Court, the defendants filed a Memo in the newly instituted suit in O.S.No.183 of 2008 and prayed for dismissal of the suit. The plaintiffs have also filed Memo, seeking to “Not press” the suit in O.S.No.80 of 2000 in view of the order passed by the Hon'ble Supreme Court, confirming the order passed by this Court in the revision. The Memo, filed by the plaintiffs, was received but not recorded and the suit was dismissed as “not pressed”. Thereafter, the plaintiffs have filed the present suit. The relief sought for in the suit has



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already been extracted herein above.

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27. The first relief is to seek a declaration that the plaintiffs are the absolute and exclusive owners of the plaint schedule mentioned properties and consequential permanent injunction to restrain the defendants from in any manner interfering with their peaceful possession and enjoyment has also been sought for.

28. The second relief is to declare the alleged sale deed dated 03.07.1995 and the alleged Will dated 13.10.2004 registered on 26.03.2008 as null and void are not binding on the plaintiffs. It is in respect of this relief that the appellants have filed a memo, seeking permission to withdraw the said relief. The said Memo has been strongly objected to by the contesting respondents 1 to 3.

29. As rightly contended by the learned counsel for the respondents 1 to 3, as on date, the plaint stands rejected and the question of considering the memo would not arise. However, if the second appeal is allowed in favour of

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the appellants and the plaint is restored to file, then the memo would have a bearing and therefore, I am reserving the fate of the Memo and the objections towards the end of this judgment.

30. Coming to the relief of declaration of title, admittedly, the Hon'ble Supreme Court has permitted the plaintiffs to seek declaration of their title by way of separate suit. In such circumstances, I do not find the arguments of the learned Senior Counsel for the respondents, regarding the procedure mandated under Order 23 not being followed and that the suit in O.S.No.183 of 2008 being withdrawn or O.S.No.80 of 2000 being withdrawn without liberty granted by the Court, coming in the way of the plaintiffs to institute a fresh suit for declaration of title. Insofar as the reliefs of declaration, challenging the lease deed and the general power of attorney, the plaintiffs are not entitled to re-agitate the same in view of the earlier proceedings culminating against them upto the Hon'ble Supreme Court.

31. The main thrust of the argument of both the learned Senior Counsel is only with regard to the question of the suit being barred by limitation.



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32. According to Mr.T.R.Rajagopalan, learned Senior Counsel, the question of limitation will never arise since the defendants have admitted to the fact that they have sold the property to the plaintiffs and the said factum of the sale deeds being executed in favour of the plaintiffs is not denied but have in fact been expressly admitted at various points of time, including in the present suit proceedings. Learned Senior Counsel would therefore state that in such circumstances, the question of limitation would not even arise and would pale into insignificance.

33. Per contra, Mr.AR.L.Sundaresan, learned Senior Counsel would state that having filed the suit for declaration of title based on the cause of action pleaded in the plaint, the suit ought to have been filed within three years from 22.06.2000 and admittedly even on the face of the plaint, the suit has been filed only in July 2013 and therefore, the suit was clearly barred by limitation.

34. The cause of action paragraph in the suit in O.S.No.2170 of 2013



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would thus assume significance and the same is extracted hereunder for ready reference:-

“The cause of action for the suit arose on 15.02.1933 when the said Karuppa gounder purchased said properties; and on 20.12.1972 when the 1st defendant and one late.Velusamy have jointly purchased the suit properties; and on 25.07.1974 when the 1st plaintiff purchased the half share of the suit properties from the late.Velusamy; and on 20.12.1976 when the 1st defendant executed a sale deed in favour of late.Kuttiappan who is the father of the plaintiffs 3 to 7 and husband of 2nd plaintiff; and on 28.12.1989 when the Kuttiappan died intestate leaving behind the plaintiffs 2 to 7 as his legal heirs to succeed his half share in the suit properties and on all prior subsequent dates of plaintiffs joint possession and enjoyment of the suit properties. On 03.07.1995 and 17.10.1997 when the defendants 1 and 2 have created void lease deed and void General Power of Attorney, on 22.06.2000 when the 1st defendants attempt to alienate and encumber the suit properties; and



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on the date of filing of the suit properties and on the date of filing of suit in O.S.No.80 of 2000 and on the date when the 1st defendant illegally obtained a new service connection and installed a motor in the well in Natham S.F.No.169B; and on the date of withdrawal of the suit in O.S.No.80 of 2000; and on 06.03.2008 when the Hon'ble District Munsif of Palladam allowed the I.A.No.225 of 2007 in O.S.No.80 of 2000 to not press the original suit in O.S.No.80 of 2000; and on 26.06.2008 whe on the strength of the above said order the plaintiffs filed another suit in O.S.No.183 of 2000; and after that when the Hon'ble Distirct Munsif of Palladam reopened the O.S.No.80 of 2000 by suo moto as the order of Hon'ble District Munsif in I.A.No.225 of 2007 in O.S.No.80 of 2000, was setaside by the Hon'ble High Court of Judicature at Chennai in CRP No.1480 of 2008 dated 19.05.2010; and after that, when the plaintiffs not pressed the both suits in O.S.No.80 of 2000 and as well as O.S.No.183 of 2008 as per the order of the Hon'ble Supreme Court in SLP No.1150 of 2011



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dated 29.09.2011; and when they filed a not press memo in both the cases; and when the decree has been passed in both suits in 11.01.2012; thereafter when the plaintiffs got certified copies on 16.03.2012; and after withdrawing the said suits the defendants purposefully and cunningly attempted to encroach the property situated in the S.F.No.2549 (Old No.169B Natham) by influencing the police by deploying all illegal elements and attempted to puot up the wall towards east to west wherein the plaintiffs on 10.05.2013 and 12.05.2013 lodged complaint against the defendants and their henchmen before Sulur Police against their high handedness; and, when the Police refused take action against the defendants; and hence the plaintiffs sent complaints against the defendant's high handedness before the Higher Police officials and others; and thereafter the 1st defendant lodged a false claim before the Tahsildar, Sulur by suppressing the material facts and documents and falsely claims that, he is



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having the properties in S.F.No.24/1 it is nothing but a fraudulent and fabricated claim which is resisted by the plaintiffs suitably; and the plaintiffs on the dates of defendants illegally attempts to interfere with the plaintiffs' peaceful possession and enjoyment of the suit properties and on all prior on subsequent dates or their continues with at Kangeyampalayam, Sulur Taluk where the suit properties are situated within the jurisdiction of this Hon'ble Court.

35. On a reading of the entire plaint as a whole, along with cause of action paragraph, it is clear that nowhere in the plaint, the plaintiffs have stated that the defendants have denied their title. Article 58 of Limitation Act imposes a three years time limit only when the title of the plaintiffs is denied by the defendants. Even in the written statement filed in O.S.No.80 of 2000, the defendants have admitted that the first plaintiff has purchased portion of the suit property from the 1st defendant therein and the same is not disputed and the husband of the 2nd plaintiff and father of the plaintiffs 3 to 7 late Kuttiappan had purchased the remaining $\frac{1}{2}$ share was also not disputed. A



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written statement has been filed even in the present suit, by the first defendant. Even in the said written statement in O.S.No.2170 of 2013 also, the defendants do not deny that the plaintiffs have purchased the suit property under two sale deeds. In fact, paragraph-5 of the written statement is extracted hereunder;-

“ 5. Whereas, it is submitted that Late.Velusamy under the Sale Deed dated 25.07.1974 has sold to Chenniappan the first plaintiff only an half share from his undivided share in the properties referred in the sale deed dated 25.07.1974. Lie wise, the first defendant had sold an half share from his undivided share of properties, detailed in the sale dated 30.12.1976 to Late.Kuttiappan.....”

36. Therefore, the question of denial of title of the plaintiffs never arose at any point of time and only because of the amendment application being negatived by this Court to include the relief of declaration of title and the subsequent application to withdraw the suit with liberty to file a fresh suit also going against the plaintiffs and in view of the liberty granted by the



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Hon'ble Supreme Court to seek declaration of their title, the present suit in O.S.No.2170 of 2013 has come to be instituted.

37. In fact, in the written statement filed in O.S.No.80 of 2000, in Paragraph No.3, the second defendant therein has stated as follows:

“ 3. The averment that on 25.7.1974 the 1st plaintiff has purchased a portion of the suit property from the 1st defendant under document No.1(dated 25.2.1974) is not disputed. The further averment that on 20.11.1976, the husband of 2nd plaintiff as well as the father of the plaintiffs 3 to 7, late Kuttiappan has purchased a portion of the suit property from the 2nd defendant is also not disputed.....”

Therefore, it is clear that the sale of properties to the plaintiffs has never been challenged by the defendants at any point of time.

38. In such circumstances, I do not find Article 58 of the Limitation



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Act coming in the way of the plaintiffs from seeking for declaration of their title. Moreover, the relief of declaration is also prayed for along with the consequential relief of permanent injunction which is on the premise that the plaintiffs are in physical possession of the suit property and their possession is to be protected.

39. The question of whether the plaintiffs are in possession or not is certainly a mixed question of fact and law and it can be decided only on the basis of the evidence adduced by the parties. In the present case, admittedly the defendants do not deny the sale deed in favour of the plaintiffs and therefore, when the Hon"ble Supreme Court has granted liberty to institute a suit for declaration of title and left open the question of limitation, to be raised by the defendants, it certainly has to be decided only after trial of the suit and cannot be decided in a summary manner under Order 7 Rule 11 of Civil Procedure Code.

40. The plaintiffs have not stated anywhere in the plaint that the defendants have denied their title. On the contrary, it is already seen that the



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defendants have admitted that they have sold the suit property to the plaintiffs by way of two sale deeds. However, the defendants claim that they are in possession of the suit property and by way of a lease deed and power of attorney, the first defendant has been conferred upon certain lease rights.

41. All these matters have to be tested only during the trial of the suit and the rights of the plaintiffs cannot be shut out by way of invocation of Order 7 Rule 11 of Civil Procedure Code.

42. It would again be a mixed question of law and fact as to whether the cause of action pleaded by the plaintiffs viz., 22.06.2000, where, they have stated that the first defendant attempted to alienate or encumber the suit properties would be a starting point of limitation for seeking the relief of declaration, since the defendants admit sale of the suit property to the plaintiffs. Even though the Hon'ble Supreme Court has left open all the issues, including limitation to be raised by the defendants, it cannot be done in an application under Order 7 Rule 11 of Civil Procedure Code on the given set of facts and circumstances. The parties have to lead evidence, oral



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and documentary and only thereafter, the Court will be in a position to decide whether the plaintiffs are in possession of the suit property as claimed and whether they are entitled to the relief of declaration or whether the defendants have sold only undivided $\frac{1}{2}$ share of their entitlement and they continue to remain in possession of the remaining undivided $\frac{1}{2}$ share.

43. Learned Senior Counsel would also place reliance on the decision of *Salim D.Agboatwala and Others vs Shamalji Oddhavji Thakkar and Others* reported in *[(2021) 17 SCC 100]*, wherein, the Hon'ble Supreme Court has held that the starting point of limitation or the reckoning the date for computation of period of delay would be the date on which the cause of action arose, and the notice, including the constructive notice or knowledge of the essential facts which would be the basis of cause of action and determination of date of such notice are triable issues and cannot be dismissed at the threshold invoking Order 7 Rule 11(d) of Civil Procedure Code.

44. Learned Senior Counsel would also place reliance on the decision



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of ***Balasaria Construction (P) Ltd vs Hanuman Seva Trust and Others***

reported in ***[(2006) 5 SCC 658]***, wherein the Hon'ble Supreme Court has held that the suit cannot be barred by limitation without proper pleadings, framing of issues of limitation and taking of evidence and question of limitation being mixed question of law and fact and ex facie on reading of the plaint , the suit cannot be held to be barred by limitation. The parties have to be relegated to contest the suit.

45. Learned Senior counsel would place reliance on the decision of ***Saranpal Kaur Anand vs Praduman Singh Chandhok and others*** reported in ***[(2022) 8 SCC 401]***, wherein the Hon'ble Supreme Court has held that when decision on issues of fact are involved, the issue of law should not be decided as a preliminary issue, unless the issue of law can be adjudicated on admitted facts.

46. In my considered view, the above ratio laid down by the Hon'ble Supreme Court in the above case would squarely apply to the facts of the present case and the plaintiffs cannot be thrown out at the initial stage itself,



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especially when the Hon'ble Supreme Court has granted liberty to the plaintiffs to file a suit for declaration of title. Of course, it would be open to the defendants to take up the plea of limitation also and the Court shall decide the same along with the other issues after the parties adduce evidence, both oral and documentary.

47. Learned Senior Counsel appearing for the respondents relied on by the learned counsel for the respondents in ***Khatri Hotels Private Limited and another vs Union of India and another*** reported in ***(2011) 9 SCC 126***, the Hon'ble Supreme Court has held that Article 58 of the Limitation Act would apply to the suit for declaration and permanent injunction to restrain interference with possession of immovable property. However, in the facts of the said case, the Hon'ble Supreme Court found that cause of action had accrued even in December 1990 and the suit filed in the year 2000 was barred by time. However, the said case before the Hon'ble Supreme Court was not arising under an application filed under Order 7 Rule 11 of Civil Procedure Code and therefore, I do not find it relevant to be applied to the facts of the present case.

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48. Learned Senior Counsel would place reliance on the decision of ***K.A.Ibrahim vs P.Kalaiselvi*** reported in ***2021 (3) MWN (Civil) 7***, wherein this Court held that when permission was not obtained by plaintiffs while withdrawing the suit to file a fresh suit on the same cause of action, parameters stipulated in Order 23 Rule 1(3) were not complied with and subsequent suit was barred and not maintainable.

49. However, the facts of the present case are arising under entirely different circumstances. Liberty has been granted by the Hon'ble Supreme Court and therefore, the earlier suit had to be withdrawn since the order in revision in CRP (PD) No.1480 of 2008 had been confirmed and therefore, the plaintiffs cannot be blamed for withdrawing the earlier suit, which was not even necessary in my view since the Hon'ble Supreme Court has confirmed the order passed by this Court in the Civil Revision petition, allowing the revision and setting aside the order granting liberty to file a fresh suit on the same cause of action.



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50. Similarly, the ratio laid down in ***Joseph Arokiados represented by Power Agent T.Kasi vs P.Pradeep*** reported in ***2011 (2) CTC 177*** was also on an entirely different factual matrix and will not apply to the facts of the present case.

51. In ***Dahiben vs Arvindbhai Kalyanji Bhanusali (Gajr) (dead) through legal representatives and others*** reported in ***[(2020) 7 SCC 366]***, the Hon'ble Supreme Court has held that the plaint has to be read as a whole, without addition or subtraction of any words and if it discloses prima facie a cause of action, the Court is not required to further enquire about the truthfulness of the allegations on fact and the pleas taken by the defendants in the written statement would not be relevant at this stage. Only if the Court finds the suit to be manifestly vexatious, not disclosing any right to sue, then, it would be justified in exercising power under Rule 11 of Order 7 of Civil Procedure Code.

52. Here, when the Hon'ble Supreme Court has granted liberty to the plaintiffs to seek declaration of title, it cannot be said that the suit is



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vexatious or that it does not disclose any right to sue or cause of action.

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53. All these matters have to be tested by the trial court only after the parties lead evidence and not in an application under Order 7 Rule 11 of Civil Procedure Code. However, both the Courts have erroneously applied Article 58 of the Limitation Act and also held that there is no cause of action for filing the suit, unmindful of the liberty granted by the Hon"ble Supreme Court to the plaintiffs to seek for declaration of their title. The judgments of the Courts below are therefore materially irregular and perverse and are liable to be set aside.

54. Coming to the Memos filed by the plaintiffs and the respondents 4 to 8, now that the suit is being restored, it is always open to the plaintiffs to give up a portion of the reliefs and when they admittedly want to not press one of the reliefs in the prayer, neither the defendants nor the court can stand in the way. The objections filed by the contesting respondents is unsustainable since there is no question of rejection of plaint in part involved in the present case and the plaintiffs want to give up one of the reliefs,

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which they are entitled to do so at any point of time. Thus, I am accepting the Memos filed by the plaintiffs and the respondents 4 to 8.

55. In fine, the second appeal is allowed and the order dated 17.07.2014, rejecting the plaint by the trial Court in I.A.No.254 of 2014 and confirmed by the first Appellate Court in A.S.No.8 of 2015 dated 22.06.2016 are set aside and the suit is restored to file. The permission to omit the relief (b) viz.,

“ declaring that the alleged lease deed dated 03.07.1995 and the alleged will dated 13.10.2004 which registered on 26.03.2008 are null and void and not bind upon the plaintiffs and granting a consequential permanent injunction restraining the defendants, their men, agents, servants, assigns etc from in any way alienating or encumbering the suit properties'

is granted and the suit in respect of the reliefs viz.,

(a) Declaring that the plaintiffs are the absolute and exclusive owners of the plaint schedule mentioned properties and granting a consequential



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permanent injunction restraining the defendants, their men, agents, servants, assign etc., from in any manner preventing or interfering with the plaintiffs' peaceful possession and enjoyment thereon;

(c) Granting the mandatory, directing the defendants to remove the service connection and motor pumpset installed in the well in Natham S.F.No.169 B (New S.F.No.254/9);

shall be tried by the trial Court in accordance with law and it is open to the defendants to canvass the plea of limitation, along with other defences raised by them and the trial Court shall endeavour to dispose of the suit within a period of six months from the date of receipt of a copy of this judgment.

56. In the result, the judgment and decree of the courts below are set aside and the Second Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.



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Index: Yes/No
Speaking Order/Non-Speaking Order
sr

To

1. The II Additional Sub Court, Coimbatore
2. The I Additional District Munsif Court, Coimbatore
3. The V.R.Section, High Court, Chennai.



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P.B.BALAJI,J.

sr

Pre-Delivery Judgment
in S.A.No.702 of 2017

18.04.2024