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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2024

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

**CRP.No.4869 of 2024 &
CMP.No.27282 of 2024**

Mohamed Younus

..

Petitioner

Vs

1. M. Sadhiq Basha
2. M.Shakira
3. Sakeetha Begum
4. Samsath Begum
5. M. Iliyas

..

Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 28.08.2023 made in I.A.No.1 of 2021 in O.S.No.172 of 2020 on the file of the Principal Sub Judge, Krishnagiri and allow the Civil Revision Petition.

For Petitioner : Mr. S.Bharanidharan for

Mr.P.Dinesh Kumar

ORDER



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This Civil Revision Petition challenges the order passed by the learned Principal Subordinate Judge, Krishnagiri in I.A.No.1 of 2021 in O.S.No.172 of 2020, dated 28.08.2023.

2. The Civil Revision Petitioner is the 1st defendant in O.S.No.172 of 2020. It has been filed for seeking partition and separate possession. The 1st defendant, as the plaintiff had presented O.S.No.9 of 2007 for partition and separate possession. In the said suit, he had pleaded that he is entitled to 28/144th share of the suit property. In the said suit, he had shown, the suit schedule mentioned property in O.S.No.172 of 2020, as a part of the suit property. Subsequently, he deleted the same by filing an amendment application. Therefore, the defendants Sadik Basha and Shakira Begum 5th and 11th defendants respectively in O.S.No.9 of 2007, launched O.S.No.172 of 2020 seeking for partition and separate possession of the property which had been deleted in O.S.No.9 of 2007.

3. The case of the plaintiffs in O.S.No.172 of 2020 is that the suit schedule mentioned property had been purchased by the mother of the



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plaintiff and defendants by way of a Registered Deed on 29.01.1988. At the time of purchase, the property had not been divided. The suit property had been previously a subject matter of a partition suit in O.S.Nos.230 of 1977, 232 of 1977 and 263 of 1977. These suits had been decreed on 23.03.1979. The mother of the plaintiff and defendants Mymoon Bi purchased the property for Rs.95,000/-. She had paid Rs.60,000/- at the time of registration of the sale deed, with an undertaking to pay Rs.35,000/-, to discharge the decrees obtained by the Panchayat Union of Kelamangalam, Panchayat Union of Uthangarai and Panchayat Union of Pennagaram and one Vitobha Ammal.

4. As the Panchayat Union of Kelamangalam did not get the dues under the decree, it launched E.P.No.312 of 1984 in O.S.No.57 of 1972. Knowing that the property is being brought for sale, the plaintiffs pleaded Mymoon Bi, handed over a sum of Rs.35,000/- to the 1st defendant, (Civil Revision Petitioner) to pay the said amount and satisfy/discharge the decree. The plaintiffs plead that the 1st defendant, in order to profit illegally, did not pay the amount which he had received from his mother to discharge the decree, but left the property to be



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brought for sale. From the funds that had been given by his mother, he purchased the property in his name and took delivery of the same. They added the 1st defendant informed Mymoon Bi that he had satisfied the sale amount and had foreclosed it. Hence Mymoon Bi did not make a statement in O.S.No.9 of 2007 that the 1st defendant had duped her. The plaintiff further proceeds that the 1st defendant lodged a complaint against the 1st plaintiff and his family members when they attempted to pluck the mangoes from the trees situated over the suit property. Only then, they came to know that the 1st defendant had illegally purchased the property in his name. Hence, they brought forth the suit for partition and separate possession and to set aside the sale certificate in REP.No.312 of 1984 dated 20.04.1992.

5. The defendant, on entering appearance filed an application for rejection of the plaint. He pleaded that as the mother Mymoon Bi had admitted that the suit schedule mentioned property has been purchased by the 1st defendant, it shows that even the mother had stood by the sale in his favour. In addition, he pleaded that the sale certificate is of the year 1992, whereas, the suit has been presented in the year 2020 and



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therefore, it is barred by limitation.

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6. The learned trial Judge found that these are triable issues and therefore, dismissed the petition reserving the right of the 1st defendant to raise all these pleas at the time of trial. Against the said order, the present Civil Revision Petition is preferred.

7. I heard Mr.S.Bharanidharan for Mr.P.Dinesh Kumar for the revision petitioner.

8. Mr.S.Bharanidharan, invited my attention to the amended plaint filed in O.S.No.9 of 2007 and pointed out that the defendants 5 and 11 received the amended copy deleting the suit schedule properties on 25.04.2017. Therefore, he argues that the cause of action for the plaintiff to present the present suit arose in the year 2017 itself. Hence, the presentation of the suit in the year 2020 is barred by time. For the said purpose, he relies upon Article 59 of the Limitation Act.

9. Mr.Baranidharan, further invites my attention to the plea



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taken by the mother of 1st defendant, Mymoon Bi and pointed out that she had accepted that the purchase made by the 1st defendant Mohammed Yunus as his self acquisition and therefore he urges it is not open to the plaintiffs to attack the sale certificate in his favour after long lapse of time. Hence he pleads that the suit is barred by limitation and hence it deserves to be rejected.

10. I have carefully considered the submissions of Mr.Bharanidharan.

11. For the purpose of rejection of a plaint, the averments made in the plaint alone matters. It is the specific case of the plaintiffs that they came to know about the exclusive claim made by the 1st defendant only in the months of June and July 2020. It was during that time the 1st defendant gave a complaint against the family members of the 1st plaintiff alleging theft of mangoes. They also stated that they came to know about the suit in O.S.No.9 of 2007 only when they filed necessary petitions to set aside the *exparte* order passed against them along with their written statement in November 2019. Therefore, the earliest point



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of time when the plaintiffs came to know about O.S.No.9 of 2007 was when the *exparte* order was set aside against them in November 2019.

12. Even the endorsements made on the amended plaint that Mr.Baranidharan relies upon does not reveal that the 5th and the 11th defendants have been served with the amended plaint. It shows the endorsements made by the counsel appearing on behalf of the defendants 1,2, 6 - 10 and 12. This shows that the defendant Nos.5 and 11, who are the plaintiffs in O.S.No.172 of 2020, were not served with the amended plaint as alleged by Mr.Baranidharan. Under Article 59 of the Limitation Act, a suit to declare a document as void has to be filed within 3 years from the date of knowledge about the document or deed.

13. Taking the plaint to be true, I have to consider the pleadings in para (ix). It states that the plaintiffs came to know about O.S.No.9 of 2007 only in November 2019. Therefore, the suit having been filed in September 2020 cannot be said to be barred by limitation.

14. Furthermore, in a suit for partition, where the defendant



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pleads that he is the absolute owner of the property and when the plaintiffs urge that the purchase made by the 1st defendant was from and out of the funds that had been provided by the mother of the plaintiff and defendants, the defendant would have to prove ouster in order to succeed. In such a case, the period of limitation is 12 years.

15. In any event, limitation is mixed question of law and fact. Unless and until the reading of the plaint itself discloses, the suit is barred by time, a court cannot reject such a plaint. In addition, the relief sought for in the main suit is one for a partition. The relief of partition is one which arises *de die in diem* till the properties have been partitioned.

16. I have to add that I have discussed on Limitation only for the purpose of disposal of the Revision against the rejection of plaint application. It is for the Court to decide whether the suit is barred by time or not, after a detailed discussion on the evidence that to be let in by both the parties at the time of pronouncing judgment in the suit.

17. In the light of the above discussions, I do not find any reasons to take a different view than that taken by the Principal



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Subordinate Judge, Krishnagiri. The Civil Revision Petition is dismissed.

No costs.

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Index: yes/no

Internet:yes/no

To

The Principal Sub Judge, Krishnagiri.

V. LAKSHMINARAYANAN



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