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C.R.P.Nos.5189 & 5190 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.Nos.5189 & 5190 of 2024 &
CMP.Nos.29044 & 29045 of 2024

1.Bagalur Development LLP,
Represented by its authorized signatory
Mr.M.S.Srinivasa Narayanan
Now represented by its authorized signatory,
Mr.M.Sudhakar

2.Venu Srinivasan
Represented by his Power Agent,
Bagalur Development LLP. .. Petitioner in both CRPs.

Versus

1.Gowramma
2.Mariyappa
3.Akkaiyamma
4.Vasanthamma
5.Govindamma
6.Venkatalakshamma
7.Munirathnamma
8.Rajamma
9.Sumithra
10.Shyamala

.. Respondents in CRP.5189 of 2024

1.V.Rajanna @ Babu
2.Ratnamma
3.Saraswathamma

.. Respondents in CRP.5190 of 2024

Prayer in CRP.No.5189 of 2024: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal



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order as made in I.A.No.5 of 2024 in O.S.No.603 of 2023 dated 21.11.2024 on the file of the Additional District Judge, Hosur and reject the plaint in O.S.No.603 of 2023 on the file of the Additional District Judge, Hosur.

Prayer in CRP.No.5190 of 2024: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order as made in I.A.No.4 of 2024 in O.S.No.595 of 2023 dated 21.11.2024 on the file of the Additional District Judge, Hosur and reject the plaint in O.S.No.595 of 2023 on the file of the Additional District Judge, Hosur.

For Petitioners in

both CRPs. : Mr.ARL.Sundaresan
for Mr.R.Bharanidharan

COMMON ORDER

These civil revision petitions challenge the orders passed by the Additional District Judge, Hosur in I.A.No.5 of 2024 in OS.No.603 of 2023 and I.A.No.4 of 2024 in OS.No.595 of 2003.

2. O.S.No.595 of 2003 and O.S.603 of 2023 are the suits for partition and separate possession.

3. The case of the plaintiffs in O.S.No.595 of 2023 is that the suit schedule mentioned properties originally belonged to one Subbarayappa ancestrally. He had two sons, Vasanthappa and Munisamyappa. Vasanthappa had four sons namely Chinna Narayanappa, Bajappa,



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Venkataramappa and Muniramaiah. Munisamyappa had one son, namely, Pedda Narayanappa. The plaintiffs are the grandson and the daughters of Pedda Narayanappa. According to them, successors in interest of vasanthappa, had sold the property in favor of the defendants 29 to 31. In turn, they had sold the property in favor of the defendant 32. The defendant 32 sold the property to the defendant 33, who in turn appointed, a power of attorney, namely, defendant 35.

4. The plaintiffs in O.S.No.595 of 2023 claimed that after the death of Subbarayappa and his two sons, the property vested with Pedda Narayanappa and being an ancestral property, they had right over the same. They alleged that the grandson of Vasanthappa, had misled the Revenue Department and had obtained a fraudulent UDR patta in his name. On the strength of the said UDR patta, he had alienated the property in favor of the defendants 29 to 31. These defendants had alienated the property in favour of several persons and finally in favour of the defendants 33 and 35, who are the civil revision petitioners. In fine, the pleading is that the property being an ancestral property of their family, the other branches namely their junior grandfather could not have sold the property including their shares.



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Therefore, they presented the suit for partition and separate possession of the property into two equal shares and for allotment of one share in their favor.

5. Subsequent thereto, few of the defendants in O.S.No.595 of 2023 got together and presented O.S.No.603 of 2023 for the same relief of partition and separate possession.

6. On being served with the summons in both suits, the civil revision petitioners who are the defendants 35 and 33 in O.S.No.595 of 2023 and the defendants 28 and 26 in O.S.No.603 of 2023 preferred two revisions before this court in CRP Nos.4205 and 4208 of 2024 to strike off the plaints.

7. Taking note of the fact that the civil revision petitioners have already filed applications for rejection of plaint, I requested the learned Additional District Judge at Hosur, to dispose of those applications and adjourned those civil revision petitions to enable the parties to contest the applications for rejection of plaint.



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8. In compliance of the direction of this court, the learned Additional District Judge at Hosur took up the applications for rejection of plaint. He heard the arguments and dismissed the rejection of plaint applications.

9. When the aforesaid revisions came up before me, I granted liberty to the petitioners to file revisions challenging the orders dismissing the rejection of plaint applications and closed those revisions. Hence, these revision are again before this court.

10. I heard Mr.ARL.Sundaresan for Mr.R.Bharanidharan.

11. Mr.ARL.Sundaresan takes me to the plaints in detail and submitted as follows:

(i) No documents have been filed to prove the genealogy or for that matter, the alleged joint possession of the plaintiffs;

(ii) From the return endorsement made by the learned Additional District Judge, prior to numbering of the plaint, the original supporting documents to prove that the properties are ancestral properties had not been filed along with the plaint and it was re-presented with an endorsement that



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the same will be filed at the time of trial together with an affidavit of undertaking to do so.

(iii) He relies upon the return Nos.2 and 6 to point out that the Trial Court fell in error in receiving the affidavit of undertaking and numbering the plaint. He states that as the orders dated 11.01.2024, taking the plaints on file is contrary to law, it requires to be interfered with and that orders should be set aside and the party should be directed to file the documents before proceeding further with the numbering.

(iv) In continuation of this submission, he states that not even a shred of paper had been produced before the Court to prove the genealogy. Thereafter he, referring to the Order VI Rule 15(5) of the Code of Civil Procedure, states that the affidavit verifying the pleading not having been filed, it is a ground for rejection of plaint.

(v) Finally he states that the sale deeds of the year 1986, 2008, 2019 and 2023 are sought to be set aside. The same is barred by virtue of Article 58 of the Limitation Act or in any event by Article 59.

Hence, he pleads that the order of the learned Trial Judge requires to be revised at the hands of this court.



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12. I have carefully considered the submissions of Mr.ARL.Sundaresan.

13. At the time of consideration of application for rejection of plaint, the plea being one of demurrer, a court has to take the averments made in the plaint to be true and thereafter, proceed to see if the suit is barred by any one of the provisions of Order VII Rule 11 (a) to (f). In case the reading of the plaint discloses that it attracts any one of the provisions, then the court shall reject the plaint. If it does not, then the suit has to be proceed in its normal course.

14. The narration of the aforesaid facts would show that the clear and categorical case of the plaintiffs in both the suits is that the property belonged to one Subbarayaappa ancestrally. Subbarayappa's sons, Vasanthappa and Munisamyappa enjoyed the property in the said capacity. The plaintiffs in O.S.No.595 of 2023 in paragraph 13 of the said plaint stated that there was no partition amongst the family members. This implies that the plaint, the presentation of which would commence the disruption of the joint family status between the parties, proceeds on the basis that the



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properties are a part of Hindu Coparcenery properties governed by Mitakshara Hindu law.

15. Taking the first argument of Mr.ARL.Sundaresan, that no documents have been filed to prove the joint possession or genealogy and hence, the suit must be rejected is concerned, I have to point out that Order VII Rule 14(3) of the Code of Civil Procedure enables a party to file documents, which he ought to have presented at the time of presentation of the plaint, at a later date with the leave of the court. This implies that the filing of the documents is not compulsory, but can be deferred to a later date. I should add, it cannot be produced unless and until the leave of the court is obtained.

16. At this stage, I should point out that Order VII Rule 14(3) was brought into the Code by way of an amendment under Act 22 of 2002 with the effect from 01.07.2002 by the Parliament. The very Parliament, which amended Order VII Rule 14(3), in its wisdom did not include the failure to produce documents in support of the plaint as a provision under Order VII Rule 11. In fact, the Parliament had included Order VII Rule 11 (e), (f), and proviso to the said Section by virtue of the amendment. Yet, it did not think



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it fit to incorporate failure to file the documents along with the plaint as a ground to reject the plaint.

17. If I were to accept the plea of Mr.ARL.Sundaresan that the failure to file the documents would entitle the rejection of the plaint, I would be judicially amending the Code of Civil Procedure. Unfortunately, I do not possess such powers. I have to apply the statute as it stands. As it stands today, the failure to file documents with respect to genealogy or possession does not entitle the rejection of the plaint. In addition, genealogy is not a matter to be proved by way of documents alone. It is open to the party to produce oral evidence also, in order to demonstrate that there was in existence a relationship of father and son, and son and grandson, at the time of trial. If the matter requires evidence, it certainly cannot be a matter for rejection of plaint. As pointed out above, the clear and categorical case in the plaint is that the plaintiffs are the legal heirs of Pedda Narayanappa.

18. If I were to take the averments to be true, unless and until, the plaint had stated that Pedda Narayanappa did not have share in the property, I cannot hold that there is no cause of action for the plaintiffs to present a suit for partition, when there has been no partition amongst the members of



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the joint family which traces its roots to the deceased Subbarayappa.

Therefore, the plea that not even a shred of paper had been filed to prove the genealogy or possession, should entitle for rejection of the plaint does not appeal to me.

19. Turning to the next point raised by Mr.ARL.Sundaresan that the learned District Judge, even at the time of numbering of the plaint, had called upon the plaintiffs to produce the documents and the plaintiffs got around the same by stating that they will produce it at the time of trial is concerned, he argues that this is contrary to the Code.

20. At this juncture, I should refer to the judgment of the Hon'ble Mr.Justice N.Seshasayee in ***Selvaraj v. Koodankulam Nuclear Power Plant India Limited, 2021 3 LW 677***. The learned Judge analysed the role of a court at the time of numbering of the plaint and thereafter. In the case of former, the learned Judge held that it is only a ministerial act and it is not the duty of the court to play the role of the defendant and asked queries from the plaintiff, which should appropriately be asked by the defendant by filing written statement or at the time of cross examination of the plaintiff. The conclusion arrived at in the judgment is that returns made in the ministerial



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side of the court would not bind the Court, at the time the suit is being tried on its judicial side.

21. Applying the ratio to the facts of the present case, for the mere fact that the learned District Judge had called for certain documents and since they were not produced, the plaint should be rejected, goes beyond the scope of Order VII Rule 11 of the Code of Civil Procedure. I should add here that the very same learned District Judge, who returned the plaint on those grounds, was satisfied with the affidavit that had been filed by the party undertaking to produce the documents at the time of trial. Having been satisfied that they will produce the documents, the learned Trial Judge had taken the suit on file. From that date onwards, the return made on the ministerial side pale into insignificance.

22. Once the plaint is numbered, I cannot go back and conduct a research on the returns that had been made by the plaint examiner and on that basis, reject the plaint. That will be giving too much of liberty to the plaint examiner and would force the court to rely upon their endorsements for the purpose of deciding the matters which fall exclusively an judicial side of the court.



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23. Insofar as Order VI Rule 15(4) is concerned, under the amended Code, a party has to file an affidavit in support of his pleadings that are found in the plaint. Failure to file the pleadings might result in the court to return the plaint. That stage has long gone by. The plaint has been received, summons has been served, and it is today at the stage for the defendants to file their written statement. There is no way I can put the clock back and make the plaintiffs file an affidavit (assuming that they have not filed along with the plaint), once the plaint has been taken on file.

24. Order VI Rule 15(4) deals with a situation as to how the plaint must be drafted. Order VII Rule 9 onwards deals with the situation where the plaint has been “admitted and suit proceeds thereafter”. The stage of Order VI Rule 15(4) is when the plaint is at the ministerial stage. Order VII Rule 9 of Code of Civil Procedure onwards fall within the judicial side. I cannot project a requirement at the time of numbering into Order VII Rule 11 and hold that the plaint ought to have been numbered at all.

25. Turning to the two pleas on limitation, it can be answered in two ways. The easier way to answer it is the view taken by the Supreme Court in



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Dahiben v. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366. The
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learned Judge, speaking for himself and Justice Indu Malhotra J., held that when reading of the plaint itself discloses that the suit is barred by limitation, then the court can immediately apply the appropriate Article of the Limitation Act and reject the plaint.

26. A reading of the plaint in this case shows that the plaintiffs have pleaded that they came to know about the documents that had been entered, *inter se*, between the defendants on 26.05.2023. If that date is to be taken, as the date on which the knowledge of the documents came to them, then the presentation of the plaint in the month of December 2023 cannot be held to be barred by time.

27. The second point in this aspect is that the limitation is a mixed questions of law and fact. In case the reading of the plaint does not disclose that it is barred by limitation, then it is the duty of the parties to adduce evidence and cull out from the evidence that the claim is barred. Even without the defendant taking a plea, if after the evidence is recorded, the court comes to a conclusion that the suit is barred, it can always dismiss the suit as barred by limitation invoking Section 3 of the Limitation Act, 1963.



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When the plaintiff has given an explanation on date of knowledge, it cannot be held to be a ground to reject the plaintiff.

28. The learned Trial Judge has analysed these aspects and has come to the conclusion that the plaintiffs have included all the legal heirs and subsequent purchasers as party to the suit and therefore, there cannot be a ground for rejection of plaintiff.

29. In the light of the above discussions, since all the points raised by Mr.ARLSundaresan fails, I am not in a position to come to the rescue of the civil revision petitioners. The civil revision petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

30. The learned Additional District Judge at Hosur is requested to club O.S.No.595 of 2023 along with O.S.No.603 of 2023 and take up the matter for joint trial, once the pleadings are completed.

19.12.2024

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Index : yes/no



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Speaking order/Non-speaking order

Neutral Citation : yes/no

To

1. The Additional District Judge, Hosur.



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V.LAKSHMINARAYANAN, J.

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