



C.R.P.(MD).No.642 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 25.04.2024

DELIVERED ON: 30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.642 of 2018

and

CMP(MD).No.2798 of 2018

A.Esakkimuthu

...Petitioner/Petitioner/1st Defendant

Vs

1.S.Arumugam

...1st Respondent/1st Respondent/Plaintiff

2.S.EaShanmugam Konarkiammal (died)

3.Subbulakshmi

4.Muppudathi

5.Mariammal

6.Shamugam Servai

...Respondents 2 to 6/Respondents 2 to 6
/Defendants 2 to 6

(Memo dated 17.10.2019 presented by the Court is recorded as R2 died and the petitioner, Respondents 1, 3 to 5 who are already on record, are recorded as Lrs of the deceased R2 vide Court order dated 17.10.2019 made in CRP(MD).No.642 of 2018)



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PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India, to allow the civil revision petition by setting aside the fair and decretal order passed in I.A.No.31 of 2017 in O.S.No. 114 of 2013 dated 09.02.2018 on the file of the Additional Subordinate Court, Tirunelveli.

For Petitioner : Mr.H.Arumugam

For R1 : Mr.R.J.Karthick

R2 : Died

For R3 to R6 : No appearance

ORDER

The first defendant in O.S.No.114 of 2013 on the file of the Additional Subordinate Court, Tirunelveli has filed the above revision petition challenging the dismissal of an application filed under Order 7 Rule 11 C.P.C.

(A)Facts leading to the filing of this revision petition are as follows:

2.The suit schedule properties were purchased by the father of the plaintiff namely Shanmugam Konar on 18.10.1978 utilising income from the ancestral property. The said property was enjoyed as Hindu undivided family property. After the death of Shanmugam Konar, the



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plaintiff and the first defendant orally partitioned the property. In the said partition, eastern half (shown as 2nd schedule in the suit) was allotted to the plaintiff and the western half (shown as 3rd schedule in the suit) was allotted to the defendant.

3.While the father was alive, the 1st defendant had arranged for sale deed to be executed by his father in favour of the 6th defendant on 20.02.1998 for an extent of 4.52 acres which was ultimately purchased by the first defendant on 29.12.1998. The plaintiff also fraudulently created a power deed as if the said Shanmugam Konar had executed the same in favour of the third party on 12.01.1999. Based upon the said power deed, the first defendant had purchased the property on 12.01.1999. These two fraudulent sale deeds came to the knowledge of the plaintiff 5 years prior to the filing of the suit.

4.As far as the second schedule property is concerned, the defendants 2 to 5 who are the legal heirs of Shanmugam Konar had executed a release deed on 10.06.2008 and thus the plaintiff has become the absolute owner of the suit schedule property.

5.Based upon the above said averments, the plaintiff had filed the present suit for declaration of title over the 2nd schedule property and



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for permanent injunction. The 2nd and 3rd schedule properties put together form the first schedule property. Along with the plaint, the plaintiff had filed 12 documents. The release deed dated 10.06.2008 said to have been executed by the defendants 2 to 5 in favour of the plaintiff is shown as plaint Document No.5.

6.The defendants had filed a written statement raising objection to the maintainability of the suit without challenging the sale deeds and also contending that the suit is barred by limitation. After cross examination of PW1 was completed, the first defendant had filed I.A.No. 31 of 2017 to reject the plaint on the ground that having not challenged the sale deeds in favour of the plaintiff and the said prayer having become time barred, the plaint has to be rejected.

7.The plaintiff had filed a counter contending that the application for rejection of plaint has been filed much belatedly and the contentions raised by the first defendant are the subject matter of trial.

8.The trial Court had accepted the contention of the plaintiff and had dismissed the application filed under Order 7 Rule 11 C.P.C. Challenging the same, the present revision petition has been filed by the first defendant.



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(B)Submission of the counsels:

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9. According to the learned counsel appearing for the revision petitioner, as per averments in Para-3 of the plaint, the plaintiff was aware of the two sale deeds in favour of the first defendant, five years prior to the filing of the suit. Even on the date of filing of the suit, the suit has become time barred. Without challenging those documents, the present suit for declaration of title is not maintainable. It does not require oral and documentary evidence to arrive at a conclusion that the suit is barred by limitation. Therefore, the trial Court was not right in rejecting the said application.

10. He had relied upon the judgements of the Hon'ble Supreme Court reported in *2019 (2) CTC 823 (Raghwendra Sharan Singh Vs. Ram Prasanna Singh (dead) by Lrs.)* and *(2020) 7 SCC 366 (Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others)* to impress upon the Court that by clever drafting, the plaintiff cannot attempt to get over the law of limitation and the plaint can be rejected at any stage of suit when it is barred by limitation.



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11.Per contra, the learned counsel appearing for the first respondent had contended that the suit was filed in the year 2013 and after two years, application to reject has been filed, especially after the evidence of PW1 was closed. Since interim order was not granted in the revision petition, the evidence on either side has been closed and the suit was posted for arguments. All the contentions raised by the first defendant in the revision petition are the subject matter of trial. The plea of limitation is a mixed question of law on fact and therefore, on the said ground the plaint cannot be rejected. Hence, he prayed for sustaining the order passed by the trial Court.

12.I have carefully considered the submissions made on either side and perused the material records.

(C) Discussion:

13.This Court is conscious of the fact that for rejection of plaint, only the plaint averments and the documents enclosed along with the plaint have to be looked into. The plaint has to be read as a whole and stray sentence in the plaint cannot be taken into consideration for the purpose of rejecting the plaint. The defence found in the written statement cannot be taken into consideration for the purpose of rejection of plaint.



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14. In the light of the above said settled position, we would consider the application for rejection of plaint.

15. The release deed executed by the sisters of the plaintiff in favour of the plaintiff dated 10.06.2008 is enclosed as Document No.5 of the plaint. A perusal of the document reveals that the mother and other sisters of the plaintiff have executed a release deed in favour of the plaintiff. In the said document, it is specifically stated that the suit properties are self-acquired properties of Shanmugam Konar who is the father of the plaintiff. It is further pointed out that he had died intestate and it had devolved upon the legal heirs of the Shanmugam Konar. Without mentioning the first defendant, the document proceeds as if there are only five legal heirs for the deceased Shanmugam Konar.

16. From the above said documents, the following facts emanate;

(a) The suit schedule properties are the self-acquired properties of Shanmugam Konar.

(b) Till the death of Shanmugam Konar, the property was enjoyed by them jointly and there was no partition among the co-sharers.



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17. In the light of the above said recitals in the release deed in favour of the plaintiff, it is clear that the plaintiff after admitting the absolute title of Shanmugam Konar has got the release deed executed from his mother and sister on 10.06.2008 after the death of his father Shanmugam Konar. During the life time of Shanmugam Konar, he had executed the documents on 20.02.1998 and 12.01.1999 alienating the properties which had ultimately been purchased by the first defendant. The said Shanmugam Konar had passed away on 31.08.2006. During his life time, he has not chosen to challenge those sale deeds. When the release deed dated 10.06.2008 reveals that the properties are self-acquired properties of Shanmugam Konar, his entitlement to alienate the same cannot be questioned by the plaintiff, unless he is able to establish vitiating circumstances surrounding the execution of those sale deeds.

18. Therefore, it is clear that unless the plaintiff challenges those sale deeds in favour of the first defendant, he would not be entitled to seek a prayer for declaration of title. As per paragraph No.3 of the plaint and the cause of action paragraph, it is clear that the plaintiff came to know about these two documents five years prior to the date of filing of the suit ie. in the year 2008 itself. Therefore, even as on date of filing of the suit, the suit



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has become barred by limitation. By clever drafting of the plaint, the plaintiff has omitted to seek the prayer to set aside those documents so as to get over the law of limitation.

19.The reading of the plaint as well as the release deed dated 10.06.2008 enclosed along with the plaint will clearly reveal that as on the date of suit, it has become time barred. There is no factual dispute with regard to the date of cause of action or date of knowledge warranting to relegate the parties to the trial.

20.The trial Court had dismissed the application for rejection of plaint on the ground that the original title holder could be decided only after trial and the application for rejection of plaint has been filed belatedly. The trial Court has not taken into consideration the plaint Document No.5 which is the release deed dated 10.06.2008 which clearly establishes the fact that the suit schedule properties are the self-acquired properties of the father of the plaintiff namely Shanmugam Konar. In contravention of those averments, the present plaint has been filed. It is settled position of law that the plaint can be rejected at any stage, if it is found to be barred by limitation or it is a frivolous or a vexatious litigation.



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(D)Conclusion:

21.In view of the above said facts, the order of the trial Court in I.A.No.31 of 2017 is set aside and the plaint in O.S.No.114 of 2013 on the file of the Additional Subordinate Court, Tirunelveli stands rejected. This Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

30.04.2024

Index : Yes/No
Internet : Yes/No
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To

1. The Additional Subordinate Judge
Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
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