

A.S.No.167 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.09.2025
PRONOUNCED ON : 16.10.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

A.S. No. 167 of 2019

Sathiyavathi,
W/o.E.K.Shanmugam,
No.23, Chinnamuthu Street,
Erode Town,
Erode – 11. ... Respondent/Plaintiff/Appellant

Versus

1.The President,
Erode Cloth Merchants Association,
No.46, East Kongalamman Veethi,
Erode.

2.The Secretary,
Erode Cloth Merchants Association,
No.46, East Kongalamman Veethi,
Erode. ...Applicants/Defendants/Respondents

PRAYER:

Appeal Suit filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure against the Judgment and decree dated 17.12.2018 made in I.A.No.42 of 2018 in O.S.No.37 of 2017 on the file of Mahila (Additional District Judge) Fast Track Court, Erode, Erode District.

APPEARANCE OF PARTIES:



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For Appellant : Mr. G.Ethirajulu, Mr. R. Dhanaram,
Ms.W.S.R.Abirami, Advocates.

For Respondents : Mr. C. Ramaraj for
M/s.M.Guruprasad.

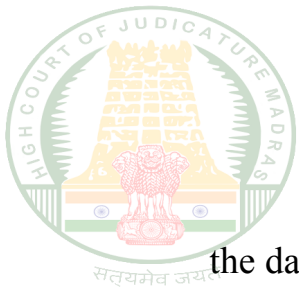
J U D G M E N T

Heard.

2. Aggrieved by the order of the learned Mahila Court (Additional District Judge), Fast Track Court, Erode District, passed in I.A.No.42 of 2018 in O.S.No.37 of 2017 dated 17.12.2018 under Order VII Rule 11 of the Code of Civil Procedure, 1908, rejecting the plaint on the ground that the suit is barred by limitation, the plaintiff has preferred the present appeal.

3. In this appeal, the plaintiff before the Trial Court is the appellant, and the defendants are the respondents. For the sake of convenience, the parties will be referred to in the same rank as they stood in the Trial Court.

4. The plaintiff filed O.S.No.37 of 2017 seeking recovery of a sum of Rs.14,77,440/- with interest on Rs.9,60,000/- at 18% per annum from



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the date of plaint till the date of realisation.

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5.The brief facts are that the plaintiff purchased a housing plot at Textile City from the defendants under a sale deed dated 12.11.1990. The defendants executed the said sale deed as power agent of one Rangasamy and others, acting under a power of attorney dated 25.02.1982. Subsequently, the plaintiff came to know that the defendants had cheated her by selling land which did not belong to them and which included poromboke land.

6.The plaintiff lodged a complaint dated 14.07.2004 before the Superintendent of Police. As no action was taken, she filed a private complaint in C.C.No.246 of 2009 before the Judicial Magistrate Court No.III, Erode. The said complaint was dismissed, against which the plaintiff preferred a Criminal Revision in Crl.R.C.No.30 of 2009 before this Court, which was allowed on 28.03.2014, holding the defendants guilty.

7.Pursuant thereto, the plaintiff issued a legal notice dated 03.06.2014 demanding refund of the sale consideration and damages. As



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there was no response, the present suit was filed on 27.03.2017, stated to be within three years from the date of the High Court's order in the criminal revision.

8.During the pendency of the suit, the defendants filed I.A.No.42 of 2018 under Order VII Rule 11 CPC, seeking rejection of the plaint on the ground that the suit was hopelessly barred by limitation since the sale was executed on 12.11.1990. They also contended that the plaintiff had earlier participated in W.P.No.21752 of 2000, which was later withdrawn on compromise, and therefore, the plaintiff was aware of the nature of the property long ago. The defendants contended that the suit filed after 26 years, 4 months, and 15 days was clearly barred.

9.The plaintiff filed a counter reiterating the plaint averments, contending that the suit was filed within three years from 28.03.2014, the date when the High Court confirmed the guilt of the defendants in the criminal case, and therefore within limitation. She also sought benefit under Section 14 of the Limitation Act, 1963 for exclusion of time spent in the criminal proceedings.



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10.The plaintiff contended that limitation is a mixed question of law and fact and cannot be decided at the threshold under Order VII Rule 11(d) CPC.

11.However, the settled position of law is that when, on the face of the plaint averments, the suit appears to be ex facie barred by limitation, the court is empowered to reject the plaint without any further enquiry. The Hon'ble Supreme Court in ***Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by LRs., [(2020) 16 SCC 601]***, held that:

“8....Considering the averments in the plaint, if it is found that the suit is clearly barred by the law of limitation, the same can be rejected in exercise of powers under Order VII Rule 11(d) CPC.”

Applying the above dictum, it is clear that from the reading of the plaint itself the suit is evidently time-barred, the court need not embark on an evidentiary enquiry.



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12.In the present case, the sale deed was executed on 12.11.1990.

The plaintiff's claim for refund of the sale consideration on the ground that the sale was void and the vendors had no title amounts to a claim for refund under a void transaction, not for breach of contract simpliciter. There being no specific article for refund of consideration on account of failure of title, Article 113 of the Limitation Act applies, providing a three-year period from the date when the right to sue accrues.

13.The plaintiff alleges that she discovered the fraud only later and filed a police complaint on 14.07.2004. Even assuming that the defendants committed fraud by conveying poromboke land, Section 17 of the Limitation Act would only postpone the commencement of limitation until the discovery of such fraud. Since the plaintiff admits that she discovered the fraud by 14.07.2004, the limitation period began on that date.

14.Accordingly, the period of limitation expired on 13.07.2007. The suit filed on 27.03.2017 is, therefore, clearly barred by limitation, even after applying Section 17.



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15.The plaintiff's contention that time spent in criminal proceedings (C.C.No.246 of 2009 and CrI.R.C.No.30 of 2009) should be excluded under Section 14 of the Limitation Act is untenable.

16.Section 14 applies only to civil proceedings prosecuted with due diligence before a court without jurisdiction or unable to entertain the matter. The earlier proceedings initiated by the appellant were purely criminal in nature, not civil suits prosecuted in a wrong forum. Therefore, Section 14 is inapplicable to the present fact.

17.From a plain reading of the plaint, it is evident that the cause of action arose long before 2004, and even computing limitation from the date of knowledge (14.07.2004), the present suit filed on 27.03.2017 is hopelessly barred by limitation. The trial court has rightly rejected the plaint under Order VII Rule 11(d) CPC. There is no infirmity or perversity in the impugned order warranting interference by this Court.

18.In the result the Appeal Suit fails and is dismissed. No order as to costs.



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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

1.The Additional District Judge,
Mahila Fast Track Court,
Erode.

2.The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
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