

THE HIGH COURT OF JUDICATURE AT MADRAS



Order reserved on : 14.08.2025

Order pronounced on : 12.09.2025

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

CRP.No.1784 of 2025
& CMP.No.10305 of 2025

M/s.Shree Harii Home,
Rep. by its Partner K.Thangavel,
D.No.383/1, Coddisia to Thanneerpanthal Road,
Near Geethanjali Matriculation School,
Peelamedu, Coimbatore – 641 004.

..Petitioner

Vs.

R.Marakutti (Died)

- 1.M.Dhanalakshmi
- 2.G.Senthilkumar
- 3.G.Selvakumar
- 4.V.Gunasekaran
- 5.V.Rajasekaran
- 6.K.Elango
- 7.K.Prakash
- 8.M.Thangaraj
- 9.M.Sakthivel
- 10.B.Muralidharan
- 11.R.Ve.Vijay Anandan
- 12.R.Balasundaram
- 13.V.Balasubramaniam
- 14.Syed Farook

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the impugned fair and decretal order dated 14.11.2024 passed in I.A.No.8 of 2023 in O.S.No.221 of 2017 by the learned III Additional District Judge, Coimbatore.



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For Petitioner : Mr.ARL.Sundaresan
Senior Counsel
for Mr.Arun Anbumani

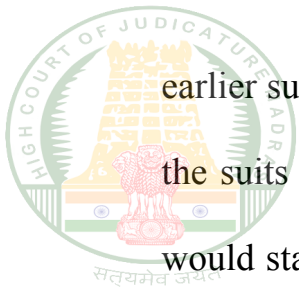
For Respondents : Dr.C.Ravichandran for RR1 to 3 & 6 to 9
Mr.V.Raghavachari
Senior Counsel
for Mr.Kandhan Duraisami for RR4 & 5
No appearance for RR12 and 14
RR10, 11 and 13 are not ready in notice

ORDER

This revision has been filed seeking to set aside the order of the Trial Court dated 14.11.2024 in I.A.No.8 of 2023 in O.S.No.221 of 2017, which has been filed by the 6th defendant in the said suit, to reject the plaint under Order VII Rule 11 of CPC. On contest, the said application came to be dismissed, as against which, the present revision has been filed.

2.I have heard Mr.ARL.Sundaresan, learned Senior Counsel for Mr.Arun Anbumani, learned counsel for the petitioner and Mr.V.Raghavachari, learned Senior Counsel for Mr.Kandhan Duraisami, learned counsel for the respondents 4 and 5 and Dr.C.Ravichandran, learned counsel the respondents 1 to 3 and 6 to 9.

3.Mr.ARL.Sundaresan, learned Senior Counsel appearing for the revision petitioner would invite my attention to the plaint in the present suit and also the



earlier suits filed in O.S.Nos.1772 & 1774 of 2008, the reliefs sought for in b

the suits and the array of parties to the said suits. The learned Senior Counsel

would state that when the first suit in O.S.No.2512 of 2007 in respect of one of

the present suit schedule properties has been dismissed under Order IX Rules 8

and 9 of CPC and not under Order IX Rules 2 and 3 of CPC, the decree in the

earlier suit would certainly bind the plaintiffs in the subsequent suit and the suit

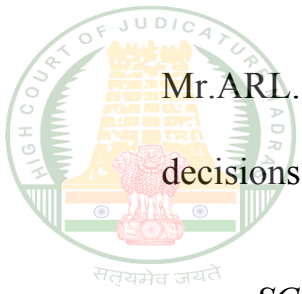
was clearly hit by provisions of Order II Rule 2 of CPC. He would also state

that the second suit is also hit by limitation under Article 58 of the Limitation

Act, in view of the fact that unlike the Limitation Act of 1908, now emphasis is

on first accrual of right to the plaintiffs to approach the Court.

4.It is therefore the contention of Mr.ARL.Sundaresan, learned Senior Counsel that the suit is clearly barred by limitation. He would also point out to the reference, even in the plaint, regarding the defence taken by the defendants in the earlier suit, the predecessors in title from whom the present revision petitioner purchased the properties, being incorporated. He would therefore state it is a classic case where right to sue arose for the plaintiffs even when the earlier suits came to be filed and therefore, on the face of record and the plaint averments itself, the suit was hit by Article 58 of the Limitation Act. He would also state that it is not the case of the plaintiffs that the claim of the defendants was adverse possession and therefore, the plaintiffs cannot take advantage of the 12 year limitation period provided under Article 65 of the Limitation Act.



Mr.ARL.Sundaresan, learned counsel would place reliance on the following decisions:

- 1.*T.Arivanandam Vs. T.V.Satyapal and another* ((1977) 4 SCC 467).
- 2.*Anathula Sudhakar Vs. P.Buchi Reddy and others* ((2008) 4 SCC 594).
- 3.*L.C.Hanumanthappa Vs. H.B.Sivakumar* ((2016) 1 SCC 332).
- 4.*Ranjith Ammal Vs. Sivasubramanian* (2010 3 L.W 184).
- 5.*Mayandi Vs. Pandarachamy and another* ((2021) 20 SCC 585).
- 6.*Bharathidasan Vs. Shanmugavel* (2019 SCC Online Mad 35536).
- 7.*Amruddin Ansari and others Vs. Afajal Ali and Others* (Spl.Leave to Appal(C) No.11442 of 2023)
- 8.*Arifa and Others Vs. Abhiman Apartment Co-operative Housing Society Limited and others* (Spl.Leave Petition (C) Diary No.14976 of 2024).

5.Per contra, Dr.C.Ravichandran, learned counsel appearing for the respondents 1 to 3 and 6 to 9 would first and foremost contend that in an application for rejection of plaint, it is only the plaint averments that can be looked into and the plaint documents and not any other document or evidence can be considered by the Trial Court, while deciding an application for rejection of plaint under Order VII Rule 11 of CPC. He would therefore invite my attention to the plaint documents where the earlier plaints have not even been filed along with the plaint as suit documents and therefore, he contends that it is a matter for evidence and trial and the petitioner/6th defendant has not made out any case for rejection. He would rely on the following decisions:



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1. *Vurimi Pullarao Vs. Vemari Vyankata Radharani and another* (2020 (14) SCC 110).
2. *C.Mohammad Yunus Vs. Syed Unnissa and others* (1961 SCC Online SC 135).
3. *MST.Rukhmabai Vs. Lala Laxminarayan* (AIR 1960 SC 335).
4. *N.Thajudeen Vs. Tamil Nadu Khadi and Village Industries Board* (2024) 6 MLJ 193 (SC)).
5. *Sidramappa Vs. Rajashetty and others* (1970 (1) SCC 186).
6. *Selvaraj and others Vs. Narayanan* (2007 1 L.W. 834).
7. *Krishnamurthy Vs. Kesavan (died) rep by LR's* (CRP.(PD).No.932 of 2023 dated 02.07.2024).
8. *Bolo Vs. Koklan* (AIR 1930 PC 270).
9. *Bharat Singh Vs. Kunwar Singh and another* (AIR 1991 MP 368).
10. *S.Ramanan (deceased) Vs. The Idol of Sri Patteswara Swamy, Perur, Coimbatore, rep. by Executive Officer / Assistant Commissioner and others* (2020 3 L.W. 84).
11. *Kalavathi Vs. Chitra* (1998 (1) CTC 529).
12. *A.Muthumariappan Vs. P.R.Sundaram and another* (2024 (5) L.W 710).
13. *P.Kumarakurubaran Vs. P.Narayanan* (2025 INSC 598).
14. *Dalmia Cement (Bharat) Limited Vs. Uthandi @ Peria Uthandi* (AIR 2005 MAD 457).
15. *Ramesh Chandra Sankla and Others Vs. Vikram Cement and others* ((2008) 14 SCC 58).

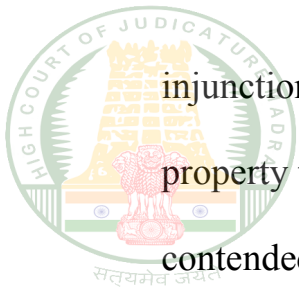
6. Mr. V. Raghavachari, learned Senior Counsel appearing for the respondents 4 and 5 would state that there are three suits filed in all and none of the said suits were for declaration and in respect of one suit alone, the suit came to be dismissed under Order IX Rule 9 of CPC and two other suits were withdrawn, in order to file a present comprehensive suit, with additional reliefs to establish the title of the plaintiffs. It is the contention of the learned Senior Counsel, Mr. V. Raghavachari that the bar of Order II Rule 2 of CPC does not



apply to the facts of the present case, in view of the new relief having been sought for and even if it can be contended that Order II Rule 2 of CPC bars the present suit, it cannot be decided in an application filed under Order VII Rule 11 of CPC. It is also the specific contention of Mr.V.Raghavachari, learned Senior Counsel that the cause of action for the present suit is entirely different and the plaintiff can establish his source of title and also seek annulment of documents that have created a cloud on its title and therefore, when a clearly larger relief is sought for, the Trial Court has rightly dismissed the application for rejection of the plaint. It is also the contention of Mr.V.Raghavachari, learned Senior Counsel that whether the suit was dismissed under Order IX Rules 8 and 9 of CPC is again a matter for evidence and the plaint cannot be thrown out summarily. Insofar as the issue of limitation, Mr.V.Raghavachari, learned Senior Counsel contends that limitation is a mixed question of fact and law and therefore the plaint cannot be rejected even on this score.

7.I have carefully considered the submissions advanced by the learned Senior Counsel for the petitioner and the learned Senior Counsel and the learned counsel for the parties.

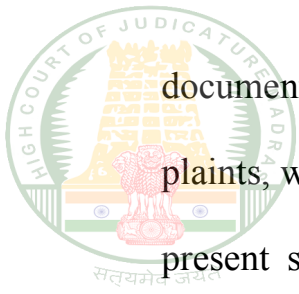
8.One of the main contention that is taken as a ground for rejection of the plaint is that the suit filed in O.S.No.2512 of 2007 to declare the Sale Deed dated 03.04.2007 as null and void and for consequential relief of permanent



injunction came to be dismissed for default on 24.03.2015, in respect of property that has been described as Schedule B in the present suit. It is therefore contended that a fresh suit, in respect of the Schedule B property, is not permissible or maintainable.

9.Insofar as the larger relief being sought for in the present suit where declaration of title has been included and no leave having been obtained at the earlier point of time, when the other suits were filed, it is the case of the plaintiffs that realising that the relief sought for in the earlier suits were not sufficient to protect the interest of the plaintiffs, the plaintiffs have been advised to file a comprehensive suit, including the relief of declaration of title. It is therefore contended that the bar under Order II Rule 2 of CPC would not come into play. I had an occasion in *K.Ravikumar and others Vs. K.Lakshminarayanan and others*, reported in 2025 4 LW 9, where I held that bar of plea of Order II Rule 2 CPC requires evidence and cannot be decided in an application under Order VII Rule 11 of CPC. I had relied on the decision of the Hon'ble Supreme Court in reported in *Gurbux Singh Vs. Bhooralal*, reported in 1964 SCC Online SC 101.

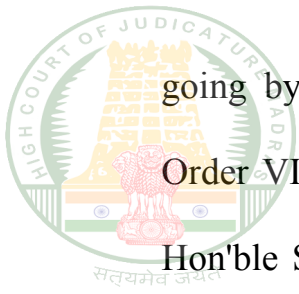
10.Even otherwise, as rightly pointed by Dr.C.Ravichandran, as seen from the plaint and plaint documents, even the earlier plaints are not documents that have been annexed to the plaint. An application for rejection of the plaint can be decided only on the basis of the plaint averments and allegations and the



documents filed along with the plaint. Therefore, to even invite me to the other plaints, which are now relied upon by the revision petitioner, to contend that the present suit is barred under law, cannot be looked into for the purposes of deciding the application under Order VII Rule 11 of CPC. The law on this aspect is fairly well settled by a plethora of judgments of the Hon'ble Supreme Court as well as this Court.

11. Insofar as the dismissal of suit in O.S.No.2512 of 2007 for default under Order IX Rule 9 of CPC, from a reading of the plaint in the present suit, I find that there is not even a reference to the said suit anywhere in the plaint and there is only a reference to the other suits in O.S.Nos.1772 and 1774 of 2008 and another suit for injunction in O.S.No.473 of 2016. Therefore, unless the contention of the defendants in the written statement are taken into account, the issue cannot be decided as to whether the said suit was dismissed for non-prosecution. The Court has to see the nature of the reliefs sought for in the said suit and whether they would bar the reliefs that have been sought for in the present suit.

12. Even the plaints in O.S.Nos.1772 and 1774 of 2008 are not annexed as plaint documents. However, it is contended by Mr.ARL.Sundaresan, learned Senior Counsel that when the written statement in both the suits have been annexed as documents and there is also specific reference to the case of the defendants in the plaint, which is most unusual to be found in any plaint, yet



going by settled principles of law for consideration in an application under

Order VII Rule 11 of CPC, which have been time and again reiterated by the

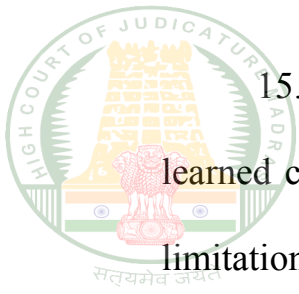
Hon'ble Supreme Court, I do not find that the Trial Court has committed any

material error in dismissing the application for rejection of the plaint, strictly

going by the averments in the plaint and plaint documents.

13.It is also relevant and significant to note in the present case that on the date of filing of the present suit, two earlier suits were pending and they were withdrawn only subsequently even the question of whether any leave was granted before withdrawing the suit or not are matters which are outside the scope of the plaint and therefore, even on this ground the plaint cannot be rejected as being barred under law, more specifically bar under Order II Rule 2 of CPC.

14.With regard to the plea of limitation, the Trial Court has held that limitation is a mixed question of law and fact and can be decided only after trial. It is contended by the learned Senior Counsel, Mr.ARL.Sundaresan that the bar under Article 58 of the Limitation Act would squarely apply to the facts of the present case, since the plaintiffs are now belatedly seeking declaration of their title in the present suit.



15.Mr.ARL.Sundaresan, learned Senior Counsel and Mr.Arun Anbuma

learned counsel for the petitioner contend that the suit is hopelessly barred by limitation and therefore, on the ground of being barred by law under Order VII Rule 11(d) of CPC, the plaint is liable to be rejected. I have examined the arguments made by the learned Senior Counsel on either side.

16.Admittedly, the present suit has been filed in the year 2017 seeking to declare the plaintiffs as the absolute owners of the suit schedule property and also seeking to declare Sale Deeds dated 03.04.2007 and 22.11.2013 and 30.04.2014 as null and void. The 6th defendant who is the revision petitioner has purchased the property under Sale Deeds dated 18.12.2019, one from the 11th respondent herein and another from the 14th respondent herein and T.Gopalakrishnan, purchaser from 12th respondent, Vijay Anandan. Admittedly, the purchase made by the revision petitioner was pending the said suit and upon getting to know about the pendency of the suit, the revision petitioner filed an application in I.A.No.6 of 2022 and sought to implead himself. The said application was allowed and thereafter, the 6th defendant has taken out the application seeking rejection of the plaint.

17.The fulcrum of the argument of the learned Senior Counsel, Mr.ARL.Sundaresan as well as Mr.Arun Anbumani, counsel for the revision petitioner is that the suit ought to have been filed within a period of three years



from the date on which right to sue first accrued. Under the old Limitation Act, the word 'first' was not available in the statute. However, in the 1963 Act, Article 58 sets out the period of limitation for filing a suit for declaration to be three years, from the date when the right to sue first accrued.

18.It is the specific argument of the learned Senior Counsel, Mr.ARL.Sundaresan and Mr.Arun Anbumani, learned counsel that the cause of action for the plaintiffs arose even in 2008 itself, when written statements were filed in O.S.Nos.1772 and 1774 of 2008 on 12.12.2008 itself. My attention was also invited to the said written statements, where the defendants have not only denied the right of the plaintiffs, but have also asserted title in themselves. The plaintiffs were therefore fully aware of the cloud on their title, even in the year 2008, more specifically, 12.12.2008, when the written statement was filed by the defendants in O.S.Nos.1772 and 1774 of 2008. In fact, I find that in the said written statements, it has been specifically mentioned that the plaintiffs ought to have sought for declaration of their title and that the suit for bare injunction was not maintainable. In the light of the said pleadings and defence raised as early as December 2008, applying Article 58 of Limitation Act, it is thus clear that the plaintiffs ought to have sought for any declaratory right on or before 11.12.2011. The plaintiffs did not take any steps to even amend the complaints in O.S.Nos.1772 and 1774 of 2008, by seeking the relief of declaration.



19. In fact, the said stand of the defendants has been specifically set out by the plaintiffs themselves in the present suit in O.S.No.221 of 2017, where they have extracted the case of the defendants, even in the plaint. Therefore, the plaintiffs are fully conscious of the fact that the defendants have denied the title of the plaintiffs even in 2008. The suit has however been filed only in the year 2017, seeking the relief of declaration of title. Though it is contended by Mr.V.Raghavachari, learned Senior Counsel and Dr.C.Ravichandran, learned counsel that the relief of declaration of title has also been additionally prayed in the present suit and therefore, the plaint cannot be rejected on the ground of limitation, I am unable to countenance the said arguments for the simple reason that when the plaintiffs have not sought for necessary declaratory relief within a period of limitation, then the plaintiffs are not entitled to impeach the various Sale Deeds, which come in their way to establish their title and consequently the plaintiffs are not entitled to succeed in the suit.

20. In *L.C.Hanumanthappa's case*, referred herein supra, the Hon'ble Supreme Court has held that a suit for declaration would have to be filed within three years from the date on which the right to sue first accrued and that successive violation of the right will not give rise to fresh cause of action.

21. In *Rajeev Gupta and others Vs. Prashanth Garg and others*, in *Civil Appeal No.11061 of 2024* dated 23.04.2025, the Hon'ble Supreme Court held that the moment the right first accrues for the plaintiff to file a civil suit, the

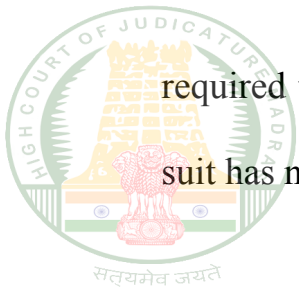


clock of limitation would start ticking right from then on and if the suit is instituted within three years therefrom, the suit would be barred by limitation.

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22. In a recent decision of the Hon'ble Supreme Court in *Nikhila Divyang Mehta and another Vs. Hitesh P. Sanghvi and others*, reported in 2025 (2) CTC 857, the Hon'ble Supreme Court held that though the issue of limitation may be a mixed question of fact and law, but when it established that the suit is ex facie barred by limitation, then no evidence is required to be adduced by the parties. The Hon'ble Supreme Court held that when the primary relief is barred by limitation, then the ancillary reliefs would also fall down and the plaint is liable to be rejected as barred by limitation under Order VII Rule 11(d) of CPC.

23. In the light of the above and the specific averments, even in the plaint in O.S.No.221 of 2017 clearly indicating that the right to sue first accrued to the plaintiffs even in 2008, I am not in a position to accept the arguments of the learned counsel for the respondents that limitation, being a mixed question of fact and law, would have be relegated to trial and cannot be decided summarily in an application under Order VII Rule 11(d) of CPC. In fact, as rightly pointed by the learned Senior Counsel, Mr.ARL.Sundaresan, this is an unusual case where even in the plaint, the plaintiffs have voluntarily proceeded to incorporate separate paragraphs, setting out the defence of the defendants. Therefore, the Court, while dealing with the application for rejection of the plaint, is not even



required to go beyond the pleadings available in the plaint to ascertain that 1
suit has not been filed in time.

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24. Though I am unable to accept the contentions of the learned Senior Counsel, Mr. ARL. Sundaresan and Mr. Arun Anbumani, counsel for the petitioner with regard to the suit being barred under Order II Rule 2 of CPC and on that score, the plaint is liable to be rejected, however, on the ground of limitation, for the foregoing discussions, I see merit in the contentions advanced with regard with the suit being ex facie barred by limitation.

25. In fine, the Civil Revision Petition is allowed and the order dated 14.11.2024 passed in I.A.No.8 of 2023 in O.S.No.221 of 2017 by the learned III Additional District Judge, Coimbatore, is set aside and the plaint in O.S.No.221 of 2017 is rejected. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

12.09.2025

Speaking/Non-speaking order

Index : Yes/No

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To

The III Additional District Judge, Coimbatore.



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P.B.BALAJI.J,

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Pre-delivery order made in
CRP.No.1784 of 2025
& CMP.No.10305 of 2025



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12.09.2025