



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:13.06.2025

Pronounced on:14.07.2025

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. PD. No.2289 of 2023
and CMP. No.13843 of 2023**

1.V.Rajan
2.V.Shanmugham
3.V.Amirthakavi

Petitioner(s)

Vs

1.Venkatesan
2.Umamageswari

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 08.06.2022 made in I.A. No.128 of 2022 in O.S. No.91 of 202 on the file of the learned Sub Judge, Thiruvavarur.

For Petitioners : Mr.N.Manoharan
For Respondents : Mr.V.Manisekaran

ORDER

The defendants in O.S. No.91 of 2022 aggrieved by an order under Order VII Rule 11(d) of the CPC dismissing an Application filed by them to reject the plaint as barred by limitation are the revision petitioners herein.



2. I have heard Mr.N.Manoharan, learned counsel for the petitioners and Mr.V.Manisekaran, learned counsel for the respondents/plaintiffs.

3. The learned counsel, Mr.N.Manoharan would take me through the plaint and contend that on a reading of the plaint itself, it is clear that the suit is hopelessly barred by law of limitation and therefore, the Trial Court ought to have exercised the power available under Order VII Rule 11(d) and rejected the plaint.

4. He would place reliance on the decision of the Hon'ble Supreme Court in *Dahiben Vs ArvindBhai Kalyanji Bhanusali(Gajra) dead through Lrs and others*, reported in (2020) 7 SCC 366; *Padhiyar Prahladji Chenaji (deceased) through LRs vs Maniben Jagmalbhai (deceased) through Lrs*, reported in (2022) 12 SCC 128 and *Nikhila Divyang Mehta and another vs Hitesh P Sanghavi and others*, reported in 2025 SCC Online SC 779.

5. Per contra, Mr.V.Manisekaran, learned counsel for the



respondents would submit that the Trial Court has rightly dismissed the Application seeking rejection of the plaint, since the suit filed by the plaintiffs could have been filed within a period of 12 years from the denial of the title by defendants and rightly held that Article 65 of Limitation Act, 1963 would apply and not Article 58 of the Limitation Act, 1963 as claimed by the petitioners.

6. The learned counsel for the respondent would place reliance on the decision of the Hon'ble Supreme Court in *Sopan Rao and another vs Syed Mohammed and others*, reported in (2019) 7 SCC 76 and *N.Thajudeen vs Tamil Nadu Khadi and Village Industries Board*, reported in (2024) 7 SCC 759.

7. I have carefully considered the submissions advanced by the learned counsel on either side.

8. The only question that falls for consideration is as to whether Article 58 of the Limitation Act would apply or Article 65 of the Limitation Act would apply ? If Article 58 applies, then the suit is barred by limitation however, if Article 65 applies, then the suit is in time and



cannot not be rejected.

WEB COPY 9. Article 58 and 65 of the Limitation Act, 1936 extracted for easy reference.

58.To obtain any other declaration	Three years	When the right to sue first accrues
65.For possession of immovable property or any interest therein based on title. Explanation.—For the purposes of this article— (a)where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (c)where the suit is by a purchaser at a sale in execution of a decree when the judgmentdebtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.



10. The suit that has been filed by the respondents is seeking for relief of declaration that the A Schedule property is the property of the plaintiffs and for possession of B schedule property which is a part of A Schedule property. The second relief seeks declaration, challenging two settlement deeds both dated 26.10.2010, in favour of the first defendant and third defendant, as invalid. The suit has admittedly been filed on 18.06.2022. According to the revision petitioners the suit was filed close to 8 decades after the cause of action arose for the first time on 01.09.1943, when Kuppammal purchased 25 cents from Narayanan Pillai. However, it is the contention of the respondents/plaintiffs that the plaintiffs had knowledge of the settlement deeds only on 29.04.2021 when they had applied for an Encumbrance Certificate and therefore, the said relief of declaration, challenging the settlement deeds being filed within 3 years cannot be barred by limitation.

11. The Trial Court relying on the Judgment of the Hon'ble Supreme Court in *Sopan Rao's* case (referred herein supra), which is also relied on before me, held that if a suit is filed for possession based on title then, the plaintiff is bound to prove his title and seek for a declaration that he is the owner and in such scenario, when the main

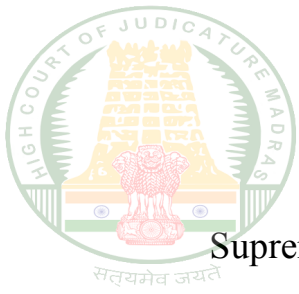


relief only being possession, it is therefore covered by Article 65 of the Limitation Act, 1963.

WEB COPY

12. The Trial Court has found that the title of the plaintiffs came to be denied through reply notice dated 08.07.2010 and the suit has been filed within 12 from the date of denial of title and therefore under Article 65, the suit is in time. Insofar as the settlement deeds, the Trial Court has held that the plaintiffs claim to have knowledge of the documents only after obtaining Encumbrance Certificate and thereafter, the suit has been filed within three years and therefore this is a matter for trial and cannot be a ground to reject the plaint, the question of limitation being a mixed question of law and facts.

13. In *Sopan Rao* 's case, (referred herein supra), the suit was filed for recovery of possession based on claim of title by the plaintiff and the Hon'ble Supreme Court held that the main relief would be the relief of possession and therefore, the suit will be governed by Article 65 of the Limitation Act.



14. In *N.Thajudeen's* case, (referred herein supra), the Hon'ble Supreme Court held that, a suit for declaration of right cannot be held to be barred so long a right to property subsists. In the said case the reliefs sought were for declaration of title and possession and the Hon'ble Supreme Court held that Limitation would be 12 years in terms Article 65, though limitation for seeking declaration is only 3 years as per Article 58.

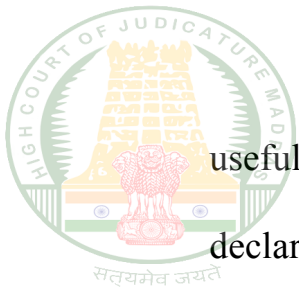
15. In *Dahiben's* case, (referred herein supra), the Hon'ble Supreme Court held that if the Court takes the plaint in entirety in conjunction with the documents relied upon and finds that the suit is barred by any law, then duty is cast on the Court to reject the plaint.

16. In *Padhiyar Prahlad Ji Chenaji's* case, (referred herein supra), the Hon'ble Supreme Court dealt with an issue as to distinction between a substantial relief and consequential relief. The High Court had held that the relief of permanent injunction was the substantial relief which was not approved by the Hon'ble Supreme Court, noting that the main relief was for cancellation of sale deed and declaration and therefore, the prayer for permanent injunction was only a consequential relief.



However, this decision cannot be applied to the present case since we are concerned with a relief of declaration and recovery of possession that has been sought for by the plaintiff.

17. In *Nikhila*'s case, (referred herein supra), the Hon'ble Supreme Court testing whether the suit was barred by limitation under Order VII Rule 11(d) CPC requiring to be rejected, held that, when the suit was filed for declaration that a Will and Codicil were null and void and for a relief of permanent injunction which was dependent upon the success of the first relief, the relief of permanent injunction was only a consequential relief and the primary relief was a relief of declaration. On facts, finding that the Will was executed on 04.02.2014 and codicil came to be executed and registered on 20.09.2014 and even as per the plaintiff's admission in the plaint, the plaintiff had knowledge of the Will and Codicil in the first week of November 2017, it was held that the suit had to be brought within a period of three years that at least from 04.02.2014 when the Will was registered or at least within three years of execution of the Codicil or the death of the plaintiff's father. On such facts, the Hon'ble Supreme held that applying Article 58 to the Act, the suit was barred by limitation. The facts of the said case are also not



useful to decide the present case since in the present case relief of declaration as well as possession are sought for.

WEB COPY

18. The ratio laid down in *N.Thajudeen's* case and *Sopan Rao's* case, (referred herein supra), which has been relied on by the Trial Court would in fact apply to the facts of the present case where similar reliefs of declaration and possession are also sought for and as laid down by the Hon'ble Supreme Court, when both the reliefs of declaration and possession are sought for, the suit will be governed by Article 65 of the Limitation Act, 1963 and not Article 58.

19. In view of the above, I do not find any infirmity in the order of the Trial Court dismissing the Application seeking rejection of the plaint. Hence, this Civil Revision Petition is dismissed. Connected Miscellaneous Petition is also closed. No costs.

14.07.2025

rkp

Index : Yes / No

Internet : Yes / No

To:

The Sub Judge, Thiruvarur.



WEB COPY

CRP. PD. No.2289 of 2023



P.B.BALAJI, J.,

rkp

Pre-delivery order in
CRP. PD. No.2289 of 2023
and CMP. No.13843 of 2023

14.07.2025