

(2013) 02 MAD CK 0147

In the Madras High Court

Case No : C.R.P. (PD) No"s. 1872 and 1910 of 2012 and M.P. No"s. 1 to 1 of 2012

Amaravathy Cranes and Structural Pvt. Ltd. and Another
Vs

APPELLANT

Rajendra Raja and Others

RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(d), Order 7 Rule 14(1), 24
Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 90
Limitation Act, 1963 — Section 3
Penal Code, 1860 (IPC) — Section 120B, 147, 34, 420, 447

Citation : (2013) 2 CTC 756

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : N. Jothi and N. Manokaran, for the Appellant;

Final Decision : Dismissed

Judgement

K. Chandru, J.—These Civil Revision Petitions came to be posted before this Court on being specially ordered by the Hon'ble Chief Justice vide order dated 6.8.2012. The Petitioner in all the Civil Revision Petitions is the same person, i.e., Amaravathy Cranes and Structural Pvt. Ltd., represented by its Director. These Civil Revision Petitions are filed under Article 227 of the Constitution of India seeking strike off the Plaint in O.S. Nos. 367 to 371, 397 to 410, 421 to 430 & 435 to 444 of 2011 on the file of the District Munsif Court, Ambattur. The C.R.Ps. are yet to be admitted.

2. The Suits were filed by the First Respondent/Plaintiff before the learned District Munsif, Ambattur seeking for a declaration to declare the 39 Sale Deeds executed by the Revision Petitioner and the Second Respondent and registered at the Sub-Registrar Office, Poonamallee as null and void. The Sale Deeds were related to the year 1965.

3. Heard Mr. N. Jothi, learned Counsel for Mr. N. Manokaran, learned Counsel appearing for the Petitioner. The contention of the Petitioner was that the lands to an extent of 1743 acres in Morai Village were taken over by the District Collector of the Chengalpattu District under Rule 75-A(1) of the Defence of India Rules during the Second World War vide proceedings, dated 26.10.1944. After the end of the World War-II, lands were derequisitioned to the respective land owners. Since the land use pattern was considerably changed, the land owners had decided to sell the lands. Accordingly, the Petitioner had purchased the properties from the respective land owners under 39 Sale Deeds in the year 1965. The Petitioner-Company purchased a vast extent of agricultural punja lands comprised in different survey numbers in Morai village by virtue of Sale Deeds. It was claimed that ever since the purchase, the Company was in possession and enjoyment being its absolute owner.

4. The Board of Revenue on 11.9.1967 took a decision to set aside the existing registry made at the time of settlement in respect of the lands and decided to conduct a denova settlement enquiry after complying with the procedures contemplated under the Tamil Nadu Act 26 of 1948. A suo motu enquiry was taken up for the grant of Ryotwari Patta in respect of S. No. 474/1 onwards in Morai village. The settlement Tahsildar at Chengalpattu was authorised to conduct an enquiry vide notification dated 19.5.1976. The Settlement Tahsildar had conducted an enquiry and included the land for the grant of Ryotwari Patta. He had passed an order on 23.7.1976, 24.7.1976 and 30.7.1976 in respect of proceedings in S.R. Nos. 14 to 16 of 1976. The Settlement Tahsildar had issued Ryotwari Patta not only to the Petitioner-Company, but also to 46 other persons. The Petitioner-Company got Ryotwari Patta to an extent of 165 acres. In respect of other lands, several other individuals were given Patta. No one questioned the Ryotwari Patta granted by the Settlement Tahsildar to those 46 persons by the same proceedings issued. The other lands were also classified as assessed waste manavari, cart track poramboke, temple poramboke, assessed waster dry, channel porambokel, puzhakal poramboke and road poramboke. Subsequent to the amendment made to the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, as amended by the Tamil Nadu Act 17 of 1970, the Authorised Officer (Land Reforms), Kancheepuram under whose jurisdiction the lands were situated took an action in terms of the provisions of the Land Ceiling Act. He had published a draft settlement u/s 10(1) of the Land Reforms Act vide Gazette Notification, dated 25.3.1981 and served the copy on the Petitioner-Company.

5. The Company had filed its objection before the Authorised Officer. The Authorised Officer by virtue of the power u/s 10(5) of the Act had rejected the objection made by the Petitioner-Company. The company had filed a Revision Petition u/s 82 of the Land Reforms Act before the Land Commissioner, Chennai. The Revision was also dismissed on the ground of maintainability in view of the Appeal available u/s 78 of the Act. Thereafter, the Petitioner-Company filed an Appeal before the Land Tribunal in LT C.M.A. No. 86 of 1991. The Appeal was allowed on 4.5.1992 and the matter was remitted back to the Assistant

Commissioner (Land Reforms) for fresh disposal in the light of the observations made by the Tribunal. After remand, the Assistant Commissioner (Land Reforms), Villupuram personally inspected the lands and agreed with the contention of the Petitioner-Company with reference to the land use pattern. The Assistant Commissioner (Land Reforms) by his proceedings had cancelled the final settlement, which was published in the Tamil Nadu Government Gazette on 22.9.1993. Based on the findings of the Assistant Commissioner (Land Reforms), the Deputy Secretary to the Government by proceedings, dated 16.2.1994 had cancelled the Notification issued by the Revenue Department, dated 21.9.1981. After the Gazette Notification, necessary changes were carried out in the revenue records and the lands were entered in the name of the Petitioner-Company. The Company has been in possession of the land and are paying Kist upto date to the Government. The Company also obtained Patta and mutation of records had been effected. The 39 Sale Deeds under which lands were purchased were genuine.

6. The Company's Directors had filed a Suit in O.S. No. 258 of 2009 before the District Munsif, Ambattur against the First Respondent and others, who were shown as Defendants, seeking for a declaration of title to the property as well as for permanent injunction. The First Respondent had also filed I.A. No. 877 of 2009 for rejecting the Plaint. The Company sold a part of the lands in different survey numbers in favour of its family members between the year 1995 & 2002. The Patta was also transferred in the name of the individuals in respect of the lands sold and purchased by the Company's family members and they are also in absolute possession and enjoyment. But, however, during July, 2009, the contesting Respondent, who was the land grabber and Benami of an influential politician with the help of political influence had attempted to interfere with the possession of the Petitioner-Company. Initially, a temporary injunction was obtained against them. But subsequently, in C.M.A. Nos. 8 & 9 of 2010 on the file of the Sub-Court, Poonamallee, the injunction was vacated. As against the same, the Petitioner-Company preferred Civil Revision Petitions under Article 227 of the Constitution in C.R.P. Nos. 1456 & 1457 of 2011, which are also pending.

7. In the meanwhile, on 29.7.2009, the Tahsildar had issued a notice for conducting a fresh proceedings on 29.7.2009. The said proceedings were initiated on the basis of a Petition submitted by the First Respondent/Plaintiff claiming Patta in respect of the Survey Number, which is owned by the Company. The proceedings initiated by the said Tahsildar was challenged by the Petitioner-Company in W.P. No. 15438 of 2009 and this Court had granted an interim stay. The said Writ Petition was disposed of in the light of the subsequent Writ Petition filed in W.P. No. 25413 of 2009. Subsequently, when the First Respondent/Plaintiff attempted to get the electricity service connection, the Petitioner-Company also filed W.P. Nos. 21800 to 21802 of 2009 and an order of injunction was granted against the Electricity Authorities. When the First Respondent-Plaintiff attempted to create false documents, the Petitioner-Company also filed W.P. Nos. 21877 to 21879 of 2009 seeking a restraint against the Sub-Registrar,

Avadi not to admit and register any documents by way of sale or gift, etc. In that Writ Petitions also, interim orders were granted. In order to stop the Criminal activities of the First Respondent/Plaintiff, the Petitioner-Company gave a Complaint in Crime No. 122 of 2009, which was registered against the Plaintiff under Sections 120-B, 147, 447, 465, 471, 474, 420, 506(ii) read with 34, I.P.C. The case was subsequently taken up for investigation by the CBCID.

8. In the meanwhile, the First Respondent sent a Petition, dated 30.10.2009 to the Assistant Settlement Officer alleging that he has grievance over the order passed by the Assistant Settlement Tahsildar, Chengalpattu made in the year 1976. Without applying his mind, the Assistant Settlement Officer had issued a proceedings, dated 6.11.2009 seeking to conduct an enquiry in the Complaint lodged by the Respondent. The Petitioner-Company filed W.P. No. 25413 of 2009 and an order of stay was granted on 9.12.2009. All the Writ Petitions were still ending before this Court. The First Respondent filed various Suits before the District Munsif, Ambattur seeking for declaration that the Sale Deeds executed by the Petitioner and the Second Respondent in favour of third parties are not binding on the First Respondent/Plaintiff and for permanent injunction. It is at this juncture, the Petitioner has come forward to file the present Civil Revision Petitions under Article 227 of the Constitution seeking to strike out various Plaints on the file of the District Munsif, Ambattur.

9. It was stated that the Plaintiff was guilty of laches and delay. They cannot institute Suits after 46 years after the Sale Deeds were executed. Section 3 of the Limitation Act is a clear bar. Under Article 59 of the Limitation Act, 1963, three years limitation has been prescribed for cancelling or setting aside an instrument. The District Munsif ought not to have taken the Plaints on file. No cause of action was disclosed. The 39 Sale Deeds were executed in the year 1965 and there is a legal presumption in their favour in terms of Section 90 of the Indian Evidence Act. The Suits filed by the First Respondent were frivolous and vexatious and since they were based upon illusory cause of action, they should be nipped in the bud. The Suits were a clear example of abuse of the process of the Court.

10. However, a reading of the Plaints filed by the First Respondent before the District Munsif, Ambattur sets out the following facts:

The First Respondent/Plaintiff claimed that he is one of the legal heirs of Shrodriyamdars, i.e., Kumaramalrazu. The lands were comprised in the Shrodriyam village, i.e., Vellanoor and Morai. They are owned and enjoyed by the ancestors of his great grandfathers and it can be verified from the title deed. Both melvaram and keelvaram rights were held and enjoyed by them as Mirasdars of the then Chengalpet District. Their grand father Kumaramalrazu had gifted 52 cawnies of unoccupied land to Akilandakodi Bramandanayakar Sri Thiruvengadamudaiyan temple by way of registered document No. 248/1873. His ancestors had alienated a portion of the land. Some of the ancestors have also bequeathed their share to their respective heirs by executing documents. The

documents were executed over the years in different period starting from 1892 to 1941 by the members of their family. They are holding right to possess the lands and are also in possession continuously since 1780. Notwithstanding these facts, Karnam and Munsif of the village, who belonged to Pillai Community, were jealous about the family status of the Plaintiff's ancestors and made wrong entries in the official land records of the Government. The malpractices came to their knowledge only after many years. After the introduction of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, the survey and settlement work was started by the Government and it was completed by 1961. In fact, against the proceedings initiated, a de novo proceeding was ordered by the Board of Revenue. Such a de novo enquiry is yet to be completed. After several years, the Settlement Tahsildar, Chengalpattu, by name one C. Subramaniam, had conducted a de novo enquiry on 23.7.1976. Without any proper enquiry, he had passed an order within a week and directed the grant of Ryotwari Patta to an extent of 177 acres to the Petitioner-Company and 124.25 acres for other 56 persons. In a short enquiry, without any records and documents, he had ordered Ryotwari Patta to an extent of 385.32 acres. The lands in Morai village are dry vacant lands and that the members of the Plaintiff and their family members enjoyed the same as a original inamdars. They were not aware of these facts till the year 2009. Except the Plaintiff, no one has right or interest in the lands, which were described in the schedule to the Plaints. The First Respondent/Plaintiff came to understand that the Petitioner-Company had created forged documents with the help of the junior officials of the Revenue Department. They have no right to take the law in their own hands. The forged documents have to be declared as null and void by the Court. Therefore, the Suits came to be filed for declaration that the Sale Deeds executed by the Petitioner and the Second Respondent as null and void and for a permanent injunction.

11. The Plaints were accompanied by some documents filed under Order 7, Rule 14(1), C.P.C. The learned District Munsif, after going through the averments in the Plaints and the documents, admitted the Suits and directed issuance of summons to the Petitioner and other Defendants.

12. It was contended by Mr. N. Jothi, learned Counsel that the First Respondent/Plaintiff, nowhere in the Plaints, had referred to the cause of action for determining the limitation period and that the pleadings in the Plaints are bereft of particulars regarding limitation. They have not stated anything about the knowledge of the Plaintiff nor the period of limitation for filing the Suit. No date has been mentioned in order to show the date on which the cause of action accrued to sue for such a relief. However, alternatively he pleaded that in the event of this Court not accepting the case of the Revision Petition, the Suits pending on the file of the District Munsif, Ambattur may be transferred to the City Civil Court, Chennai in view of the peculiar facts and circumstances of the case and after such transfer, this Court can issue such a direction to the Trial Court to decide the preliminary objection regarding the maintainability of the

Suits and other issues and also fix a time frame.

13. But, this Court is not inclined to entertain the Revision Petitions for more than one reason. In this case, the Revision Petitioner has remedy by way of filing of an Application before the Trial Court under Order 7, Rule 11 of CPC for rejecting the Plaints. It is only when such an Application is filed, the trial Munsif will be in a position to decide whether the Plaints should be rejected at the threshold without trial. In the event of the rejection of the Plaint, the aggrieved party has right to challenge the same before the appropriate forum. The power under Article 227 of the Constitution is extraordinary and it is supervisory jurisdiction. By the exercise of the supervisory power of jurisdiction, this Court cannot convert itself into the Court of Appeal as held by the Supreme Court in Abdul Razak (D) through L.Rs. and Others Vs. Mangesh Rajaram Wagle and Others, , and in paragraph 23, it was observed as follows:

23. If the Petition filed by Respondents 1 & 2 was under Article 227 of the Constitution of India, then the learned Single Judge should have taken note of the often quoted judgment in Surya Dev Rai Vs. Ram Chander Rai and Others, in which a Two-Judge Bench, after threadbare analysis of Articles 226 or 227 of the Constitution and considering a large number of judicial precedents on the subject, recorded the following conclusions: (SCC pp. 694-96, para 38)

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the Subordinate Courts within the bounds of their jurisdiction. When a Subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

...

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of Appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(Emphasis added)

14. Though it was contended that u/s 3 of the Limitation Act read with Article 59, the Suit will be to be filed within three years. Article 59 itself gives further leverage wherein it is stated that when the facts entitling the Plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. Therefore, it can still open to the First Respondent/ Plaintiff to argue that he had knowledge within three years before lodging the Plaints in the Trial Court.

15. It must be noted that the plea taken by the Petitioner regarding the bar of the Suit in terms of the Limitation Act is concerned, the question of limitation is

the question based on both facts and law. Therefore, at this juncture, this Court while entertaining applications under Order 7, Rule 11, cannot reject the Pleat. Hence all C.R.Ps. must fail.

16. It is necessary to refer to a decision of the Supreme Court in Popat and Kotecha Property Vs. State Bank of India Staff Association, , and in Paragraphs 19 & 25 it was observed as follows:

19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the Pleat. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

25. When the averments in the pleat are considered in the background of the principles set out in Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others, the inevitable conclusion is that the Division Bench was not right in holding that Order 7, Rule 11, C.P.C. was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of Lease Deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the Suit from statement in the Pleat can be said to be barred by law. The statement in the Pleat without addition or subtraction must show that it is barred by any law to attract application of Order 7, Rule 11. This is not so in the present case.

17. Whether Order 7, Rule 11(d), C.P.C. can be invoked when a plea of bar of limitation pleaded also came to be considered by a subsequent judgment of the Supreme Court in Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others, It is necessary to refer to the following passages found in Paragraphs 15, 16 & 19, which reads as follows:

15. The principle underlying clause (d) of Order 7, Rule 11 is no different. We will refer here to a recent decision of this Court rendered in Popat and Kotecha Property Vs. State Bank of India Staff Association, , where it was held as under in para 10 of the report: (SCC p. 515)

10. Clause (d) of Order 7, Rule 7 speaks of Suit, as appears from the statement in the Pleat to be barred by any law. Disputed questions cannot be decided at

the time of considering an application filed under Order 7, Rule 11, C.P.C. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the Plaintiff in the Plaint, without any doubt or dispute shows that the Suit is barred by any law in force.

16. It was emphasised in Para 25 of the report that the statement in the Plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7, Rule 11, C.P.C. The principle is, therefore, well settled that in order to examine whether the Plaint is barred by any law, as contemplated by clause (d) of Order 7, Rule 11, C.P.C., the averments made in the Plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the Written Statement or to any piece of evidence.....

19. A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. The question whether the words "barred by law" occurring in Order 7, Rule 11(d), C.P.C. would also include the ground that it is barred by law of limitation has been recently considered by a Two-Judge Bench of this Court to which one of us was a member (Ashok Bhan, J.) in *Balasaria Construction (P) Ltd. v. Hanuman Seva Trust*, 2006 (5) SCC 658, below it was held: (SCC p. 661, para 8)

8. After hearing Counsel for the parties, going through the Plaint, Application under Order 7, Rule 11(d), C.P.C. and the judgments of the Trial Court and the High Court, we are of the opinion that the present Suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the Plaint it cannot be held that the Suit is barred by time.

This principle would be equally applicable to a Company Petition. Therefore, unless it becomes apparent from the reading of the Company Petition that the same is barred by limitation the Petition cannot be rejected under Order 7, Rule 11(d), C.P.C.

18. Therefore, the Petitioner-Company having not moved the Trial Court for the relief, this Court exercising its supervisory power is not inclined to reject the Plaints. It is for the Petitioner to take appropriate steps before the Court concerned.

19. The alternative plea made by the learned Counsel Mr. N. Jothi, i.e., on the question of transfer of the Suits to the City Civil Court, is concerned, the power of transfer is vested u/s 24, C.P.C. and an appropriate Application has to be made by the party concerned. Even in such event, a notice will have to be given to the other party and they must be heard before such transfer. Therefore, this Court is not inclined to order any such transfer and it is once again left to the

Petitioner to make an appropriate Application in terms of Section 24 of the CPC. In the light of the above, all the Civil Revision Petitions will stand dismissed. No costs. Consequently, connected Miscellaneous Petitions stand closed.