

(2005) 03 MAD CK 0101

In the Madras High Court

Case No : A. No. 1059 of 2004 in C.S. No. 558 of 2003

Appasamy Real Estates Ltd.

APPELLANT

Vs

Neelayathatchi Ammal, Gunasekaran and S. Kalaivanan @ S.
Babu

RESPONDENT

Date of Decision : 11-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 11(d)
Limitation Act, 1963 — Section 17, 17(1)

Citation : (2005) 03 MAD CK 0101

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : R. Krishnaswamy, SC for Mr. Satish Parasaran, for the Appellant; M. Thulasidas, for the Respondent

Judgement

R. Balasubramanian, J.—This is an application taken out by the 54th defendant to reject the plaint and consequently to discuss the suit. Heard the learned counsel for the applicant and the learned counsel for the respondents/plaintiffs. Rejection of plaint is sought for on the ground that the relief claimed in the plaint is barred by limitation. The plaintiffs in their counter affidavit would state that the relief claimed in the plaint is in time. It is their case that they came to know in October 2002 that in getting the sale deed dated 29.05.1951 executed, the first defendant had played a fraud on the original owners of the suit property namely, Sivagami Ammal and Pushpakanthammal. The plaintiffs rely upon the averments made by them in paragraph No. 25 of the plaint in regard thereto.

Therefore their case is that, no ground is made out to reject the plaint.

2. Since rejection of plaint is asked for, it is needless to state that on the allegations found in the plaint, the court must decide whether the relief claimed in the suit is barred by limitation or not. One of the grounds for rejecting the plaint as enumerated under Order 7 Rule 11 (d) of the CPC is that, it should

appear from the statement in the plaint that it is barred by any law. Admittedly, in the plaint the plaintiffs are asking this court to set aside the sale deed dated 29.05.1951, being document No. 1325/51 SRO, Saidapet, standing in the name of the first defendant as null and void as being one brought about by "fraud" and "misrepresentation". Therefore it is clear that the challenge in the suit is with reference to a document of the year 1951. Under Article 59 of the Limitation Act, for such a suit the period of limitation prescribed is three years. Under that Article, the time of three years starts running when the facts entitling the plaintiff to have the instrument cancelled or set aside first become known to him. In fact before registering the plaint, the Registry of this court returned the plaint stating that the suit is not filed within the period of limitation. The advocate for the plaintiffs represented the plaint with the following endorsement:

"The suit is for setting aside a sale deed dated 29.05.1951 on the ground of "fraud". Since "fraud" is pleaded, there is no particular period of limitation prescribed. Hence the suit is maintainable."

With the note from the Registry on the issue of limitation, it was listed before a learned Judge of this court for a decision on that. A learned Judge, by order dated 10.07.2003, directed the Registry to register the plaint, since there is an allegation in paragraph No. 25 of the plaint that the plaintiffs had come to know that "fraud" having been played only in October 2002. The learned Judge's attention was also drawn to paragraph No. 28 of the plaint in that context. That is how the suit had come to be registered.

3. Having regard to the facts available, let me now decide the application on it's merits. The instrument challenged in the suit is sought to be set aside solely on the ground that the first defendant, by playing a "fraud" on Sivagami Ammal and Pushpakanthammal, brought the document into existence in his favour by forging their signatures. The plaintiffs solely rely upon the act of "fraud" as referred to above alone to have the instrument set aside and they do not urge any other ground in the plaint. Therefore section 17 of the Limitation Act gets attracted to the case on hand. Under that Act, where any period of limitation is prescribed for a suit (Article 59 of the Limitation Act) when the suit is based upon the "fraud" of the defendant, then the period of limitation shall not begin to run until the plaintiff has discovered the "fraud" or could, with reasonable diligence, have discovered it. As rightly contended by the learned counsel for the applicant, the document challenged in the suit is shown to have been executed in the year 1951 and therefore a duty is cast upon them to show that despite a reasonable diligence exercised by them, they were not in a position to discover the "fraud" and that it came to be discovered only in October 2002 as claimed by them. Fifty two years have elapsed since the document challenged in the suit had come into existence and therefore the plaint must contain the necessary pleadings as to how, when and in what manner the "fraud" came to be detected. Assuming for a moment without conceding that despite reasonable diligence the plaintiffs came to discover the "fraud" only in October 2002, yet the question is whether the suit

is maintainable in law?

4. The plaintiffs have alleged in the plaint that the first defendant, who had purchased the property in the year 1951, conveyed the property so purchased by them in favour of defendants 46 to 55 under sale deeds dated 05.06.1996, 11.07.1996 and 09.02.1998. Therefore in effect, if the sale deed dated 29.05.1951 is set aside and the consequential declaration that the plaintiffs are the owners is given, then the rights of defendants 46 to 55 would be legally interfered with. Clause (i) of the proviso to section 17(1) of the Limitation Act reads as follows :

"Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which-

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed."

In the context of the above provision of law, I went through the plaint again and again to find out what exactly is the case of the plaintiffs against defendants 46 to 55. At all stages in the plaint, I find that the plaintiffs attribute "fraud" only to the first defendant. The object sought to be achieved by such "fraud" (assuming "fraud" was played) was accomplished in the year 1951 when the first defendant had the sale deed dated 29.05.1951 executed in his favour. There is no allegation whatsoever in the plaint that defendants 46 to 55 were a party to that "fraud". There is also no allegation in the plaint that defendants 46 to 55, at the time of conveyances in their favour, either knew or had reason to believe that any "fraud" had been committed in respect of the property forming the subject matter of conveyances in their favour. If the case of the plaintiffs in the plaint as stated is accepted for the present, then it would only show that the first defendant played a "fraud" in getting the sale deed executed in his name. In the annexure to the plaint, the details of the sale deeds executed in favour of defendants 46 to 55 are given and it shows that in all a sum of Rs. 73,60,000/- is paid as consideration under all those transactions. Therefore it is clear from the plaint that defendants 46 to 55 are not accused of being a party to the "fraud"; they are shown to have purchased the property for valuable consideration and that there is not even an allegation that defendants 46 to 55 knew or had reason to believe that a "fraud" had been committed in the year 1951.

5. The plaintiffs, who are not parties to the sale deed dated 29.05.1951, are seeking to set aside that sale deed on the ground of "fraud" and "misrepresentation". But however, they have carefully avoided seeking such a declaration in respect of the sale deeds of the year 1996 (2 in number) and the sale deed of the year 1998, under which the very same property covered under the sale deed dated 29.05.1951 stands transferred in the name of defendants 46

to 55. If the plaintiffs can ask for the relief of setting aside the sale deed dated 29.05.1951, there is no reason as to why they have not asked for setting aside the sale deeds in favour of defendants 46 to 55. In my opinion, this is where the clever drafting of the plaint has come to play a role. The plaintiffs obviously cannot ask for the relief of setting aside the sale deeds in favour of defendants 46 to 55, since on the plaint allegations section 17(1) of the Limitation Act stands totally inoperative. In other words, the plaintiffs cannot fall back upon section 17(1) of the Limitation Act in saving the cause of action. The plaintiffs prayed for arrears of mesne profits at Rs. 10,08,000/-. They also asked for future mesne profits at Rs. 28,000/- per month from defendants 46 to 55 from the date of plaint till date of delivery. It is obvious that the claim for past mesne profits is also directed against defendants 46 to 55. Therefore in effect, if the sale deed dated 29.05.1951 is set aside by the court, it in fact amounts to setting aside the legal title of defendants 46 to 55, which they have acquired under the sale deeds already referred to. Without asking for the relief of setting aside the sale deeds in favour of defendants 46 to 55, a legal question will arise as to whether such omission would operate as a legal bar to grant any relief to the plaintiffs with reference to the sale deed dated 29.05.1951. My answer prima facie would be in the affirmative. Therefore it is clear that on the one hand the proviso to sub-section (1) of section 17 of the Limitation Act would come in the way of the plaintiffs asking for any relief in respect of the sale deeds standing in the name of defendants 46 to 55 on any grounds enumerated u/s 17(1) of the said Act and on the other hand, the court would also be legally disabled from granting relief (a) prayed for in the plaint without the additional relief as referred to above and directed against the sale deeds standing in the name of defendants 46 to 55. Therefore I have no doubt at all that on the plaint allegations it is very clear that it is one of the cleverly drafted and camouflaged plaint, which claim is not only vexatious on the face of it but it is also a thoroughly merit less one. To disturb the otherwise legally vested rights in favour of defendants 46 to 55 based on the sale deeds referred to earlier on the basis of the claim of the plaintiffs made against the sale deed of the year 1951, would be a futile exercise in law and on facts. If that is so, then under the proviso to section 17(1) of the Limitation Act, the grounds enumerated therein would not enable the plaintiffs to bring the suit before this court.

6. The plaint proceeds on the basis that while the first defendant was having his eyes on the property in question, another person by name Vijayaraghava Mudaliar was also trying to grab that property. With that in his mind, the allegation in the plaint is that, he brought a fraudulent mortgage over the property in question in favour of General Bank Limited. Vijayaraghava Mudaliar brought into existence the said mortgage deed solely with a view to put pressure on the bank to bring the property to sale and then to buy the same in the auction at a throw away price. The further allegation in the plaint is that General Bank Limited went into liquidation by this court's order in O.P. No. 63 of 1953 and the Official Assignee in whom the assets of the company wound up vested,

sold the property in court auction and in that court auction, the property in question was purchased by Vijayaraghava Mudaliar in the name of his wife Radhabai for a paltry sum of Rs. 1,200/- as early as 23.08.1957. The third angle of the plaintiff's case is that there was yet another person by name Alagappa Devar, who also had his eyes set on this property based on an agreement of sale in his favour for a stated sale price of Rs. 6,000/-. He filed a suit in O.S. No. 256 of 1978 on the file of Sub Court, Chengalpattu and got an ex parte decree on 20.1.1979 and the court executed the sale deed in favour of said Alagappa Devar. Therefore it is clear from the plaint allegations that three persons, namely, first defendant (defendant Nos. 2 to 4 are the sons of the first defendant); Vijayaraghava Mudaliar, whose legal representatives are defendant Nos. 6 to 39 and Alagappa Devar, who is defendant No. 42 in this application, are guilty of playing fraud in respect of the property in question on Sivagami Ammal and Pushpakanthammal. Sivagami Ammal is shown to have died intestate and the first plaintiff is the daughter of Pushkanthammal. The plaint shows that Pushpakanthammal died on 1.12.2002 and Sivagami Ammal died prior to her. But however, it appears from the plaint that the sale in favour of defendant Nos. 46 to 55 is by the first defendant and the other persons referred to earlier have signed in those sale deeds as confirming parties.

7. Having the above allegations in the plaint in my mind, I asked a question to myself, (i.e.) whether on these allegations, would the plaintiffs have an arguable case? The Bombay High Court in the judgment reported in M/s. Crescent Petroleum Ltd. Vs. m.v. "MONCHEGORSK" and another, held that in a case falling under Order 7 Rule 11 (a) of the Code of Civil Procedure, the Court can reject the plaint, if it finds that it is plain and obvious that the case put forward is unarguable and a meaningful reading of the plaint does not make out any case. In 1997 (III) C.T.C. 746 (I.T.C Limited v. The Debts Recovery Appellate Tribunal), the Supreme Court laid down the Law as hereunder:

"Question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7, Rule 11, C.P.C, and clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. T. Arivandandam Vs. T.V. Satyapal and Another, "

In Sopan Sukhdeo Sable v. Asst. Charity Commr.2004) 3 S.G.C. 137= 2004-2-L.W.800 in considering the power available to the court under Order 7 Rule 11 of the Code of Civil Procedure, the Honorable Supreme Court of India exhaustively dealt with the same by laying down the Law as hereunder:-

"Order 7 Rule 11 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised - the trial court can exercise the power at any stage of the suit, that is, before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial -

and also does not say in express terms about the filing of a written statement: for the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 CPC, the averments in the plaint are germane.... Instead, the word "shall" is used, clearly implying thereby that Order 7 Rule 11 casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Order 7 Rule 11, even without intervention of the defendant.

Only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected. Order 7 Rule 11 does not justify rejection of any particular portion of the plaint.

The real object of Order 7 Rule 11 is to keep out of courts irresponsible law suits. Therefore, Order 10 CPC is a tool in the hands of the courts; and by resorting to it and by a searching examination of the party, in case the court is prima facie persuaded of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 can be exercised.

The basic question to be decided while dealing with an application filed under Order 7 Rule 11 (a) CPC is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get around Order 7 Rule 11."

In yet another judgment reported in *Liverpool & London S. P. & I. Assn. Td. v. M V. Sea Success* (2004) 9 Sup 512, the Supreme Court on the above subject namely, power available under Order 7 Rule 11 has held as follows :-

"It is trite that a party should not be unnecessarily harassed in a suit. An order refusing to reject a plaint will finally determine his right in terms of Order 7 Rule 11 CPC. The idea underlying Order 7 Rule 11 (a) is that, when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the courts would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant."

8. It is no doubt true that the judgments referred to above were dealing with cases where rejection of the plaint was sought for, on the ground that the plaint does not disclose a cause of action. But however in the case on hand, rejection of the plaint is sought for solely on the ground that it is barred by law, namely, Law of limitation. But however I am sure that the judgments referred to above dealing with the case falling under Order 7 Rule 11(a) of the CPC would equally apply to the case falling under Order 7 Rule 11(d) of the CPC as to the extent of the power available to the Court under that provision of law namely, Order 7 Rule 11. IA careful and meaningful reading of the plaint in this case, in my opinion,

really show that it is a manifestly vexatious and merit less "lis" and it does not disclose a "clear right to sue. To save the suit from the Law of limitation, the plaintiffs have made certain averments in paragraphs 25 and 28 of the plaint, which alone made a learned Judge of this Court to overrule the objections made by the Registry before registering the plaint, stating that the suit is barred by limitation. The allegation in para 25 of the plaint is that when a close friend of plaintiffs 2 and 3 approached them with an offer to purchase the lands in question and wanted the documents of title relating to the same, the first plaintiff asked the first defendant to give back to her the documents of the lands. There is no allegation in the plaint under what circumstances the documents of title were entrusted to the first defendant. The sale in favour of the first defendant was way back in the year 1951 and the first plaintiff would have been aged 13 on that day. Therefore it is clear that only with a view to give a colour - speculative exercise - to the claim in the plaint, the plaintiffs have come forward with the allegation in para 25 that only after the offer came at the end of October, 2002 the first plaintiff wanted the first defendant to return the documents back to her. The allegation in para 28 of the plaint also is not better weighty than the allegations found in para 25 of the plaint. Documents 3, 4 and 5 filed along with the plaint (sale deeds in favour of defendant Nos. 46 to 55) show that copies of documents were applied for on 23.9.2002 (document Nos. 3 and 4) and on 20.9.2002 (document No. 5). Therefore it is clear that the plaintiff's case that they started the ball moving only after the end of October, 2002 appear to be false on the face of it. The plaintiffs are shown to be residing namely, in the same area where the suit property is situated. Therefore the exploitation of the said property by defendant Nos. 46 to 55 or their predecessors-in-interest should not have escaped the attention of the plaintiffs. What more? There is an allegation in the plaint that the very same property is the subject matter of sale by this court in O.P. No. 63/53 at the instance of the official assignee in favour of Radhabai, wife of Vijayaraghava Mudaliar and the sale certificate was issued by this court in her name on 23.08.1957. The legal heirs of the said purchaser and her husband Vijayaraghava Mudaliar are defendants 5 to 36. An additional fact is also available in the plaint namely, the 42nd defendant had obtained a decree for specific performance in respect of the very same property in O.S. No. 256/1978 on the file of the Sub-Court, Chengleput and the court executed the sale deed in favour of the decree holder, which document stands registered as document No. 3123/83. The plaintiffs have not chosen to ask for any declaration in respect of those two transactions. Assuming that the plaintiffs are likely to succeed in the present suit, then so long as the sale of the property by this court in the insolvency jurisdiction and the sale of the very same property by the civil court at Chengleput in pursuance of a decree for specific performance stand, I have my own doubt whether the plaintiffs would get any title at all. Though the legal representatives of the purchaser of the sale conducted by this court and the 42nd defendant are stated to have signed as confirming parties to the sale deeds in favour of defendants 46 to 55, yet that will not have the effect of obliterating their respective title as far

as the plaintiffs are concerned. Probably, the act of the persons referred to above may be binding on them vis-a-vis the purchasers namely, defendants 46 to 55. I have already noted that defendant Nos. 46 to 55 are shown to have parted with nearly a sum of Rs. 73,60,000/- for the property in question. Therefore to my mind, the plaintiffs appear to have started the litigation solely with a view to harass defendant Nos. 46 to 55 and then by making use of such a situation, to unjustly enrich themselves. Though the application to reject the plaint is moved only by the 54th defendant, yet, having regard to the speculative nature of the claim, which in my opinion, would have no legs to stand at all in the long run, would mandate this court to reject the plaint as a whole. That is what Supreme Court in all the judgments referred to above had called upon the Court to do. Under these circumstances, I have no doubt at all in holding that the suit is barred by Law and accordingly the plaint stands rejected as a whole under Order 7 Rule 11(d) of the Code of Civil Procedure.