(2015) 09 MAD CK 0221

In the Madras High Court

Case No : O.S.A. No. 294 of 2012

L. Ramachandran and Others APPELLANT

Vs

K. Ramesh and Others RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 1, Order 7 Rule 1, Order 7 Rule 11, Order 7 Rule 11(d)

Citation : AIR 2015 Mad 281 : (2015) 5 CTC 629 : (2015) 4 LW 585 : (2015) 7 MLJ 129

Hon'ble Judges : Sanjay Kishan Kaul, C.J;T.S. Sivagnanam, J

Bench : Division Bench

Advocate : R. Gandhi, Senior Counsel for M. Kamalanathan, for the Appellant; P.B. Sampathkumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J—This Appeal is directed against the fair and decreetal order dated 10.04.2012 in Application No. 3115 of 2011 in C.S. No. 1009 of 2005. The appellants are the 7th and 9th defendants in the Civil Suit in C.S. No. 1009 of 2005, filed by the respondents 1 to 6 /plaintiffs. The plaintiffs 1 & 2 are the sons of the second defendant, plaintiffs 3 to 5 are the sons of the third defendant and the 6th plaintiff is the son of the fourth defendant.

2. The plaintiffs filed the Suit during 2005 as indigent persons for a decree of partition against defendants 1 to 4; to handover vacant possession of the shares belonging to the plaintiffs either with specific boundaries or as undivided shares to the extent of which each of the plaintiffs are entitled; to declare the sale deed dated 03.01.1979, registered as Document No. 16/79 executed by the defendants 1 to 4 in favour of defendants 5 & 6 as null and void and set aside the same as not valid and binding on the plaintiffs; consequently to declare the sale deed dated 26.11.1982 registered as Document No. 917 of 1982, executed by the defendants 5 & 6 in favour of defendants 7 & 8 as null and void and not

binding on the plaintiffs and to declare the release deed registered as Document No. 770/79, executed by the defendants 2 to 4 in favour of the first defendant as null and void and not valid and binding on the plaintiffs.

3. The second appellant/9th defendant was brought on record as legal representative of her mother Smt. Saraswathi Ramachandran, the 8th defendant. The first appellant on his behalf and on behalf of the 8th defendant (since deceased), filed a written statement resisting the Suit claim. Thereafter, the appellants filed an Application for dismissal of the suit in A.No. 3115 of 2011 under Order 15 Rule 1 C.P.C. read with Order 14 Rule 8 of the O.S. Rules. The plaintiffs filed their counter affidavit and the learned single Judge by the impugned order dismissed the Application primarily on the ground that the as the issues are triable issues, they have to be decided on evidence.

4. Before we commenced hearing of this appeal, an issue arose as to whether the Appeal is maintainable as against an order refusing to reject the Plaint, in the light of the decision of the Hon''ble Supreme Court in the case of Shah Babulal Khimji Vs. Jayaben D. Kania and Another, AIR 1981 SC 1786 : (1981) 3 SCALE 1169 : (1981) 4 SCC 8 : (1982) 1 SCR 187 . This decision which was considered by the Hon''ble Supreme Court in a later Judgment in the case of Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another, (2003) 9 JT 218 : (2003) 10 SCALE 1 : (2004) 9 SCC 512 : (2003) 5 SCR 851 Supp , wherein it was held that the appeal is maintainable as an order refusing to reject the Plaint is in the category of a preliminary Judgment. In the light of the said decision, there is no controversy as regards the maintainability of this Appeal.

5. Heard Mr.R.Gandhi, learned Senior counsel assisted by Mr.M.Kamalanathan, learned counsel appearing for the appellants and Mr.P.B. Sampathkumar, learned counsel appearing for the respondents/plaintiffs.

6. In this Judgment, for the sake of convenience, parties are referred to as described in the Civil Suit.

7. The case of the plaintiffs is that their grand father Mr. Ayyasamy, father of the defendants 1 to 4 was the absolute owner of the property bearing No. 1, Dr.Radha Krishnan Salai, Kailasapuram, Chennai-4, having purchased the same by sale deed dated 16.07.1949 duly registered as Document No. 750 of 1949. It is stated that Ayyasamy died intestate on 09.04.1955 and thereafter, the defendants 1 to 4 along with the plaintiffs were residing in the same place. It is further stated that the first defendant and his family moved out of the said premises to have their own establishment. The Plaint does not however state during which period the first defendant moved out of the said premises. The plaintiffs claim that they never gave up their right of ownership of the land and were under the impression that the first defendant was in occupation and possession of the property as ''kartha'' of the Hindu Undivided Family (HUF) consisting of defendants 1 to 4 and the plaintiffs. The plaintiffs stated that they approached the first defendant during first week of February, 2000, seeking

permission to put up a superstructure in the vacant land abutting the superstructure occupied by the first defendant and were informed by the first defendant that they have no right over the said property and the defendants 1 to 4 have already disposed of the property in favour of the defendants 5 & 6 and they were furnished the photostat copy of the sale deed dated 03.01.1979, registered as Document No. 16/79. It is stated that the plaintiffs have verified the same from the Office of the Sub-Registrar, Mylapore. It is their further plea that the property has been disposed of when they were minors and without their knowledge. Thus, the plaintiffs claiming right of ownership over the said property, filed the Suit to declare the sale deed dated 03.01.1979, registered as Document No. 16/79 as null and void.

8. As the property had been transferred by the 5th and 6th defendants in favour of the 7th and 8th defendants vide sale deed dated 26.11.1982, duly registered as Document No. 917 of 1982, the plaintiffs have sought for a declaration to declare the said Sale Deed dated 26.11.1982 as null and void and not binding.

9. Written statement was filed by the 7th and 8th defendants questioning the plaintiffs locus standi to maintain the Suit by stating that they have no right or title over the suit property. It is stated that it is the admitted case of the plaintiffs that their paternal grand father and father of defendants 1 to 4, Mr. Ayyasamy, was the sole and absolute owner of the suit property being his self acquired property. Further, it is the admitted case of the plaintiffs that the said Mr. Ayyasamy lived along with his sons viz. Defendants 1 to 4 and after his demise, his wife Tmt.Ambujammal lived along with defendants 1 to 4 in the suit property, all of them in the capacity of Class-I heirs of the deceased Mr. Ayyasamy. The total extent of the property purchased by Mr. Ayyasamy was two grounds and 2040 sq.ft. i.e. 6840 sq.ft. however, an extent of 7653 sq.ft. was said to be in their enjoyment. Tmt.Ambujammal and the defendants 1 to 4 sold an extent of 4650 sq.ft in favour of defendants 5 & 6 by sale deed dated 03.01.1979, who in turn sold the same to the defendants 7 & 8 by a registered Sale Deed dated 26.11.1982. Therefore, the defendants 7& 8 contend that they are bona fide purchasers for valuable consideration. The balance 3003 sq.ft was retained by the legal heirs of deceased Ayyasamy and major portion out of the said extent was settled by them and that the plaintiffs were fully aware of all those transactions. It is further stated that the plaintiffs have chosen to challenge only the alienation in respect of the property sold to the defendants 5 & 6 and the alienation in respect of the remaining extent has not been questioned. Thus, the plaintiffs have waived their right over those transactions. The defendants 7 & 8 would state that the plaintiffs have acquiesced themselves that the alienation in respect of the remaining portion and hence are estopped from challenging the alienation by Tmt.Ambujammal and the defendants 1 to 4 in favour of the defendants 5 & 6 and consequently on the defendants 7 & 8. Therefore, it is stated that the Suit has to be dismissed in limini.

9.1. Without prejudice to the preliminary objections, on merits, it was contended that the defendants 2 to 4 on behalf of themselves and their minor children released their respective shares in favour of the first defendant by Release Deed dated 30.04.1979, in respect of an extent of 1541 sq.ft. and at that point of time, the first defendant was alive. Further, it is stated that on the same day i.e. 30.04.1979, the defendants 1 to 4 had settled a portion of the southern side of the property measuring about 262 sq.ft. in favour of their sister Mrs. Suseela and in the said Settlement Deed, it is mentioned that they are in possession and enjoyment of an extent of three grounds and 493 sq.ft (7693 sq.ft).

9.2. Likewise, by another Document dated 30.04.1979, defendants 1 to 3 released an extent of about 1200 sq.ft. in favour of the 4th defendant by registered Sale Deed dated 20.05.1991, sold the same to one S.Renuka Devi. Therefore, it is the contention of the defendants 7 & 8 that though three transactions were done on the same day i.e. on 30.04.1979, the plaintiffs have chosen to challenge only one of such transactions viz. the Release deed executed in favour of the first defendant by the defendants 2 to 4, consequently, the plaintiffs have no right to question the alienation in favour of defendants 5 & 6.

9.3. Further, it is submitted that though one of the Suit prayer was to declare the Release Deed registered as Document No. 770/1979 as null and void and not binding on the plaintiffs, there is no allegation in the plaint about the said transaction and the paragraphs dealing with the cause of action also does not state explicitly about such transaction. Therefore, it is stated that there is no cause of action for the plaintiffs to seek for a declaration to declare document No. 770/79 as null and void. The other allegation is that the first defendant was in occupation of the property as ''Kartha'' of HUF, has been denied to be false and frivolous and that the plaintiffs are guilty of suppression of material facts in respect of the other alienations done at the relevant point of time. Further, it is submitted that the plaintiffs have filed the Suit only in the year 2000 and sought permission to sue as indigent persons and even at the relevant point of time there were buildings in the estate left behind by late Mr. Ayyasamy. Further, it is stated that the allegations in paragraph No. 9 of the Plaint regarding the knowledge about the transactions are bald and vague, as on the date of filing of the Suit i.e. in the year 2000, the entire area was occupied by different people. It is further submitted that assuming without admitting the fact that there was a joint family consisting of Ambujammal and her sons (defendants 1 to 4), after the demise of Ayyasamy, his wife and sons alone were entitled to alienate or transfer the estate left behind by Ayyasamy as his Class-I heirs. Therefore, the sale effected in favour of defendants 5 & 6 is not hit by the provisions of the Hindu Succession Act 1956 or any other Act in force at the relevant point of time. Further, the allegation that the plaintiffs verified from the Sub-Registrar Office is vague and no entries have been furnished by the plaintiffs and the transaction occurred in the year 1979, the Suit ought to have been filed within three years and for the first time, the plaintiffs approached the Court only in the year 2000 with an Application seeking permission to sue as indigent person and the suit is barred by limitation.

9.4. Further it is submitted that the plaintiffs have given two schedules of property in the Plaint viz. schedule A & B. Schedule A consists of land and building measuring about 1541 sq.ft and Schedule B covering an extent of 4560 sq.ft. and there is no explanation as to the nature of relief the plaintiffs are seeking with respect to schedule A & schedule B properties and there is no certainty in the relief prayed for. Further it is submitted that the alienation in favour of Govindarajulu to an extent of 1244 sq.ft. and alienation in favour of Mrs. Suseela to an extent of 262 sq.ft. has not been questioned or challenged and therefore the plaintiffs are estopped from seeking any relief against the defendants 7 & 8. Thus, the defendants 7 & 8 contend that the plaintiffs attempt to set aside transaction after a lapse of 21 years is clearly barred by limitation. Further, the allegation that the property was a vacant site is absolutely false, as on the date when the plaintiffs filed an Application seeking permission to sue as indigent persons, there were buildings in the property. The defendants also have questioned the amount of Court fee paid more particularly with regard to the relief in paragraph No. 32 (e) of the Plaint. The defendants 7 & 8 would further contend that they have purchased the property with their hard earned money and they have put up construction and the plaintiffs waited till the completion of the construction and have come forward with the Suit with a view to harass the appellants/defendants and make unlawful and illegal gain and the Suit being vexatious, is liable to be dismissed with exemplary cost.

9.5. The defendants 7 & 9 (legal heirs of deceased 8th defendant), filed an Application in A.No. 3115 of 2011 under Order 15 Rule 1 CPC, to dismiss the Suit. In the affidavit filed in support of the Application, the 7th and 9th defendants after referring to the admitted case of the plaintiffs, stated that the property was purchased by the 7th and 8th defendants as early as on 26.11.1982, applied for planning permission on 05.01.2001 and completed the construction as on 07.05.2003 and that at the time when the plaintiffs filed the Application to sue as indigent persons, the defendants 1 to 4 had not only sold the property which was purchased by the defendants 7 & 8, but had entered into other transactions as well with other third parties which have not been questioned by the plaintiffs. Therefore, it is contended that the plaintiffs have acquiesced themselves with the sale effected in favour of the defendants 5 & 6 vide sale deed dated 03.01.1979, who in turn sold the property to the defendants 7 & 8 in the year 1982, have no locus standi to file the Suit in the year 2000. It was further contended that the suit property is the self acquired property of late Ayyasamy, the paternal grand father of the plaintiffs who died intestate in 1955 and the widow of Ayyasmy, Tmt.Ambujammal and the defendants 1 to 4 became the absolute owners of the property in the year 1955 and they have entered into various transactions and in particular, the transaction with the vendors of the defendants 7 & 8 during 1979. Further, it is submitted that on the date when the Plaint was presented and permission was sought for to sue as indigent persons, the youngest plaintiff was aged about 26 years, which means he was born in the year 1974 and attained majority in the year 1992.

Further, it is stated that in the Release Deed dated 30.04.1979, executed in favour of the first defendant by the defendants 2 & 4, it has been stated that the 5th and 6th plaintiffs were only four years in the year 1979 and they ought to have challenged the Sale Deed in favour of 5th and 6th defendants within three years of their attaining the age of majority i.e. between 1992 and 1995 and so far as the plaintiffs 1 to 4 are concerned, they lost their respective rights to sue much earlier that the year 1992. Therefore, it is stated that the plaintiffs are barred from seeking a relief to declare the sale deed dated 03.01.1979 and the consequential 13 sale deed dated 26.11.1982 as null and void as they have waived their legal right and there is no cause of action to maintain the Suit and the Suit is liable to be dismissed without going into the merits of the case. Further, it is stated that there are no triable issues involved in the Suit and therefore, prayed for dismissal of the suit.

10. The plaintiffs while resisting the said Application, filed a counter affidavit and denied the allegations regarding the completion of construction in the year 2003 and would state that they were not aware of the sale effected by their father in favour of the third parties and that the land was always vacant and that it is not necessary to state about the ancestral and joint family nucleolus in the cause of action paragraphs and consequently prayed for dismissal of the Application.

11. The learned single Judge accepted the fact that the age of the plaintiffs as given in the Plaint if calculated would show that the youngest plaintiff namely the 6th plaintiff, attained the age of majority in the year 1992 and the time limit for questioning the transaction would expire by 1995 and the plaintiffs have launched the proceedings only in the year 2000 by stating that they verified the records of the Sub-Registrar and that the transactions have taken place without joining them as parties and filed the Suit within three years from the date of knowledge. After accepting this factual position, the Court took note of the decisions of the Hon''ble Supreme Court in the cases of Ram Prakash Gupta Vs. Rajiv Kumar Gupta and Others, (2007) 11 JT 472 : (2008) 149 PLR 326 : (2007) 11 SCALE 549 : (2007) 10 SCC 59 : (2007) 10 SCR 520 ; Kamala and Others Vs. K.T. Eshwara Sa and Others, AIR 2008 SC 3174 : (2009) 1 CLR 743 : (2008) 7 SCALE 436 : (2008) 12 SCC 661 : (2009) AIRSCW 373 : (2008) AIRSCW 5364 : (2008) 4 Supreme 204 : (2008) 7 Supreme 125 and C. Natrajan Vs. Ashim Bai and Another, AIR 2008 SC 363 : (2007) 12 JT 295 : (2007) 12 SCALE 163 : (2007) 11 SCR 33 : (2007) AIRSCW 6953 : (2007) 7 Supreme 532 and observed that the decision to be under Article 59 or any other provisions of Limitation Act per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under Article 59 or any other Article stated in the schedule appended to the Limitation, without any evidence. Further, it was observed that since the decision to be reached on the applicability of the Limitation Act is harbouring on the evidence to be adduced by the parties on a separate issue to be framed therein, it cannot be decided in an Application under Order 7 Rule 1 CPC for the purpose of rejecting the Plaint. Further, it was pointed out that as regards acquiescence pleaded by the defendants and other

arguments for rejecting the Plaint, the same would depend upon the evidence to be adduced during the trial, since they are only triable issued to be decided on evidence.

12. After hearing the learned counsels for the parties and perusing the material placed on record and the reasons assigned by the learned single Judge, it is seen that the learned single Judge proceeded on the basis that the defendants 7 & 9 has sought for rejection of the Plaint under Order 7 Rule 11 CPC. However, the Application filed by the defendants was under Order 15 Rule 1 CPC. In terms of the said provision where at the first hearing of the Suit it appears that the parties are not at issue on any question of law or a fact, the Court may at once pronounce Judgment. Primarily the defendants 7 & 9 sought for dismissal of the Suit on the following grounds, viz.

(1) on the admitted facts, the Suit is barred by limitation;

(2) there is no cause of action to file Suit; and

(3) the Suit is liable to be rejected on the ground of the ground of acquiesce and estoppel.

13. The defendants 7 & 8 purchased the suit property in the year 1982 from the defendants 5 & 6 who had purchased the Suit property in the year 1979 by sale deed dated 03.01.1979 executed by the defendants 1 to 4. Thus, the Suit has been filed after a period of 26 years to declare the sale in favour of the defendants 7 & 8 as null and void. This factual position is not in dispute. Equally, it cannot be disputed that the period of limitation for questioning such transaction is three years.

14. The question that would arise is whether the Suit was filed within the period of limitation. The learned single Judge opined that to decide the question as to whether the Suit is barred by limitation, evidence has to be looked into. In our view, this may not be the case in all matters and facts of each case are germane. When an Application is filed to dismiss the Suit, the endeavour of the Court should be to examine the admitted facts and then to consider as to whether the parties should face trial to decide the question of limitation. The learned Judge in the impugned order has recorded the factual position that the Suit was filed much after the period of limitation had expired. This finding has not been questioned by the plaintiffs either by way of separate Appeal or in a Cross Appeal. At this state, we may note the observations made in the impugned order in this regard, which reads as follows:

"10..........No doubt, it is true that the ages were given in the plaint and on calculation of the ages of the plaintiffs, the youngest plaintiff namely 6th plaintiff attained the age of majority in the year 1992 and the time limit for questioning the transaction would expire by 1995...."

15. The above factual position requires no further evidence to be recorded, as it has been admitted and the same has been culled out from the plaint averments.

Thus, on the admitted facts, if the Court is convinced that a Judgment could be pronounced, it shall do so in terms of Order 15 Rule 1 CPC. In the opinion of the learned single Judge, the plaintiffs having stated that they have questioned the transaction after coming to know of the said fact, it would require evidence to be let in, which can be done only at the time of trial. In paragraph No. 10 of the plaint, it has been stated that the plaintiffs have verified the transactions with the official records of the Sub- Registrar, Mylapore and were utterly shocked with disbelief when they came to know that the said property in which the plaintiffs also have a right were disposed of even during their minority without their knowledge. The alleged date of verification in the Office of the Sub- Registrar, Mylapore, has not been mentioned in the Plaint. Therefore, from the admitted averments it has to be seen as to whether the Suit was within time. In fact such an exercise was done by the learned single Judge and it was recorded that from the age of the parties given in the Plaint, the youngest plaintiff namely the 6th plaintiff, attained the age of majority in the year 1992 and the time limit for questioning the transaction expired by 1995. This finding is more than sufficient to hold that on the date when the plaintiffs sought permission to sue as indigent persons i.e. in the year 2000, the Suit was hopelessly barred by limitation against all plaintiffs as the limitation for filing the Suit by the 6th plaintiff expired in 1995 and in respect of other plaintiffs it expired much earlier.

16. An argument was advanced by the learned counsel for the respondents/ plaintiffs that the word ''first hearing'' as mentioned in Order 15 Rule 1 CPC would mean the date on which the summons were served and the hearing of the Suit was fixed. This argument is stated to be rejected since the settled position is that the first hearing is the day when the Court applies its mind to the case and which would ordinarily be when either the issues are determined or evidence is taken.

17. In the instant case, an Application was taken out by the defendants 7 & 9 under Order 15 Rule 1 CPC and at that stage, the Court had to apply its mind as to whether the Suit could be disposed of in terms of Order 15 Rule 1 CPC. Thus, the admission of the plaintiffs as noticed by the learned single Judge is sufficient to pronounce a Judgment, dismissing the Suit. Further more, the admission with regard to the age of the plaintiffs is unequivocal and that fact has been accepted by the learned single Judge and there can be no dispute as regards the factual position as it is culled out from the Plaint averments. Thus, we are not persuaded to accept the reasons assigned by the learned single Judge for coming to the conclusion that on the given facts it would require evidence to be considered to decide the question of limitation. Accordingly, the first issue is answered in favour of the defendants/appellants.

18. The Hon''ble Supreme Court in Prem Singh and Others Vs. Birbal and Others, AIR 2006 SC 3608 : (2006) 5 JT 311 : (2006) 143 PLR 647 : (2006) 5 SCALE 191 : (2006) 5 SCC 353 : (2006) 1 SCR 692 Supp : (2006) AIRSCW 3595 : (2006) 4 Supreme 69 , considered the question as to whether Article 59 of the

Limitation Act would be attracted in a Suit filed for setting aside the sale deed. It was pointed out that Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are voidable transactions and when a suit is filed by the plaintiff for cancellation of a transaction, it would be governed by Article 59 of the Limitation Act. It was further pointed out that there is a presumption that a registered document is validly executed and therefore prima facie would be valid in law and the onus of proof thus would be on the person who seeks to rebut the presumption. Further, it was pointed out that if a deed was executed by the plaintiffs when he was a minor and it was void, he had two options to file a suit to get the property purportedly conveyed thereunder, could either file the suit within 12 years of the deed or within three years on attaining the age of majority and on the facts of the said case, the suit was held to be barred by limitation. The legal principle as enunciated by the Hon''ble Supreme Court would squarely apply to the facts of the present case, going solely by the facts as admitted in the Plaint. As already pointed out, the suit has been filed after 26 years after the transaction took place and on the date when the suit was filed in the year 2000, it was barred against all the plaintiffs including the 6th plaintiff, who was the youngest among the lot.

19. On the second and third issues as to whether there was cause of action to file the suit and whether the suit was liable to be rejected on the grounds of acquiescence and estoppel, the learned single Judge held that this also requires evidence to be gone into. Paragraph No. 30 of the suit deals with the cause of action for filing the suit and it is stated that the cause of action arose during first week of February 2000 when the plaintiffs approached the first defendant for permission to put up there own dwelling unit in the suit property on 24.03.2000, when the plaintiffs caused a Lawyer''s notice to all the defendants on various dates and when the notice was received by the defendants individually on 07.04.2000 and when the first defendant issued a reply notice to the counsel for the plaintiffs and subsequently.

20. We may point out that in the written statement filed by the 7th and 8th defendants, they have specifically denied the allegation that they received the suit notice. However, for the present we do not propose to go into the said controversy. Therefore, the only averment with regard to the cause of action for the suit is by stating that the plaintiffs approached the first defendant who is none other than the father of the plaintiffs 1 & 2 and it is stated that they wanted to put up construction.

21. It is to be noted that the transaction effected was by the first defendant in whose favour the defendants 2 to 4 executed a settlement deed. Apart from that there has been two other transactions in respect of the smaller extents in the same property executed by the defendants 2 to 4 which have not been questioned. The specific case of the defendants 7 & 8 is that they have purchased an extent of 4650 sq.ft. of land from the 5th and 6th defendants on

26.04.1982 and their vendors, defendants 5 & 6 had purchased the property on 03.01.1979. Thus, we have no hesitation to hold that the cause of action is absolutely vague and presumably to cover up the delay and to avoid the suit being thrown out on the ground of limitation. Yet, from the admitted averments in the plaint, the learned single Judge found that the suit was barred by limitation. Therefore, it has to be held that there was no cause of action for filing the suit in the year 2000, seeking to set aside the transactions which were done in the year 1979 / 1982.

22. As noticed above, there were other transactions in favour of third parties in respect of the same property and those transactions have not been questioned by the plaintiffs and therefore, it has to be held that they have acquiesced themselves of the fact that the defendants 1 to 4 and their mother (paternal grand mother of the plaintiffs) to deal with the property. Therefore, on this ground also the suit is liable to be dismissed.

23. We may hasten to add that is a settled legal position that in all cases of preliminary objection, the test is to see whether any of the relief prayed for could be granted to the party if the averments made in the petition are proved to be true and for the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the Court has to find out whether those averments disclose a cause of action or a triable issue as such and the Court cannot probe into the facts on the basis of the controversy raised in the counter.

24. We have referred to the admitted factual position which has been noticed and accepted by the learned single Judge and going by the admitted factual position, the suit is clearly barred by limitation and to decide this issue no evidence is required as we have gone by only the admitted facts culled out from the Plaint and recorded by the learned single Judge.

25. The learned single Judge referred to three decisions of the Hon''ble supreme Court in the cases of RAM PRAKASH GUPTA, KAMALA and C.NATARAJAN (referred supra) and all of which have been rendered considering the scope of order 7 Rule 11(d) CPC and how the Court has to construe such Application.

26. In terms of Order 7 Rule 11(d) CPC, the Plaint shall be rejected where the suit appears from the statement in the Plaint to be barred by any law. The scope of Rule 11 of Order 7 CPC has been explained in various decisions and the legal principle deducible are that, if the Plaint does not disclose the cause of action or is bared by law; can be rejected where the litigation was utterly vexatious and abuse of process of Court; if any one of the conditions mentioned under the Rule were found to exist, thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation and where the suit was instituted without proper authority. Thus, the provision of Order 7 Rule 11 PC being procedural is designed and aimed to prevent vexatious and frivolous litigation. The plaint is liable to be rejected on the ground of

limitation only where the suit appears from the statements in the plaint to be barred by any law and the law within the meaning of clause (d) of Order 7 Rule 11 CPC, shall include law of limitation as well.

27. Thus, considering the averments in the instant case and by considering as to whether the Plaint is liable to be rejected under clause (d) of Order 7 Rule 11, the only conclusion that could be arrived at is that the plaint was barred by limitation. Accordingly, the second and third issues are also answered in favour of the defendants/appellants.

28. For all the above reasons, the appellants are entitled to succeed and accordingly, the Appeal is allowed, the order passed in Application No. 3115 of 2011 in C.S. No. 1009 of 2005 dated 10.04.2012 is set aside. Consequently, Application No. 3115 of 2011 is allowed and the Suit is dismissed. No costs.