

IN THE COURT OF I ADDITIONAL DISTRICT JUDGE, TIRUVALLUR

**PRESENT: Thiru.S.GANAPATHISAMY, B.A., B.L.,
I Additional District Judge, Tiruvallur**

Wednesday, the 12th day of October 2022

I.A.No.3/2022

in

O.S.No.93/2022

1. V.Kapildev

2. R.Sridhar

3. R.Shyamala

... Petitioners / Defendants

Vs.

N.Dillibabu

... Respondent / Plaintiff

This Petition coming on 26.09.2022 before me for final hearing in the presence of Mr.R.Damodaran, learned counsel for the Petitioners / Defendants; M/s. M.V.Seshachari, R.S.Bharanivel Raaj, learned counsels for the Respondent / Plaintiff and upon hearing both side arguments; perusing the related records, and having stood over for consideration till this day, this Court delivers the following:-

ORDER

The petitioners / defendants have come forward with this application under Order 7 Rule 11 of CPC to reject the plaint on the ground of the suit is barred by limitation.

2. The averments of the affidavit filed in support of the application are briefly stated as follows :

The description of the suit property does not tally with the description found in the alleged sale deed dated 27.11.1951 in favour of Venkatesa Naidu. The filing of suit in O.S.No.67/2009 as against one Ramachandra Naidu and obtaining an ex parte decree as against him is clear abuse of process of law. Even at the time of the institution of the suit, the plaintiff was aware of the fact that Ramachandra Naidu, 2nd and 3rd defendants sold the suit property to the first defendant on 12.11.2007 itself.

His vendors got the property in a partition deed dated 19.04.1972 between Ramachandra Naidu and his brothers. The plaintiff did not question either the title of the first defendant or the title of his vendors or his lawfull possession till filing of this suit for more than 14 years. The fact that the respondent came to know of the purchase of the property by the first defendant only during the month of December 2021 is false.

The first defendant, after he purchased the property in 2007, put up a construction in 2008 itself and the premises are in occupation of tenants from then onwards. He has obtained electricity connection also for the premises and the house tax is also levied in his name. The boundary description shown in the

sale deed dated 12.11.2007 and the boundary description for the suit property are entirely different and the measurement also does not tally. Therefore, the relief sought for by the plaintiff is clearly barred by limitation.

Neither Article 65 or Article 59 of the Limitation Act would not come to rescue of the plaintiff. The limitation began to run from the date when the first defendant purchased the property. Only inorder to extract some amount from the first defendant, the plaintiff has filed this suit which is barred by limitation. Unless the plaint is rejected on this stage itself, the defendant will be forced to face the trial of the suit.

3. The averments of the counter filed by the respondent / plaintiff are briefly stated as follows:

The alleged falsity of the plaint averments is not a ground for rejection of plaint. The plaintiff was not aware of the alleged sale deed dated 12.11.2007 at the time of filing of the suit in O.S.No.67/2009. The defendant in O.S.No.67/2009 had not disclosed anything about the above sale deed in the above suit. The plaintiff came to know about the sale deed only in December 2021 only when the first defendant had illegally trespassed and occupied the suit property. The first defendant was not in possession and enjoyment of the suit property untill he illegally occupied the same during December 2021. The issue

whether the first defendant is in possession of the suit property from 2007 as claimed by him cannot be considered in this application for rejection of plaint.

The averments in the plaint alone have to be taken into consideration and the case of the defendants cannot be considered in the application for rejection of plaint. The alleged mismatch in the boundary description of the sale deed and the suit property are not relevant, as the first defendant had occupied the suit property on the basis of his alleged sale deed dated 12.11.2007 only. Therefore, the first defendant cannot project as if the suit property is the different from the property purchased by him as per sale deed dated 12.11.2007. As per Article 65 of the Limitation Act, time period starts to run only when the defendant's possession become adverse to that of the plaintiff. The plaintiff has filed the suit within the period of limitation. As per Article 59, the suit for seeking the relief of declaration is three years. The plaintiff came to know about the sale deed only in December 2021. He has got 12 years from December 2021 to seek the relief of recovery of possession and three years from the said date to claim declaration. The question of limitation is a mixed question of fact and law and the same cannot be adjudicated in this application for rejection of plaint. The respondent is employed in a well reputed job earning decent salary and there is no necessity for him to extract money. The petition is liable to be dismissed.

4. Both side heard.

5. The point for consideration in this application is whether the plaint is liable to be rejected on the ground of the relief is barred by limitation?.

6. While considering the application for rejection of plaint, the averments of the plaint are alone germane and the defence taken by the defendants in written statement is immaterial. Furthermore, at the time of consideration of the application for rejection of plaint, the averments of the plaint shall be taken as it stands without any addition or subtraction. Furthermore, the cause of action should be viewed from the angle of the plaintiff and not from the angle of the defendant. Where the plea of limitation is simplicitor without any intervention of the factual position and the plaint is ex facie barred by limitation, the plaint can be rejected on the ground of the suit is barred by limitation. Where some evidence is required to decide whether the suit is barred by limitation or not, it is a question of fact and law for which some evidence is required to prove whether the suit is barred by law or not.

7. The plaintiff has filed the main suit for the relief of declaration and recovery of possession and declaration that the registered sale deed dated 12.11.2007 executed by the 2nd and 3rd defendants along with his father Ramachandra Naidu in favour of first defendant is null and void. The plaintiff

has stated in the plaint that the plaintiff has become owner of the suit property and its larger extent of property by a registered Will dated 07.11.1990 executed by Venkatesulu Naidu in favour of the plaintiff and after conveyance of a portion of the property in the larger extent, the plaintiff has retained the suit property and he was in possession and enjoyment of the suit property.

8. It is the further contention of the plaintiff that the attempt of Ramachandra Naidu to interfere into the plaintiff's possession and enjoyment of the suit property, prompted the plaintiff to file a suit through his power agent in O.S.No.67/2009 for permanent injunction and the suit was decreed on 29.04.2009 and the first defendant trespassed into the suit property on 10.12.2021 on the strength of a fabricated sale deed dated 12.11.2007 executed by Ramachandra Naidu, 2nd and 3rd defendants in favour of the first defendant.

9. The plaintiff has stated in the plaint that he came to know about the sale deed dated 12.11.2007 only in December 2021, when the first defendant trespassed and occupied the suit property in December 2021. Therefore, the question as to whether the plaintiff came to know about the sale deed dated 12.11.2007 only during december 2021 or in 2007 itself, is a question of fact to be decided only on appreciation of oral and documentary evidence as may be produced by the parties. Therefore the question of limitation in this case is a

mixed question of fact and law.

10. Furthermore, it is the case of the plaintiff that even Ramachandra Naidu remained in ex parte in the earlier suit and had not disclosed about the sale deed in the earlier suit. Therefore, the case of the plaintiff cannot be thrown at threshold without affording him an opportunity to establish his knowledge of the sale deed dated 12.11.2007 only during December 2021. The application is devoid of merits.

11. In the result, the application is dismissed with costs.

Dictated by me to the Steno-Typist and transcribed by her in the computer, corrected and pronounced by me in the open Court on this the 12th day of October 2022.

Sd/S.GANAPATHISAMY
**I Additional District and Sessions Judge,
Tiruvallur**

Both side Witness & Exhibits:- Nil

Sd/S.GANAPATHISAMY
**I Additional District and Sessions Judge,
Tiruvallur**

Fair/Draft Order
I.A.No.3/2022
in O.S.No.93/2022 in
DD : 12/09/2022