

**IN THE COURT OF THE I ADDITIONAL DISTRICT AND SESSIONS
JUDGE, VELLORE, VELLORE DISTRICT.**

PRESENT: Tmt. J. Shanthi, B.Sc.,B.L.,
I Additional District and Sessions Judge,
Vellore.

Friday, the 23rd day of December, 2022

I.A.No.4/2022 in O.S.No.156/2019

1. Anju Nahar
2. Akshay Nahar
3. Thansingh Nahar

.... Petitioners/Defendants 1,2 &3

/vs/

1. M.G.Nakeeran
2. The Sub Registrar,
Gudiyatham SRO,
Vellore District.

.... Respondent/Plaintiff

.... Respondent/ 4th Defendant

This Interlocutory Application is coming on 15.12.2022 before this court for final hearing in the presence of Thiruvalargal S. Varadan and M.Vijay Jain, Advocates for the Petitioner and Tmt. R. Aparna, Advocate for the Respondent and on hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration till this day, this court doth delivered the following:-

ORDER

Petition filed by the Petitioners under Order 7, Rule 11 and Section 151 CPC to reject the plaint.

2. Brief averment in the affidavit:

The 2nd petitioner is the 2nd defendant in the above suit. The petitioners 1

and 3 are his parents. The 1st respondent has filed the above suit against the petitioners and the 2nd respondent for possessory declaration that purported sale deed executed by him in favour of petitioner and his mother as null and void and tainted with fraud misrepresentation and manipulation, contrary to Article 300A of the Constitution of India and for consequential permanent injunction. He has also filed an interim application for temporary injunction. The petitioners have filed a detailed written statement and counter. The petitioners have raised a valuable plea of the suit being barred by limitation and also raised another plea that the plaint should be rejected as per Order VII Rule 11 of CPC and requested this Court to take up this as a preliminary issue before taking evidence in para 17 of the written statement. The written statement copy was also served on the plaintiff/ 1st respondent. No prejudice will result to the respondent if this application is taken up before trying the suit. The balance of convenience is in our favour. The 2nd respondent is made a party to this application since he has been added as a party/ defendant in the suit. Hence the petition is to be allowed. Otherwise, the petitioner will be put to irreparable loss and hardship.

3. Brief averments in the Counter:

The 1st respondent is the plaintiff in the above suit. The 1st respondent deny each and every allegation putforth by the petitioners. The contention raised by the petitioners stating that the Sale Deed executed by the 1st respondent in favour of Anju Nahar and another is not null and void and it was not misrepresentation and manipulation and plaint prayer is not enforceable under

Article 300 A of the Constitution of India. The said article does not apply to the context of the case as Article 300 A stipulates only against the Government and the private parties and not against the individuals who has individual right on their own and can be agitated on the pleadings and defences taken by them in a given suit. Hence Article 300A of Constitution is in no way bar to file the suit. It is not barred by limitation as the petitioner has raised vital issue regarding the context of the alleged sale deed unless and untill it can be gone through by way of full fledged trial only as there are triable issues. The 1st respondent filed proof affidavit long ago and the petitioners in order to delay and drag on the proceedings knowing fully well that their defence is very weak has brought in a new defence which was never put to any litmus test. None of the provisions contemplated under Order 7, Rule 11 of C.P.C. applies in this petition as the petitioners intend to make written statement as part and parcel of this application. None of the pleadings go against what is stated by the 1st respondent in the plaint and being all aspects has to be separately tried by way of complete trial and cannot be circumvent in the guise of Order 7 Rule 11 of C.P.C. No balance of convenience is in their favour. It is only a mortgage deed and not a Sale Deed as the clauses contemplated under the sale deed is not fulfilled and for extraneous reasons the petitioners were harping upon the said sale deed in order to usurp the property. Viewed in any angle the petition filed by the petitioners cannot be entertained at this fag end of this trial. Hence, the petition is liable to be dismissed.

4. The Point for consideration is whether this petition for rejection of plaint is to be allowed, or not.

5. No oral evidence was let in by both sides.

6. Heard. Records perused.

POINT:

7. This petition was filed u/s Order 7 Rule 11 CPC to reject the plaint. According to the petitioners/defendants 1 to 3, the suit was filed by the 1st respondent/plaintiff against the petitioners and the 2nd respondent for possessory declaration that purported sale deed executed by him in favour of petitioners and his mother as null and void and tainted with fraud misrepresentation and manipulation, contrary to Article 300A of the Constitution of India and for consequential permanent injunction.

8. This Petition was filed by the Petitioners under Order 7, Rule 11 and Section 151 CPC to reject the plaint stating that the suit being barred by limitation since the sale deed executed in the year 2012.

9. The contention raised by the petitioners stating that the Sale Deed executed by the 1st respondent in favour of Anju Nahar and another is not null and void and there was no misrepresentation and manipulation and plaint prayer is not enforceable under Article 300 A which stipulates only against the Government and the private parties and not against the individuals who has individual right on their own and can be agitated on the pleadings and defences taken by them in a given suit. Hence it was argued that Article 300A of Constitution is in no way bar.

Regarding this issue a suit cannot be rejected. The pleadings and defences can be proved only by way of adducing evidence.

10. According to the respondents the suit is not barred by limitation. Eventhough it was stated in the petition that the suit is barred by limitation the reason is not stated in the petition. In what way the suit is barred is not stated in the petition. As the petitioners have raised vital issue regarding the context of the alleged sale deed unless and untill it can be gone through by way of full fledged trial it cannot be decided.

11. The 1st petitioner filed proof affidavit and the trial started. At that time this petition was filed. Further, this petition has been filed under Order VII Rule 11 CPC to reject the plaint. As far as Order VII Rule 11 is concerned, “Rejection of plaint— The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is under valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provision of Rule 9:

12. None of the provisions contemplated under Order 7, Rule 11 of C.P.C. applies in this petition as the petitioners intend to make written statement as part and parcel of this application.

13. Further whether it is a mortgage deed or Sale Deed is to be proved by way of adducing evidence by way of filing documents. No documents filed along with this petition. Period of limitation starts from the date of knowledge. It can be proved only through evidence and documents. Further the calculation days for the period of limitation is a mixed of facts. In case of mixed of fact and law arose the suit cannot be rejected. Whether the suit is maintainable can be decided only after trial. Hence, the petition is liable to be dismissed and the point is answered accordingly.

In the result the petition is dismissed. No cost.

Dictated by me to the Steno-typist, typed by her in computer, corrected and pronounced by me in the Open Court, this, the 23rd day of December, 2022.

**I Additional District and Sessions Judge,
Vellore.**