

K. Rajasekaran Vs. Vinothkumar and Others

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Court : Chennai

Decided On : Aug-23-2016

Judge : M.V. Muralidaran

Appeal No. : CRP(PD)No. 4209 of 2013 & M.P.No. 1 of 2013

Appellant : K. Rajasekaran

Respondent : Vinothkumar and Others

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the Fair and Decretal order dated 12.08.2013 in I.A.No.332 of 2012 in O.S.No.40 of 2006 on the file of Sub-Court, Gingee in allowing the said amendment application.)

1. The case of the petitioner is as stated below. The petitioner is the 2nd defendant and the 5th respondent is the 1st defendant in the suit in O.S.No.40 of 2006 on the file of the Sub-Court, Gingee and the respondents 1 to 4 are the minor plaintiffs represented by their mother/guardian Smt.Sheela. The petitioner and the 5th respondent are the brothers. The 5th respondent K.Anandan is the father of the respondents 1 to 4. The 5th respondent is the brother of the petitioner. The plaintiffs namely respondents 1 to 4 have filed civil suit in O.S.No.40 of 2006 on the file of Sub-Court, Gingee on 30.08.2006 through their mother / guardian Smt.Sheela against the petitioner and the 5th respondent, who are the defendants

1 and 2 seeking for the partition of the suit properties and they are entitled for 1/5th share each in the suit properties and separate possession of their alleged 1/5th share.

2. The case of the Plaintiffs 1 to 4 is as detailed below. The Petitioner, 5th Respondent, Nagarajan and Karunamoorthy are the four sons of one Kaliyamoorthy Naidu. After the marriage of the afore-said four sons of Kaliyamoorthy Naidu all the four sons were living separately with their respective families. After the death of the said Kaliyamoorthy Naidu the afore-said four sons partitioned their joint family properties under a registered partition deed dated 11.06.1996. In the said partition the 'D' schedule properties annexed to the said partition deed were allotted to the share of the said K.Anandan, who is the father of the plaintiffs in the suit.

3. The plaintiffs further state that the plaintiffs and their father K.Anandan were jointly enjoying the said 'D' schedule properties. The 1st Defendant K.Anandan all along addicted to drinks. He did not maintain the plaintiffs and their mother and used to beat his wife and he did not look after the bangle business and he was a spendthrift and he used to lead a wayward life. The plaintiffs hoped that the said K.Anandan will mend his activities in future and he will take care of the plaintiffs. But there was no change in the life of K.Anandan but he continued the same life style and ignored the plaintiffs and their mother.

4. The plaintiffs further allege that taking advantage of the said situation of the said K.Anandan, the 2nd Defendant with a bad intention created a forged document and obtained the registered sale deeds dated 31.05.1999 and 17.02.2000 in his name and thereafter a mortgage deed dated 02.11.1998 was also fraudulently obtained by the 2nd defendant namely the petitioner herein. There was no necessity to the said 1st Defendant / K.Anandan for obtaining loan or debt from the 2nd Defendant and the sale deeds dated 31.05.1999 and 17.02.2000 executed by the 1st Defendant on behalf of the minor plaintiffs are not valid in the eye of law.

5. Therefore, in the above circumstances, the plaintiffs have filed the above suit in O.S.No.40 of 2006, on the file of the Sub-Court, Gingee for partition of suit

properties. In the plaint, the plaintiffs have alleged that the said sale deeds dated 31.05.1999 and 17.02.2000 executed by the 1st defendant in favour of the 2nd defendant are not valid in the eye of law and therefore, there was no necessity for them to make a prayer for challenging the said sale deeds in the said civil suit, since the plaintiffs 1 to 4 were minors at the time of execution of sale deeds and the same will not bind the plaintiffs. Apart from this, the plaintiffs have also contended in the plaint that no necessity arose for seeking the relief for setting aside the afore-said two sale deeds and the question of value of the above two sale deeds also would not arise and hence they did not value the suit under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act and there is no necessity to pay the Court fee for the said value.

6. On issuance of the summons in the above suit, petitioner herein appeared through his counsel and filed his written-statement and raised points that unless the plaintiffs seek the prayer of setting aside the sale deeds and value the two sale deeds, the suit itself is not maintainable.

7. Though originally the suit was filed on 30.08.2006, but on 18.12.2012 the plaintiffs have filed I.A.No.332 of 2012 seeking for the amendment of the plaint for incorporating the prayer for setting aside the above two sale deeds dated 31.05.1999 and 17.02.2000. For the afore-said application in I.A.No.332 of 2012, petitioner herein has filed his detailed counter and additional counter by stating that the plaintiffs 1 to 4 ought to have prayed for the said relief in the plaint when it was presented before the Court on 30.08.2006 itself or within 3 years after attaining majority. The said application is filed 6 years after filing the suit.

8. Apart from this, the case of the petitioner is that the above two sale deeds were executed by the 1st defendant in his capacity as Kartha of the Joint family and guardian of the minor plaintiffs 1 to 4 and the plaintiffs 1 to 4 are eonimine parties to the above two sale deeds and therefore, the plaintiffs 1 to 4 cannot question the afore-said alienations. Therefore, the plaintiffs 1 to 4 ought to have prayed for the relief of setting aside the afore-said two sale deeds in the plaint itself dated 30.08.2006. The petitioner further states that at the time of filing the suit, the 1st plaintiff namely Vinothkumar was 17 years and he had attained majority during the

year 2007. Therefore, the 1st plaintiff ought to have filed the said petition in I.A.No.332 of 2012 within a period of 3 years from the date of attaining majority i.e. on or before 2010. The said petition is filed only on 18.12.2012 i.e. after the lapse of 5 years period from the date of attaining majority so far as the 1st plaintiff is concerned. Therefore, the petition in I.A.No.332 of 2012 is not maintainable and it is liable to be dismissed. Therefore, the petitioner has filed his counter and additional counter by stating that the petition is barred by limitation and the same ought to have been dismissed. But, the trial Court erroneously allowed the said application in I.A.No.332 of 2012 on 12.08.2013. Challenging the order in I.A.No.332 of 2012 dated 12.08.2013, the present civil revision petition has been filed by the petitioner / 2nd defendant.

9. Heard Mr.N.Jayabalan, learned counsel appearing for the petitioner and there is no representation on behalf of the respondents.

10. The case of the petitioner is that admittedly all the four plaintiffs are the sons of K.Anandan, who is the 1st defendant in the suit and the plaintiffs have filed the said suit for the partition without seeking prayer for setting aside the sale deeds dated 31.05.1999 and 17.02.2000.

11. The plaintiffs unless pray the Court for setting aside the sale deeds dated 31.05.1999 and 17.02.2000, the relief of partition of the suit schedule properties cannot be granted. At the time of filing the suit, the 1st plaintiff was aged about 17 years and he had attained majority in the year 2007 itself. If they really want to set aside the sale deeds and for praying for partition they ought to have filed the application for amendment by incorporating the prayer of setting aside the sale deeds dated 31.05.1999 and 17.02.2000 on or before 2010 itself. But, admittedly the petition is filed in the year 2012 i.e. on 18.12.2012 in I.A.No.332 of 2012. The learned counsel appearing for the petitioner has produced a judgment of this Court reported in 2003 2 LW 384 (Veni and 3 others Vs. Perumal and 2 others). In the said case, it is categorically stated that it is settled law that a suit for a declaration, to set aside an alienation of minor's property by the guardian filed more than 3 years after the attainment of majority, is barred under Article 60 of the Limitation Act. Even though the suit was filed within 3 years from the date of attainment of

majority by the younger brother, it is seen that after the 1st plaintiff became major, the 2nd defendant was the elder brother of the plaintiffs 3 and 4 and he would be the Manager of the family and he could give a valid discharge. The suit property was sold by the 2nd defendant's mother along with 3rd defendant, elder brother of the plaintiffs 2 and 3 and who was the Manager of the family. As the 2nd plaintiff has not filed the suit within 3 years, the younger brothers, who are the plaintiffs 3 and 4, could not also file the suit as they incur the disability under Section 7 of the Limitation Act. Section 7 of the Limitation Act reads as follows:

Disability of one of several persons:- Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability was ceased.

Explanation I:- This section applies to a discharge from every kind of liability, including a liability in respect of any immovable property.

Explanation II:- For the purposes of this section, the manager of a Hindu undivided family governed by the Mitakshara law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint family property.

12. Therefore, this Court also considered the order of the Full Bench of this Court in the case of Doraiswami Sirumadan Vs. Nondisami Saluvan (1913-25-MLJ-405 = ILR-32-Madras-118-FB), wherein on the date of the institution of the suit, the 1st plaintiff was 23 years old and the 2nd plaintiff was 20 years old. Their case was that the suit was not barred by limitation as it was brought within 3 years of the the 2nd plaintiff attaining the age of majority. But the Full Bench of this Court held that the claim being a joint claim and the suit having been brought more than 3 years after the attainment of majority by the elder brother (who was the Manager of the joint family, competent to give discharge) the claim was barred by limitation even in respect of the share of the younger brother, who had not yet completed 21

years. The facts and the principles laid down in the said case are squarely applicable to the case on hand.

13. In the present case, all the four sons of K.Anandan have filed the suit in the year 2006 and at the time of filing the suit, the 1st plaintiff was 17 years. But they have not sought for the prayer for setting aside the sale deeds dated 31.05.1999 and 17.02.2000. But, after attaining majority by the plaintiffs 1, 2 and 3 they filed the petition in I.A.No.332 of 2012 only on 18.12.2012 i.e. after five years. Therefore, both the cases are squarely applicable to this case also. It is an admitted fact that the claim being a joint claim and the petition in I.A.No.332 of 2012 was filed on 18.12.2012 on behalf of the plaintiffs 1 to 4 seeking for the relief of setting aside the two sale deeds dated 31.05.1999 and 17.02.2000 and the same was filed more than 3 years after the attainment of majority by the elder brother, who was the Manager of the joint family as per Section 7 of the Limitation Act. Hence, the claim is barred by limitation even in the respective shares of the younger brothers i.e., the plaintiffs 2, 3 and 4 and who had not yet completed the age of 21 years.

14. Both the cases cited supra by the petitioner that the 1st plaintiff is the Manager of the joint family and he would have filed the suit or the application in I.A.No.332 of 2012 within a period of 3 years from the date of the attaining majority. But, the case on hand, i.e. I.A.No.332 of 2012 is filed only after 5 years i.e. in the year 2012, whereas the original suit in O.S.No.40 of 2006 is filed in the year 2006 itself.

15. Section 60 of the Limitation Act reads as follows:-

PART IV-SUITS RELATING TO DECREES AND INSTRUMENTS

Description of suit	Period of limitation	Time from which period begins to run
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60. To set aside a transfer of property made by the guardian of a ward-(a) by the ward who has attained majority;(b) by the ward's legal representative-		
	Three years	When the ward attains majority.
	Three years	When the ward attains majority.
	Three years	When the ward dies.

16. Therefore, the plaintiffs have no right to file the above applications in I.A.No.332 of 2012 in O.S.No.40 of 2006 and the order of the learned Judge by allowing the petition is totally wrong. The learned Judge ought to have rejected the application in I.A.No.332 of 2012 instead of that she allowed the application, which is totally against the order passed in the above two judgments and also hit by Section 60 of the Limitation Act. Therefore, the order passed in I.A.332 of 2012 by the Subordinate Judge, Gingee, dated 12.08.2013 is liable to be set aside.

17. Accordingly, I am inclined to pass the following orders:

(a) The civil revision petition is allowed and the order passed in I.A.No.332 of 2012 dated 12.08.2013 is set aside and the trial Court is directed not to take the trial and not to continue the case as the suit is barred by limitation.

(b) Therefore, the entire plaintiffs' claim or right is rejected, as the plaintiffs' claim is not sustainable.

18. Hence, the Civil Revision Petition is allowed with the above terms. Consequently, connected miscellaneous petition is closed. No costs.

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