



C.R.P.(MD)No.2513 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.2513 of 2017

and

C.M.P.(MD)No.11803 of 2017

1. P.Ramasamy (Died)

2. Pitchaiammal

3. Thangamani

... Petitioners/
Defendants 1 to 3

(Memo filed in USR No.5308 dated 23.02.2022 is recorded as 1st petitioner died and 2 & 3 petitioners who are already on record are recorded as LRS of the deceased 1st petitioner vide Court order dated 10.03.2022 made in CRP(MD)No.2513 of 2017)

Vs.

1. Pappayee Ammal @ Periyammal

2. Saraswathi

3. Sekar @ Chandrasekaran

... 1 to 3 Respondents/
Plaintiffs

4. The District Collector
District Collectorate
Collectorate Post
Karur, Karur District



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5. The Thasildar

Office of Manmangalam Taluk
Manmangalam Post & Taluk
Karur District

6. Firka Surveyor (Vangal Firka)

Office of the Village Administrative Officer
Velur Road, Vangal Post
Manmangalam Taluk
and also at
Survey Section
Office of Manmangalam Taluk
Manmangalam, Karur District

7. The Inspector of Police

Vangal Police Station
Vangal & Post
Manmangalam Taluk
Karur District

8. The Sub-Inspector of Police

Vangal Police Station
Vangal & Post
Manmangalam Taluk
Karur District

... 4 to 8 Respondents/
4 to 8 Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the original suit in O.S.No.34 of 2017 on the file of the Additional District Munsif Court, Karur and strike off the same.

For Petitioners	: Mr.C.Vakeeswaran
For R1 to R3	: Mr.S.Deenadhayalan
For R4 to R8	: Mr.M.Senthil Ayyanar Government Advocate



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ORDER

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The present Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.34 of 2017 on the file of the Additional District Munsif Court, Karur.

2. The petitioners herein are the defendants 1 to 3, the respondents 1 to 3 herein are the plaintiffs, and the respondents 4 to 8 herein are the defendants 4 to 8 before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The learned counsel appearing for the defendants 1 to 3 would submit that the suit in O.S.No.34 of 2017 is a clear abuse of process of law, and that the same is a re-litigation, as the suit filed in O.S.No.804 of 2002 between the same parties, in respect of the same properties, and also in respect of the declaration of the sale deed dated 06.08.1993, which is bound by Article 56 of the Limitation Act.



5. Per contra, the learned counsel appearing for the plaintiffs would submit that, though they moved a suit at a later point of time i.e., after 3 years from the date, when they first came to know about the document viz., sale deed dated 06.08.1993, against which a declaration is sought, the suit is maintainable, and also it is the submission of the learned counsel appearing for the plaintiffs that notwithstanding the maintainability of the relief of declaration on account of limitation, the very revision petition, in respect of the other relief qua injunction cannot be sustained, as the impugned suit involves question of law and facts. Hence, he prayed to dismiss the instant revision petition.

6. I have given my anxious consideration to either side submissions.

7. The sum and substance of the submissions of the learned counsel appearing for the defendants 1 to 3 is that, the first prayer in O.S.No.34 of 2017 qua the declaration against the sale deed dated 06.08.1993, in respect of B schedule property, as null and void is hit by Article 56 of the Limitation Act. For ready reference the Article 56 of the Limitation Act is extracted hereunder:



Section	Description of suit	Period of limitation	Time from which period begins to run
56.	To declare the forgery of an instrument issued or registered.	Three years	When the issue or registration becomes known to the plaintiff.

8. According to the Article 56 of the Limitation Act, cause of action to file suit arose within 3 years, when the right to sue accrues, qua from the date of knowledge. Apparently, on the face of it, the 3 years period ends on 06.08.1996. But after careful perusal of the Article, it gives liberty to the plaintiffs to move suit within 3 years from the date when the registration becomes known to the plaintiffs. However, this Court, while carefully reading the plaint, finds that, in none of the place, the plaintiffs have pleaded about, as to when they came to know about the existence of the sale deed dated 06.08.1993. Therefore, it is apparent that they were aware about the existence of the document from the date of the inception. That is why they did not mention about any date for their knowledge, in their plaint.

9. Hence, as rightly submitted by the learned counsel appearing for the defendants 1 to 3, on the face of it, the first prayer in O.S.No.34 of 2017 is hit by Article 56 of the Limitation Act.



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10. Coming to the prayers 2 and 3 qua in respect of the permanent injunction against A and B schedule properties, the learned counsel appearing for the defendants 1 to 3 would invite the attention of this Court in respect of the decree passed in O.S.No.804 of 2002, which is filed along with additional typed set of papers. This Court perused the decree passed in O.S.No.804 of 2002. From the careful perusal of the same, the said suit was instituted by one Ramasamy, who is none other than the first defendant in the suit in O.S.No.34 of 2017, against Pappayee Ammal, Shanmuga Sundaram, Chandrasekaran and Saraswathi. Among them, admittedly, Pappayee Ammal, Saraswathi and Chandrasekaran are the plaintiffs in O.S.No.34 of 2017. Therefore, this Court is satisfied that the earlier suit in O.S.No.804 of 2002 was between the same parties. Lastly, the Court has perused the description of the property in both the suits. Admittedly, the description of property of both the suit are one and same. Though in the suit in O.S.No.34 of 2017, they have arrived at as A and B schedule properties, the 'B' schedule property is only a right to draw water. But both A and B schedule properties of O.S.No.34 of 2017 were shown as single suit property in O.S.No.804 of 2002. Therefore, it is apparent and obvious that the suit in O.S.No.804 of



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2002, and the suit in O.S.No.34 of 2017 are between the same parties and in respect of the same properties.

11. At this juncture, for ready reference this Court deems it appropriate to extract the decree passed in O.S.No.804 of 2002 as follows:

“1. தாவா சொத்தில் வாதி கொண்டிருக்கும் அமைதியான சுவாதீனத்திலும், தூடுப்பிலும், பிரதிவாதிகளோ, அவர்களது ஆட்களோ, அல்லது அவர்கள் தரப்பில் வேர் எவரேனும், தலையிட்டு இடைஞ்சல் செய்யக் கூடாது என்ற தடை செய்து வாதிக்கு நிரந்தர உறுத்துக் கட்டளை பரிகாரம் வழங்கி உத்திரவிடப்படுகிறது.

2. பிரதிவாதி வாதிக்கு தாவா செலவு தொகை ரூ.712/- ஐ கொடுக்க உத்திரவிடப்படுகிறது.

சொத்துவிபரம்

கருர்.ரி.டி., ஜாயின்ட் 2 சப்.ரி.டி., கருர் தாலுக்கா, குப்புச்சிபாளையம் கிராமம் அ.பு.ச. 535 நெ. ஏ.7.87ல் நல்லப்பன் பூமிக்கு கிழக்கு, சந்திரசேகரன் பூமிக்கு வடக்கு, பாப்பாயி அம்மாள் பூமிக்கு மேற்கு, கிழமேல் ரோட்டிற்கும் தெற்கு, தென் மத்தியில் ஏ.1.00 இந்த விஸ்தீர்ணமுள்ள பூமியும், மேற்படி பூமியின் கீழ்புறத்திலும் மேல்புறத்திலும் தென்வடல் வரிசையாக உள்ள தென்னை மரங்கள் மற்றும் கன்றுகள், சாலைக்



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கொட்டகை, மின் இணைப்பு 566 சகிதமும், மேற்படி பூமியில் நடுப்புறமுள்ள கிணற்றில் பங்குப்படி 4ல் 1 பங்கு பாத்தியமும், மேற்படி மேற்படி கிணற்றில் அமைந்துள்ள 5 எச்.பி. மின் மோட்டார் பம்ப் செட் செட்டிலும் 4ல் 1 பங்கு பாத்தியமும், மேற்படி கிணர் ஜலத்தை மேற்படி மின் மோட்டார் மூலம் தண்ணீர் இறைத்து பாய்ச்சிக் கொள்ளும் பாத்தியமும், கவுர்கள் கண்ணார் துலை, பாசவ கவர் கண்ணார் வழியும் இறவைத் துலையிலிருந்து வரும் சிமென்ட் குழாய் மூலம் பாசவ பாத்தியமும், மேற்படி பூமிக்கு வடபுறம் நல்லகுமாரம்பாளையம், போகும் கிழமேல் ரோட்டிலிருந்து நேர் தெற்கில் நடந்து கொள்ளும் பாத்தியமும் கூடிய சகிதம் பூராவும், மேற்படி பூமிக்கு பாபுலர் முதலியார் வாய்க்கால் தண்ணீரையும் பாய்ச்சிக் கொள்ள வேண்டியது. எஸ்.எண்.361ல் வாதிக்கு பாத்தியப்பட்ட தனிக் கிணற்றிலிருந்து நல்லகுமாரம்பாளையம் போகும் ரோட்டு ஓரமாக பூமிக்கடியில் புதைக்கப்பட்டுள்ள பைப் லைன் மூலம் தண்ணீர் இறைத்து தாவா சொத்திற்கு பாய்ச்சப்பட்டு வரும் பாசனம் பாத்தியம் சகிதம்.□

12. As per the above decree, in favour of the first defendant in O.S.No.34 of 2017, a decree of injunction was granted, against the plaintiffs of the instant suit. When there is an injunction against the plaintiffs, as rightly submitted by the learned counsel appearing for the



defendants 1 to 3, they are not entitled to file any subsequent suit, with illusory cause of action by using ingenuity of pleadings. In this regard, the learned counsel appearing for the defendants 1 to 3 relied on the judgment of the Hon'ble Supreme Court reported in **1977 STPL 3190 SC (T.Arivandandam Vs. T.V.Satyapal and another)**. The relevant portion of the judgment is as follows:

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 1 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down



at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi

"It is dangerous to be too good."

6. The trial court in this case will remind itself of s. 35-A C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.

7. We regret the infliction of the ordeal upon the learned Judge of the High-Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile



disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy.”

13. The learned counsel appearing for the defendants 1 to 3 has also relied yet another judgment of the Hon'ble Supreme Court reported in ***(2012) 5 MLJ 601 (SC) (Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman Vs. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee)***, and the relevant portion of the judgment is as follows:

6) Since the appellant herein, as the first defendant before the trial Judge, filed application under Order VII Rule 11 of the Code for rejection of the plaint on the ground that it does not show any cause of action against him, at the foremost, it is useful to refer the relevant provision: Order VII Rule 11 of the Code:

“11. 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 undervalued, 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 returned 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:*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.” It is clear from the above that where the plaint does not disclose



a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order VII Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial. This position was explained by this Court in Saleem Bhai & Ors. vs. State of Maharashtra and Others, (2003) 1 SCC 557, in which, while considering Order VII Rule 11 of the Code, it was held as under:

“9. A perusal of Order VII Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII CPC, the averments



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in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.....” It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. vs. Ganesh Property (1998) 7 SCC 184 and Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and Others (2006) 3 SCC 100.



7) *It is also useful to refer the judgment in T.Arivandandam vs. T.V. Satyapal & Anr., (1977) 4 SCC 467, wherein while considering the very same provision, i.e. Order VII Rule 11 and the duty of the trial Court in considering such application, this Court has reminded the trial Judges with the following observation:*

“5. The learned Munsif must remember that if on a meaningful – for formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them.....” It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or



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material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code.”

.....

21) In the light of the above discussion, in view of the shortfall in the plaint averments, statutory provisions, namely, Order VII Rule 11, Rule 14(1) and Rule 14(2), Form Nos. 47 and 48 in Appendix A of the Code which are statutory in nature, we hold that the learned single Judge of the High Court has correctly concluded that in the absence of any cause of action shown as against the 1st defendant, the suit cannot be proceeded either for specific performance or for the recovery of money advanced which according to the plaintiff was given to the 2nd defendant in the suit and rightly rejected the plaint as against the 1st defendant. Unfortunately, the Division bench failed to consider all those relevant aspects and erroneously reversed the decision of the learned single Judge. We are unable to agree with the reasoning of the Division Bench of the High Court.”



14. From the careful reading of the above ratios, what emerges is that if on a meaningful and on a formal reading of the plaint, if the Court finds that the suit is manifestly vexatious, and meritless, such suit can be rejected at any point of time from the file of the Court. From the forgoing discussion, the prayer in respect of the declaration is barred by limitation under Article 56 of the Limitation Act.

15. Similarly, the 2nd and 3rd relief, namely, injunction in respect of A and B schedule property has already been adjudicated by the Court below in O.S.No.804 of 2002. Wherein as stated supra, the first defendant P.Ramasamy was granted injunction against the plaintiffs. Therefore, after suffered decree, without referring about any of the earlier suit, filing a new suit for the same relief, would indubitably abuse of process of law. Hence, this Court is of the firm view that the suit in O.S.No.34 of 2017 is liable to be struck off. Even inspite of the above fact, if the defendant is permitted to contest the suit and to suffer the process of trial is against all cannons of law. Therefore, this Court deems it appropriate to strike off of the plaint in O.S.No.34 of 2017 from the file of the Additional District Munsif Court, Karur.



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16. In the result, this Civil Revision Petition stands **allowed** and the plaint in O.S.No.34 of 2017 pending in the file of the Additional District Munsif Court, Karur, is ordered to be struck off. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

19.09.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
csm

To

1. The Additional District Munsif Court,
Karur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN, J.

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ORDER MADE IN

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and

C.M.P.(MD)No.11803 of 2017

Dated : 19.09.2023