

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.10.2015

DELIVERED ON : 01.12.2015

CORAM:

The Hon'ble Mr.Justice S.MANIKUMAR
and
The Hon'ble Mr.Justice M.VENUGOPAL

O.S.A.No.296 of 2013

P.Govindasamy

... Appellant

Vs.

1.Manickam
2.Sathyanarayanan
Public Relations Officer,
The Chennai Silks.
3.Dr.S.Devendra Kumar
4.D.Jitesh
5.D.Chaitanya
6.S.Vimal Kumar
7.V.Leela
8.P.Gyanlata
9.R.Premalatha
10.R.Anil Kumar
11.R.Suni Kumar
12.R.Rajesh Kumar
13.R.Dinesh Kumar
14.Renu Bala
15.A.Usha
16.Kashmira
17.A.Deepak
18.V.Jatin
19.V.Nitin Kumar

... Respondents

Prayer: Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side r/w.Clause 15 of Letters Patent against the order dated 21.09.2012 in A.No.2589 of 2012 in C.S.14 of 2012.

For Appellant : Mr.V.Vijaya Sankar
(vide Court Order dated 26.08.2015)
for Mr.P.Govindasamy
(Party-in-Person)

For Respondent: Mr.Madhan Babu
for M/s.Satish Parasaran

J U D G M E N T

[Judgment of the Court was made by
M.VENUGOPAL, J.]

The Appellant/Plaintiff has filed the present Original Side Appeal as against the order dated 21.09.2012 in A.No.2589 of 2012 in C.S.No.14 of 2012 passed by the Learned Single Judge.

2.The Learned Single Judge while passing the common order on 21.09.2012 in C.S.No.14 of 2012 and A.No.2589 of 2012 and A.No.228 of 2012 at paragraph 13 had observed the following:

"... it is a fit case where no trial is contemplated without there being any disclosure of cause of action for trying the suit. Besides, the suit itself is barred by limitation. Under these circumstances, A.No.2589 of 2012 will stand allowed. The plaint in C.S.No.14 of 2012 stands rejected. In view of the rejection of the plaint, the question of issuing direction to furnish security in A.No.228 of 2012 does not arise. Hence, A.No.228 of 2012 stands dismissed ..."

3.Assailing the validity and legality of the order passed in A.No.2589 of 2012 in C.S.No.14 of 2012, the Learned counsel for the Appellant/Plaintiff urges before this Court that the order passed by the Learned Single Judge on 21.09.2012 in A.No.2589 of 2012 in C.S.No.14 of 2012 (Filed under Or.7 R.11 (d) of the Civil Procedure Code) suffers from material irregularities and illegalities in the eye of Law.

4.The Learned counsel for the Appellant/Plaintiff contends that the Learned Single Judge ought to have noted the averments contained in the plaint in C.S.No.14 of 2012 which are germane while considering the application for rejection of plaint under Or.7 R.11 of the Civil Procedure Code.

5.Expatiating his contention, the Learned counsel for the Appellant proceeds to take a plea that 'Cause of Action' is a bundle of actions and the same is to be culled out from the averments projected in the plaint. Further, the substance of the plaint ought to be looked into by a Court of Law and not the form. Moreover, on mere technicality, the plaint should not be rejected at the threshold by a Court of Law.

6.The Learned counsel for the Appellant submits that 'Collusion', and 'Fraud' can be found out only during the course of trial of the main case on evidence and therefore, the rejection of the plaint filed by the Appellant/Plaintiff is an improper one. Consequently, the impugned order of the Learned Single Judge bristles with 'perversity' and is liable to be set aside.

7. Yet another contention of the Appellant/Plaintiff is that the Learned Single Judge had failed to appreciate whether the averments made in the plaint in C.S.No.14 of 2012 discloses a plausible cause of action for filing the suit. Furthermore, whether the necessary parties or proper parties is an issue to be determined in the main suit on the basis of evidence to be adduced by both the parties to the suit at the time of trial of the case and the same cannot be decided in an application filed under Or.7 R.11 (a) & (d) of the Civil Procedure Code.

8. On behalf of the Appellant, it is represented before this Court that a Court of Law is not excepted to consider the probable defence that may be set up by a defendant in his written statement, while dealing with an application for rejection of plaint, especially, under Or.7 R.11 (d) of the Civil Procedure Code.

9. The Learned counsel for the Appellant/Plaintiff cites the decision of the Hon'ble Supreme Court Ramesh B.Desai and Others V. Bipin Vadilal Mehta and Others reported in 2006 (5) SCC at page 638 and at Special Page 639, whereby and whereunder it is observed and held as follows:

"In view of Rule 6 of the Companies (Court) Rules, the provisions of the Code of Civil Procedure will be applicable in the proceedings under the Companies Act, 1956.

A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained, which is entirely a question of fact. A Plea of limitation is a mixed question of law and fact. Therefore unless it becomes apparent from the reading of the company petition that the same is barred by limitation the petition cannot be rejected under Order 7 Rule 11(d) CPC.

CPC confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue (Para 13)

Major S.S.Khanna V. Brig F.J.Dillon (1964) 4 SCR 409 : AIR 1964 SC 497, relied on

Demurrer is an act of objecting or taking exception or a protest. It is a pleading by a party to a legal action that assumes the truth of the matter alleged by the opposite party and sets up that it is insufficient in law to sustain his claim or that there is some other defect on the face of the

pleadings constituting a legal reason why the opposite part should not be allowed to proceed further. (para 14)

The plea raised by the contesting respondents is in fact a plea of demurrer. The assertions in a plaint must be assumed to be true for the purpose of determining whether leave is liable to be revoked on the point of demurrer. The principle underlying Order 7 Rule 11(d) is no different. (paras 14 and 15)

The principle is well settled that in order to examine whether the plaint is barred by any law, as contemplated by Order 7 Rule 11 (d) CPC, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence. Applying the said principle, the plea raised by the contesting respondents that the company petition was barred by limitation has to be examined by looking into the averments made in the company petition alone and any affidavit filed in reply to the company petition or the contents of the affidavit filed in support of Company Application No.113 of 1995 filed by the respondents seeking dismissal of the company petition cannot at all be looked into."

10. He also relies on the decision of the Hon'ble Supreme Court Prem Lala Nahata and another V. Chandi Prasad Sikaria reported in 2007 (3) CTC 101 and at special pages 106 & 107 wherein at paragraphs 8 & 11, it is observed as under:

" 8. But it is a different question whether a Suit which may be bad for misjoinder of parties or misjoinder of causes of action, is Suit barred by law in terms of Order 7, Rule 11(D) of the Code. The Code of Civil Procedure as its preamble indicates, is an Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature. No doubt it also deals with certain substantive rights. But as the preamble vouchsafes, the object essentially is to consolidate the law relating to Civil Procedure. The very object of consolidation is to collect the law bearing upon the particular object and in bringing it upto date. A consolidating Act is to be construed by examining the language of such a statute and by giving it its natural meaning uninfluenced by considerations derived from the previous state of law.

11. Thus, in a case where a plaint suffers from the defect of misjoinder of parties or misjoinder of

causes of action either in terms of Order 1, Rule 1 and Order 1, Rule 3 on the one hand, or Order 2, Rule 3 on the other, the Code itself indicates that the perceived defect does not make the Suit one barred by law or liable to rejection. This is clear from Rules 3-A, 4 and 5 of Order 1 of the Code, and this is emphasised by Rule 9 of Order 1 of the code which provides that no Suit shall be defeated by reason of non-joinder or misjoinder of parties and the Court may in either case deal with the matter in controversy so far as it regards the rights and interests of the parties actually before it. This is further emphasised by Rule 10 of Order 1, which enables the Court in appropriate circumstances to substitute or add any person as a plaintiff in a Suit. Order 2 deals with the framing of a Suit and Rule 3 provides that save as otherwise provided, a plaintiff may unite in the same Suit several causes of actions against the same defendant and any plaintiffs having causes of actions in which they are jointly interested against the same defendant may unite such cases of action in the same Suit. Rule 6 enables the Court to order separate trials even in a case of misjoinder of causes of action in a plaint filed."

11.The Learned counsel for the Appellant brings it to the notice of this Court, the decision of the Hon'ble Supreme Court in Ram Prakash Gupta V. Rajiv Kumar Gupta and Others reported in 2007 (10) SCC at page 59 and at special page 61 wherein, it is observed and held as follows:

"Order 7 Rule 11(D) CPC makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the court to verify the entire plaint. Before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d) CPC it is but proper to verify the entire plaint averments. While deciding the application under Order 7 Rule 11 CPC, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read.

12.Also, in the aforesaid decision at pages 66 to 68, wherein at paragraphs 20 & 21, it is observed and held as follows:

"20. For our purpose, clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the Court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the Court to verify the entire plaint. Order VII Rule 12 mandates where a plaint is rejected, the Court has to record the order to that effect with the reasons for such order. Inasmuch as the learned trial Judge rejected the plaint only on the ground of limitation, it is useful to refer the averments relating to the same. Learned counsel appearing for the appellant, by taking us through the entire plaint, submitted that inasmuch as sufficient materials are available in the plaint, it is proper on the part of the trial Court to decide the suit on merits and not justified in rejecting the plaint that too after the evidence of the plaintiff. In the light of the assertion of the counsel for the appellant, we carefully verified the plaint averments. In paragraph 5, the appellant/plaintiff has specifically stated that he is a handicapped person from the beginning and it is difficult for him to move about freely. The following averments in the plaint are relevant to answer the point determined in this appeal:

"a) That without any intimation to the Plaintiff, said Rajeev Kumar Gupta got decreed the said suit. It seems that the said Rajeev Kumar Gupta in collusion with his father Shri Inder Prakash Gupta produced some-one-else under the pretext of Shri Ram Prakash Gupta, the present Plaintiff in the court and got the said decree in his favour on the said false pretext by playing a fraud upon the Plaintiff as well as upon the court. The Plaintiff never appeared in the above said cases before the High Court nor ever made any statement to the effect that the suit of the Plaintiff may/might be decreed and as such the judgment and decree dated 05.02.1976 passed in the above said suit No. 183/74 entitled as Rajeev Kumar vs. Ram Prakash Gupta is totally false, baseless, nullity and void in the eyes of law and is not at all binding upon the Plaintiff and the same has been procured by fraud and mis-representation as submitted above."

"b) That the Plaintiff came to know for the first time about the passing of the above said decree in favour of said Rajeev Kumar Gupta by the High Court of Delhi, in the above said suit No. 183/74 in the month of October, 1986. It is submitted that Shri Inder Prakash Gupta, the elder brother of the Plaintiff died at Delhi in the month of September,

1986 and after his death Shri Rajeev Kumar Gupta asked the Plaintiff to give first floor portion of the above building No. 8, Nizamuddin Basti to them and alleged that there was a High Court judgment in their favour. However, no particulars of the said judgment were given at that time by any of the Defendants, and therefore, the Plaintiff could not take any action at that time."

"c) That the said tenant M/s Aseema Architect also stopped payment of rent from the year 1985 and perhaps on the instructions or at the instance of said Indra Prakash Gupta, the elder brother of the Plaintiff, he deposited the rent from July, 1985 to March, 1986 in the court of Rent Controller, Delhi. However, after the death of Shri Inder Prakash Gupta, the above said tenant refused to pay the rent and ultimately he filed a inter-pleader suit being suit No. 424/89 entitled as Aseema Architect versus Ram Prakash alleging therein that there is a bonafide dispute about the person/s to whom the rent is payable. In fact, the said suit was and is not maintainable because admittedly the said tenant took the above said premises from the Plaintiff and he is stopped from denying the title of the Plaintiff under Section 116 of the Indian Evidence Act and for other reasons also."

"d) That in any case, it is submitted that as on one of the dates, the Plaintiff could not appear because of his illness, the learned trial Court proceeded ex-parte and decreed the suit ex-parte in favour of said Shri Rajeev Kumar Gupta. It is submitted that the full details of the above said judgment were given by the said Rajeev Kumar in the said court as the copy of the said judgment of the High Court was filed therein and thereafter taking the details from the same, the High Court's file was inspected and the malafide motives and designs of the Defendants came to light and, therefore, the present suit is being filed at the earliest possible challenging the said judgment and the decree of the High Court of Delhi."

As observed earlier, before passing an order in an application filed for rejection of the plaint under Order VII Rule 11(d), it is but proper to verify the entire plaint averments. The abovementioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No.424 of 1989 titled Assema Architect vs. Ram Prakash was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for declaration and in alternative for possession. It is not in dispute that as per article 59 of the Limitation Act, 1963, a suit

ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed by the High Court. While deciding the application under Order VII Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial Court as well as the High Court failed to advert to the relevant averments as stated in the plaint.

13.He also draws the attention of this Court to the decision of the Hon'ble Supreme Court V.Guru Raj Reddy Rep. by GPA Laxmi Narayan Reddy and Another V. P.Neeradha Reddy and Others etc., reported in (2015) 2 MLJ 377 Supreme Court Cases at Page 377 and at Special Page 378 whereby and whereunder, it is observed as under:

"It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order VII rule 11 the stand of the defendants in the written statement would be altogether irrelevant. (Paras 5 and 6)

Averments made in the plaint will have to be accepted as correct for the purposes of consideration of the application under Order VII Rule 11 filed by the defendants Nos.1 and 2. If that be so, the averments in the plaint would not disclose that either of the suits is barred by limitation so as to justify rejection of the plaint under Order VII rule 11 of the CPC. The suits in question were not filed for recovery of any property held in benami by the defendants. Rather the suit was for declaration of plaintiffs' title and for recovery of possession from the defendants, as already noted."

14.The Learned counsel for the Appellant seeks in aid of the decision of the Hon'ble Supreme Court P.Sarathy V. State Bank of India reported in AIR 2000 SC 2023 (1) wherein it is observed and held as follows:

"S.14 of the Limitation Act does not speak of a "Civil Court" but speaks only of a "Court". It is not necessary that the Court spoken of in Section 14 should be a "Civil Court". Any Authority or Tribunal having the trappings of a court would be a "Court" within the meaning of this Section (Para 12)

The Deputy Commissioner of Labour (Appeals), which is Authority constituted under the Tamilnadu Shops and Establishments Act, 1947 has the jurisdiction to adjudicate upon an order by which the services of an employee are terminated. He has the jurisdiction to decide whether the order of dismissal, passed by the employer, was valid or it was passed in violation of any statutory rules or principles of natural justice. Under Section 41(3) of Tamilnadu Shops and Establishments Act the order passed by him is binding on the employer as also on the employee. Thus, the Deputy Commissioner of Labour (Appeals) may not be a "Civil Court" within the meaning of Section 14 of the Limitation Act and the proceedings pending before him were civil proceedings. The entire period of time from the date of institution of the departmental appeal as also the period from the date of institution of the appeal under Section 41(12) before the Deputy Commissioner of Labour (Appeals) till it was dismissed will, therefore, have to be excluded for computing the period of limitation for filing the suit for a declaration that the removal of the appellant was illegal, ultra vires and invalid. (Paras 9,15)

15. Conversely, the Learned counsel for the Respondents 1 & 2/Applicants/Defendants 1 & 2 supported the order of the Learned Single Judge in allowing A.No.2589 of 2012 [filed by them under Or.7 R.11 (a) & (d) of the Civil Procedure Code] by submitting that the impugned order is a reasonable, legitimate and legally tenable one based on the facts and attendant circumstances of the present case.

16. Further, the Learned counsel for the Respondents 1 and 2 brings it to the notice of this Court that para 11 of the plaint filed by the Appellant/Plaintiff does not disclose 'Cause of Action' and it does not refer to any specified dates but only makes a mention of the Appellant/Plaintiff issuing the legal notice to the Defendants demanding them to pay 1% of the sale consideration of brokerage each from the vendor and purchasers. Since the said averments at para 11 had not disclosed the 'Cause of Action' for filing the suit in C.S.No.14 of 2012 by the Appellant/Plaintiff, the order passed by the Learned Single Judge in rejecting the plaint for disclosure of Cause of Action and further, the observation made by the Learned Single Judge that the suit was barred by limitation, did not suffer from any legal infirmities.

17.The Learned counsel for the Respondents 1 & 2 relies on the decision of this Court V.P.Venkataswami Chettiar V. A.Mariasusai and 5 Others reported in 1997 (II) CTC 140 and at special page 142, wherein at paragraphs 7 & 8, it is observed as follows:

"7. At this junction, the learned counsel for the respondents sought to rely upon Section 17 of the Limitation Act and contended that since the executing court as well as the learned Single Judge of this Court has found that there was fraud, the limitation will begin to run only from the date on which the fraud was discovered. But in our view, there is no specific finding by the executing court or by the learned single Judge of this Court with reference to the fraud. It is also to be noticed that there is no specific plea in the petition filed by the first respondent with reference to Section 17 of the Limitation Act, There is also no pleading as to how it was committed and when he came to know about the fraud. In the petition for setting aside the court auction sale there is a simple statement that Deiveekalingam and Natarajalingam, the sons of the respondent colluded with the auction purchaser in order to cheat him and also to escape from the contractual obligation as per the sale agreement. Apart from this there is also an allegation that the price of the property sold would be Rs. 3 lakhs, but the auction purchaser has purchased the property for a sum of Rs. 50,010.

8.Section 17(1) of the Limitation Act, reads as follows:

"(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,

(a) the suit or application is based on the fraud of the defendant or respondent or his agent; or (b) the knowledge of the right or title upon which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or (c) the suit or application is for relief from the consequences of mistake; or (d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him;

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:- Except from stating that the sons of some respondent colluded with the auction purchaser to cheat him, the first respondent has not

shown how he was cheated or defrauded. Further, he has also not specifically stated when he discovered the fraud. In our view, the vague allegation of fraud is not sufficient to an applicant to get over the normal period of limitation prescribed under the Limitation Act, 1963. It is needless to state that in a case where exemption is claimed, the person claiming exemption must specifically plead and prove the facts which enable him to claim the exemption. In this case, the first respondent has miserably failed in this regard.

18. He also cites the decision of the Hon'ble Supreme Court in *Narane Ramamurthy V. Ravula Somasundaram and Others* reported in 2005 (6) SCC 614 and at special pages 615 & 616 whereby and whereunder, it is observed and held as under:

5. We also see no substance in the contention that the Suit was barred by limitation and that the Courts below should have decided the question of limitation. When limitation is the pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of course, it is the duty of the Court to decide limitation at the outset even in the absence of a plea. However, in cases where the question of limitation is a mixed question of fact and law and the Suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. In this case the question of limitation is intricately linked with the question whether the Agreement to Sell was entered into on behalf of all and whether possession was on behalf of all. It is also linked with the plea of adverse possession. Once on facts it has been found that the purchase was on behalf of all and that the possession was on behalf of all, then, in the absence of any open, hostile and overt act, there can be no adverse possession and the Suit would also not be barred by limitation. The only hostile act which could be shown was the advertisement issued in 1989. The Suit filed almost immediately thereafter.

6. We also see no substance in the contention that no consideration has flowed from the other Respondents. The Petitioner in his own evidence-in-chief admits that some amounts were paid jointly. This is clear from the fact that in respect of some payments he uses the word "I paid" but in respect of others he deposes "we paid". Even otherwise, the contention that no consideration has flowed is contrary to the terms of the Agreement. Also the evidence of D.W. 3 shows that in 1967, when the

Agreement to Sell was entered into, the Petitioner had no income and no monies. This also belies his claim that he alone had paid.

19.He draws the attention of this Court to the decision of the Hon'ble Supreme Court in Jugal Kishore V. Dhanno Devi (Dead) by Lrs. reported in (1973) 2 Supreme Court Cases at page 567 whereby at paragraph 15, it is observed as follows:

"15.In the appeal before us the plaintiff had offered to pay court fee on the application regarded as a plaint and the court had agreed that this may be done. There is nothing in Order 33 Civil Procedure Code which prevents an applicant from telling the court that though he had prayed for permission to sue in forma pauperis, he is now in possession of funds and would like to pay the Court fee on the application treating it as a plaint. Thereby, in effect the applicant withdraws his prayer for permission to sue as a pauper and requests the court not to apply the provisions of Order 33 to him. If the court agrees, and, generally in practice the court does agree, to treat the application as a plaint, in view of the fact that it contains all the necessary particulars required in a plaint, there could be no objection to the suit being treated as one instituted by, the presentation of a plaint. In the present case, as already stated, even before, the issue regarding pauperism came for trial and decision the plaintiff offered to pay the requisite fee on the application treating it as a plaint and the court agreed to that course. The plaintiff prayed for three months time to Pay the court fee by her application dated February 26, 1949 and the court acceded to that request and adjourned the proceedings from time to time, on several occasions. The plaintiff was finally did not attend the court on that day, nor was the court fee paid. Hence the court passed the order, dated July 18, 1949, expressly saying that the application to sue as a pauper is dismissed with costs.

20.That apart, he refers to the decision of the Hon'ble Supreme Court Hardesh Ores (P) Ltd., V. Hede and Company with Sociedade De Fomento Industrial (P) Ltd., V. Hede and Company reported in (2007) 5 SCC at page 614 and at special page 617, wherein it is held that

"Whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. The test is whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether

Order 7 Rule 11 (d) is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. (Para 25)

21.He seeks in aid of the decision of this Court in K.Kanakarathnam V. A.Perumal and Another reported in 1994 (2) MLJ at page 193 wherein it is observed as under:

"It is settled law that as per 0.6, rule 4, C.P.C., necessary and material facts should be pleaded in support of the case set up and that in the absence of pleadings, evidence if any, produced cannot be considered. The object of the rule is that in order to have a fair trial it is imperative that the party should state the essential material facts so that the other party may not be taken by surprise"

22.At this juncture, this Court pertinently points out that the Respondents 1 & 2/Defendants 1 & 2 as Petitioners in A.No.2589 of 2012, seeking a relief to reject the plaint in C.S.No.14 of 2012, had among other things averred that the four sale deeds dated 06.10.2006 referred to and relied upon by the Appellant/Plaintiff (First Respondent in A.No.2589 of 2012) for claiming brokerage allegedly payable by them were executed by the respective owners even as early as 06.10.2006 and that the period of limitation commenced from the said date and as such, the Appellant/First Respondent/Plaintiff ought to have filed the suit in C.S.No.14 of 2012 on or before 05.10.2009. But the suit was filed by the Appellant/Plaintiff/First Respondent only on 28.10.2010, which is barred by limitation and therefore, the plaint is directed to be rejected under Or.7 R.11(d) of the Civil Procedure Code.

23.In the Application A.No.2589 of 2012, the Respondents 1 & 2/Defendants 1 & 2 had also averred that the plaint documents Nos.2 to 5 namely, the Sale Deeds dated 06.10.2006, relied on by the Appellant/Plaintiff/First Respondent clearly shows that the four sale deeds were executed by the respective land owners in favour of M/s.T.C.S. Textiles Private Limited [a company incorporated under Company Act, 1956] whereas the First Respondent/First Applicant/First Defendant is the Proprietor of 'The Chennai Silks' and Second Respondent is its Public Relation Officer. Also, it was stated that the Appellant/Plaintiff had not made any averments disclosing any connection with the proprietorship concern, 'The Chennai Silks' with the purchaser company M/s.T.C.S. Textiles Private Limited. Therefore, the plaint in the suit does not disclose

any Cause of Action as against the Respondents 1 and 2/Defendants 1 & 2/Applicants in A.No.2589 of 2012 for making a claim in regard to payment of brokerage as claimed etc. Hence, the Respondents 1 & 2 had stated that the suit is liable to be rejected under Or.7 R.11 (a) of the Civil Procedure Code, for not disclosing any Cause of Action against the Respondents 1 & 2/Defendants 1 & 2/Applicants.

24.The Appellant/Plaintiff/First Respondent in his counter to A.No.2859 of 2012 had among other things stated that there was instrumental in negotiating and concluding the real estate deal. After negotiation, the Respondents 1 & 2/Defendants 1 & 2 started discussing about the sale of the property behind his back and executed the Sale Deed in the year 2006. After coming to know about the same, he issued legal notice and since the Respondents 1 & 2/Defendants 1 & 2 had not responded to his claim, he initiated criminal proceedings against them in CrI.O.P.No.19676 of 2009 before this Court and on 25.07.2009, while dismissing the petition, it was made clear that he can seek redressal of his grievance by approaching the Civil Court and as such, the suit filed by him is within the period of limitation.

25.The essence of the stand taken by the Appellant/Plaintiff/First Respondent is that he was instrumental to the sale of property at Pinchala Subramani Street, T.Nagar, Chennai-17 and that the Respondents 1 & 2/Defendants 1 & 2/Applicants had agreed to give one percent each as brokerage and had not fulfilled the obligation which forced him to file the present suit. Therefore, there is valid, plausible and tenable Cause of Action for the present suit and as such, the suit shall not be rejected. Also that, the Appellant/Plaintiff/First Respondent had sought permission to let in evidence after completion of pleading so as to enable him to prove that the suit framed by him is not barred by the Law of Limitation.

26.In this connection, it is to be pointed out that the Learned counsel for the Respondents 1 & 2/Defendants 1 & 2/Applicants submits that the Respondents 1 & 2/Defendants 1 & 2/Applicants are neither vendor nor purchasers and that there is lack of pleadings in this aspect in the plaint. In short, the stand of the Respondents 1 & 2/Defendants 1 & 2/Applicants is that the necessary particulars were in the plaint and as such, the plaint is bereft of vagueness.

27.The Learned counsel for the Appellant/Plaintiff submitted that the Appellant/Plaintiff filed the Application in A.No.6210 of 2010 on 05.11.2007 [under Or.33 R.1 of the Civil Procedure Code] seeking permission to file a suit as an indigent person and the same was allowed by this Court on 11.11.2011 and that the lack/want of necessary pleadings is a curable defect in Law.

28. It is to be borne in mind that the entire object of pleadings is to bring the parties to the issues involved and further, it was to prevent the issues being enlarged, which would prevent either party from knowing when the cause came on for trial, what were the real points to be discussed and decided. The purpose is to narrow the parties to definite issues and thereby to reduce expenses and delay, especially, in regard to the extent of testimony required on respective sides at the time of hearing the main suit. To achieve this goal, a plaintiff in his suit ought to state in his plaint all the facts which constitute his cause of action. It is needless to say that no amount of proof can substitute the pleadings which are the basis of a claim of the concerned party. A Plaintiff's pleadings in his plaint is to be filed under Or.7 of the Civil Procedure Code. Likewise, the Defendant's pleadings by way of their written statements is to be filed under Or.8 of the Civil Procedure Code.

29. In order to decide the exact nature of the action, the pleadings should be looked into in entirety. Stray or loose expression, which abound in inartistically prepared plaints must not be taken into consideration. By construing the pleadings in a given case, the real substance of the subject matter can be gathered deciphered by a Court of Law. In reality, the pleadings should receive a liberal construction and a Court of Law should not adopt a pedantic approach. No wonder, without pleadings, a relief cannot be given, even though the Court may not insist on strict precision in pleadings as per decision B.B. Bangarshettar V. ITT Pattnshetti [AIR 1988 Kant 174].

30. It is to be remembered that the power of Court to grant just and proper relief to a party without his asking is also recognised by the provisions of the Code of Civil Procedure, 1908 as per decision State of Gujarat V. S.C. Aggarwal [AIR 1998 Gujarat 193].

31. Continuing further, it is a well settled proposition that the pleadings in a suit cannot be segregated or dissected or even compartmentalised and then read. The right method of reading the pleadings is that it must be read in entirety, to ascertain their true import. To put it differently, the intention of a litigant is to be gathered basically from the tenor and spirit of his pleadings taken in a wholesome manner.

32. It cannot be forgotten that every pleadings must state material facts in a concise form, only the case on which the party pleading relies for his claim or defence, must be mentioned in a pleading and not the evidence by which they are to be established. Also, the dates, amounts and figures must be set out by them in figures and words. A good pleading must set out the facts which give rise to the right or created the duty. Of course, failure to state material facts may entail dismissal of the suit as per decision Hari Chand V. Daulat Ram

[AIR 1987 SC 94]. After all, the aim of pleading is to enable the opposite side to know the case which it has to face. To ensure a fair trial, it is essential that a party to mention the essential material facts, so that the other side may not be taken by surprise. In construing pleadings, no pedantic approach should be employed with a view to avoid judicial hyper technicalities or hair splitting. Ordinarily, proof without pleadings is of no use. Also, the points which are not pleaded are not to be taken. An evidence without pleadings is immaterial. The defects in pleadings could not be cured except by way of amendment in the pleadings of the trial Court. In terms of Or.6 R.4 of the Civil Procedure Code, if a party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue inference shall be stated in the pleadings. Or.6 R.17 speaks of 'Amendment of Pleadings'. As a general rule, leave to amendment will be granted so as to the real questions no issue between the parties to be raised on the pleadings. If the amendment will cause injury to the other side, the other side can be adequately compensated by means of costs. "Leave to Amendment" ought to be always granted unless the other side applying for the same was going to mala fide or that be blunder he had caused some injury to his opposite which could not be compensated or otherwise as per decision Jai Jai Ram Manohar Lal V. National Building Material Supply, Gurgaon [AIR 1969 SC 1267]. An amendment ought not to be refused on technical grounds. The rules of procedure are intended to be a hand maid to the administration of justice and the parties should not be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure as per decision Sant Ram Agarwal V. Civil Judge, Mohanlal Ganj, Lucknow and others [AIR 1994 (All) 99].

33. It is true that a Court of Law has an obligation to reject the plaint, if any of the grounds envisaged under Or.7 R.11 of the Civil Procedure Code is attracted. But, if the plaint discloses a cause of action, the same cannot be rejected for the mere reason that in the opinion of the Judge, 'the plaintiff may not succeed'. A plea of 'Demurrer' viz., that the plaint does not disclose a cause of action can be taken only when on that, a plaintiff could be wholly non-suited. Likewise, a plaint cannot be rejected where there are numerous parties and the plaint shows a cause of action against one or more of them as per decision Balwant Singh V. State Bank of India, AIR 1976 (P & H) 316. If a plaint discloses a cause of action but the averments do not point that the suit is barred by any Law, that the defence cannot be looked into to reject the plaint. If a fraud is alleged, the principle that 'fraud vitiates everything' cannot be elongated in rejecting the plaint because of the simple reason that 'fraud' is a question of fact which is to be proved during the course of trial of the main case. To put it precisely, in Law, a 'piecemeal' reading of the plaint is impermissible. Contra reading of the plaint in whole is very much

permissible. As a matter of rule, whether the reliefs prayed for by a plaintiff would be granted on the facts pleaded and the evidence adduced is altogether a different proposition from the reliefs claimed. In fact, all the reliefs sought for may not be granted in favour of the litigant and the evidence produced by him. Also whether part of the relief could not be granted by a Court of Law is different from stating that no cause of action is shown or in view of the combined claim of reliefs, the jurisdiction is ousted. If material facts constituting the cause of action, may not be supplied later on after the expiry of limitation.

34.If on a meaningful reading of the plaint exhibits that the claim is meritless or vexatious, that in the sense of not disclosing a 'Right of Sue', a Court of Law should exercise its power under Or.7 R.11 of the Civil Procedure Code. Also, if by a clever drafting an illusory cause of action is focused in a plaint, by exercising power under Or.7 R.11 of the Civil Procedure Code, a Court of Law can pass appropriate orders at the earlier stage, in the considered view of this Court.

35.At this stage, it is worthwhile for this Court to cite the decision of the Hon'ble Supreme Court (in election dispute) Veerandra Nath Gautam V. Satpal Singh [AIR 2007 SC 581], whereby and whereunder at paragraph 33, it is observed and held as follows:

"33.A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise."

36.Undoubtedly, a rejection of plaint at the earlier stage may lead to serious consequences and may border on defeating the ends of justice. If a plaint establishes legally tenable and arguable points it ought not to be rejected in terms of Or.7 R.11 of the Civil Procedure Code as per decision Mahadeo Prasad Burnwal v. Atpendra Roy Choudhary [AIR 2007 (Jhar) 88].

37.Whether a plaintiff has a constitutional right or a legal right or any such right has been valued or otherwise, is

a matter to be determined in the suit and the same cannot be considered while dealing with an application for rejection of plaint under Or.7 R.11 of the Civil Procedure Code as opined by this Court. While exercising the power for rejection of plaint, a Court of Law is to look into the averments made in the plaint as they are, fail to establish the cause of action. In fact, in a plaint what is required to be shown by a plaintiff is a right to sue and failure to do so should necessarily result in rejection of plaint.

38. Coming to the aspect of a suit being barred by any law under Or.7 R.11 (d) of the Civil Procedure Code, it is to be pointed out that in a suit where it is seen from the averments set out in the plaint to be barred by law of limitation but the plaint is not rejected when presented, the Court may, in appropriate case, allow the plaint to be amended at the hearing as per decision *Gunnaji V. Makanji* [1910 (ILR) 34 Bom. 250]. Or.7 R.11 confers a duty on a Court to reject the plaint for non-disclosure of cause of action and it is not to be left to the event of an objection in this regard to be projected by a party. Ultimately, it is the prime duty of a Court of Law to find out if a plaint really discloses any cause of action or if the plaint is barred under provisions of any Law. For this purpose, it is the plaint only, which is to be seen for a decision under Or.7 R.11 of the Civil Procedure Code. If a plaintiff in the plaint avers that the suit was within the limitation as the cause of action arise on a particular date, the provisions of Or.7 R.11 (d) of the Civil Procedure Code cannot be attracted as per decision *Mohan Lal Sukhadia University V. Priya Soluman* [AIR 1999 (Raj) 102].

39. Of course, a plaint cannot be rejected for misjoinder of plaintiffs or misjoinder of causes of action. As a matter of fact, if the averments made in the plaint are not quite in tune with the provisions contained under Or.1 or Or.2 of the Civil Procedure Code regarding misjoinder of parties or causes of action, such defects cannot be a real impediment so as to attract the ingredients of Or.7 R.11 (d) of the Civil Procedure Code, in the considered opinion of this Court. If a Court of Law, concurs that the stand taken relating to misjoinder of plaintiffs, it would take steps in terms of the ingredients of Or.1 R.2 of the Civil Procedure Code by granting liberty to the plaintiff to elect. The question whether a suit is barred by limitation or not, would depend on the facts and circumstances of the given case.

40. Insofar as the Or.1 R.10(2) of the Civil Procedure Code is concerned, a Court of Law as the power to add or strike out parties at any stage of the proceedings even before framing of issues as per decision *Razia Begum V. Anwar Begum* [AIR 1958 SC 886]. It is trite law, a Court of Law has requisite power to add parties as necessary parties in the suit to enable the Court to effectively adjudicate the controversies involved. However, for exercising such power, a

Court of Law has to render a finding that a party is a necessary or proper party. Certainly adding of party would depend upon wide judicial discretion by a Court of Law which has to be exercised based on the facts and circumstances of the case. It is true that the plaintiff is a 'Dominus Litus' and he cannot be forced or coerced to sue a person against whom he does not claim any relief. The concept of 'Dominus Litus' is not to be overstretched in the matter of impleading parties, because of the reason that it is the primordial duty of a Court of Law to ensure that if to decide the real matter in dispute that a person is a necessary party, a Court can order such person to be impleaded. Suffice it for this Court to point out that 'Addition of Parties' is a matter of 'Discretion of Court'. Section 22 of the Limitation Act, 1963 provides that after filing of a suit, a party is substituted or added as a plaintiff or defendant, the date of substitution or addition is to be deemed, as regards that party as the date of institution. In fact, the language of Section 22 of the Limitation Act does not make any distinction between Or.1 R.10 (1) and Or.1 R.10(2) of the Civil Procedure Code and that Section applies also that when a new plaintiff or defendant is substituted after filing of the suit as per decision of the Hon'ble Supreme Court Ramprasad V. Vijayakumar [AIR 1967 SC 278].

41. One cannot lose sight of a very vital fact that the purpose of amendment of Or.6 R.17 are relating to 'Amendment of Pleadings' has brought out in the year 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial and to avoid surprises and the parties who have the adequate knowledge by other side case. If the trial has commenced in a given suit, it is difficult for any party to reconcile. In spite of due diligence, the party could not raise a plea in this regard, certainly, a Court of Law can determine the same. In the amendment of pleadings, a Court of Law is to see (i) whether an application for amendment is bona-fide or mala-fide and (ii) whether refusing the plea for amendment would in fact lead to plurality of litigation or lead to injustice. A plea of limitation being disputed should be made a subject matter of an issue after allowing the amendment as per decision AIR (2001) 2 SCC 472. The amendments to clarification and not to affect rights of the parties are to be allowed as per decision of the Hon'ble Supreme Court AIR 1964 SC Page 11. A case relating to amendment is to be decided on its own facts by applying the judicial precedents by governing the amendment of pleadings. Indeed, the power to amend the pleadings is to be exercised by a Court of Law for the ends of justice and to prevent the abuse of process of the Court. The 'Grant of Leave' to amend the pleadings ought to be the rule and refusal is exception. Moreover, pre-trial amendment should be allowed liberally to avoid plurality of pleadings. Although an amendment cannot be claimed as a matter of right under all circumstances, yet, the power to allow the amendment is wide

and can be exercised at any stage of the proceedings in the interest of justice as per decision of the Hon'ble Supreme Court 2006 (12) SCC 119. An amendment application which is vague and does not contain enough details may be rejected by a Court of Law. All amendments should be allowed which are necessary for resolving the genuine and real controversies in the suit. No person should suffer because of the technicalities of the law and the amendments should be allowed to reduce the litigation between the parties. An amendment which does not change the character of the case or is not barred by any of the provisions of law, would be allowed. Further, a pleadings can be amended to substantiate, elucidate and expand pre-existing fact already subsisting as per decision 1995 (1) MLJ 428, 432 (Mad).

42.As far as the present case is concerned, the Appellant/Plaintiff in the plaint, at paragraphs 5 to 11 had averred the following:-

"5.The Plaintiff states that in the course of his business dealings he came in contact with the third defendant who was acting on behalf of all other owners viz., defendants 4 to 19 of the property viz., situate at Pinjala Subramaniam Street, T.Nagar, Chennai - 600 017 measuring an extent of 10 grounds or thereabouts which was on the rear side of Chennai Silks located on South Usman Road. Since the plaintiff has been dealing with real estate properties, he gave the details and particulars of the property that is available for sale to defendants 1 and 2.

6. The plaintiff states that there were certain disputes between defendants 1 and 2 with the 3rd defendant and therefore the defendants were not meeting eye to eye and were not ready to negotiate and conclude the transaction for sale of the property. But however, due to the persistent and professional approach of the plaintiff, the plaintiff was able to negotiate on behalf of the defendants 1 & 2 with the 3rd defendant. The 3rd defendant was acting on behalf of the defendants 4 to 19 who are his relatives as he is one of the eldest male member of the family.

7. The plaintiff states that the defendants had initially agreed to give 2% service charges i.e., defendants 1 & 21% and the 3rd defendant 1% of the sale consideration as service charges or brokerage for facilitating the conclusion of the

transaction. Though the defendants promised to settle the brokerage to the plaintiff after ascertaining the views of other persons who are associated in the business, however, though the plaintiff had successfully negotiated the deal which culminated in the execution of the sale deeds dated 16.10.2006 and registered as Doc.Nos.2383 to 2386 of 2006 the defendants failed to come forward to pay the plaintiff for his services.

8. As per the trade practice, custom and usage, the plaintiff shall be entitled to 1% brokerage each from the vendor and the purchaser. Accordingly, after the transaction was concluded the plaintiff approached the defendants for his legally entitled claim. In fact, the plaintiff was repeatedly calling upon the defendants to settle his claim however the defendants treated the plaintiff with scant respect. This necessitated the plaintiff to issue a legal notice to the defendants calling upon the defendants to pay the commission. In reply to the legal notice sent by the plaintiff, the defendants 1 and 2 caused a reply notice dated 19.09.2007 repudiating the liability to pay the plaintiff who was instrumental for establishing the contact between the defendants 1 and 2 with the 3rd defendant. The plaintiff has been left in the lurch and the defendants treated the plaintiff as though he was an utter stranger and failed to recognize the efforts taken by him to conclude the transaction.

9. The plaintiff states that though he was instrumental in negotiating and concluding the real estate deal, the defendants started distancing themselves from the plaintiff and started discussing about the sale of property behind his back. In fact, the plaintiff was not even informed about the execution of the sale deeds and was not put on notice as and when the sale was conducted. In fact during the last two weeks of September 2006 the plaintiff was not keeping well due to advancing age and consequently could not follow it up with the defendants upon getting better the plaintiff approached the defendants to know the status of the transaction and when the deals would be executed. The plaintiff was kept in the dark and the defendants were evading him and gave evasive replies and conducted themselves in a manner which would

seem as though the deal is still in its infant stage. However, within 2-3 days of his meeting the defendants sale deeds were executed and registered on 06.10.2006. Even after the said date the plaintiff was approaching the defendants so as to conclude the deal, without knowing that the defendants had acted fraudulently behind his back and get the sale deeds executed and registered.

10. The plaintiff states that since the defendants did not pay the legitimate claim of the plaintiff, the plaintiff caused to legal notice dated 16.11.2009 to the defendants calling upon them to jointly and severally pay the real estate brokerage that he is entitled to. Though the defendants have received the legal notice, till date they have not replied to the same but however called the plaintiff for reaching an amicable settlement. The settlement did not fructify and the plaintiff has no other efficacious alternate remedy but to file the present suit for recovery of money i.e. brokerage along with the interest at 12% p.a. from the date of plaint till date of realization being the market practice.

11. That the cause of action for the above suit arose at T.Nagar, Chennai within the jurisdiction of this Hon'ble Court when the plaintiff met the defendants and negotiated on their behalf for the sale of the property situated at T.Nagar and the same was concluded because of the plaintiff's efforts subsequently when the defendants agreed to pay 1% brokerage each from the vendor and the purchaser and subsequently when the sale deed was executed without the plaintiff's knowledge, subsequently when the plaintiff came to know about the sale and initiated a criminal proceedings, lastly when the said proceedings leave was granted to approach the Civil Court subsequently when the plaintiff issued a legal notice dated 16.11.2009 calling upon the defendants to pay 1% of the sale consideration as brokerage each from the vendor and the purchaser and lastly when the notice was received by the defendants, subsequently when they had talk for settlement which fell through and lastly when the defendants did not come forward to settle the claim of the plaintiff."

43.A perusal of the plaint filed by the Appellant/Plaintiff shows that the Appellant/Plaintiff had issued a legal notice to the defendants on 08.09.2007 and the Respondents 1 and 2/Defendants 1 & 2/Applicants had issued a reply dated 19.09.2007. Even though at paragraph 11 of the plaint filed by the Appellant/Plaintiff had not referred to the date relating to cause of action but it had referred to the Respondents 1 & 2/Defendants 1 & 2 acceptance to pay 1% brokerage each from the vendor and purchasers etc. Also, it speaks of issuance of legal notice by the Appellant/Plaintiff to the Respondents 1 & 2/Defendants 1 & 2 and the subsequent talk of settlement which fell through etc. Only when the settlement had not fructified, the Appellant/Plaintiff had chosen to file the suit as an indigent person for recovery of sum of Rs.32,77,601.20 with future interest at 24% p.a. from the date of plaint till the date of recovery etc.

44.At this stage, on going through the averments set out by the Appellant/Plaintiff in the plaint in the main suit, this Court is of the considered view that the Appellant not pleaded evidence in the plaint but the plaint is required to contain a plain and concise statement of facts and circumstances constituting the plaintiff's cause of action. Indisputably, the time of 'accrual of cause of action' is to be found out from the plaint in entirety and a plaintiff cannot be tied down to the date mentioned by him in the plaint. Also that, whether the cause of action had arisen in a particular date, a question of fact is to be determined after recording of parties, in the considered opinion of this Court. By applying the aforesaid principles to the instant case on hand and also, this Court taking note of the facts and circumstances of the present case in a conspectus fashion, is of the considered view that it cannot be said that there is no cause of action at all. Per contra, the Appellant/Plaintiff at paragraph 11 of the plaint had stated that 'when the plaintiff met the defendants and negotiation on their behalf for the sale of property situated at T.Nagar and the same was concluded because of plaintiff's effort, when the defendants agreed to pay 1% brokerage each from the vendors and purchasers etc'. Insofar as the present case is concerned is to be construed as every facts which the Appellant/Plaintiff will have to establish if traversed in order to get his right but not every piece of evidence. Further, the bundle of facts which he had referred to in the plaint whether it had given raise to a right or liability as a matter to be seen or to be determined only after recording of evidence during the trial of the main case, in the considered opinion of this Court. Viewed in that perspective, the contra view taken by the Learned Single Judge to the effect that "it is a fit case where no trial is contemplated without there being any disclosure of cause of action for trying the suit. Besides, the suit itself is barred by limitation. Under these circumstances, A.No.2589 of 2012 will stand allowed. The plaint in C.S.No.14 of 2012 stands rejected. In view of the

rejection of the plaint, the question of issuing direction to furnish security in A.No.228 of 2012 does not arise. Hence, A.No.228 of 2012 stands dismissed", and therefore, under these circumstances thereby trying the suit is not legally tenable in the eye of Law, as opined by this Court.

45.Coming to the plea of limitation, it is to be pointed out that the suit was presented before this Court on 19.07.2010, the Learned Single Judge had observed at paragraph 11 of the impugned order in A.No.2589 of 2012 dated 21.09.2012 that the Appellant/Plaintiff had no answer for filing the suit beyond the limitation period. But the answer to this by the Appellant/Plaintiff is that he filed Crl.O.P.No.19676 of 2009 on the file of this Court praying for passing of an order by this Court to direct the First Respondent/Assistant Commissioner of Police, Central Crime Branch, Madras-8 to register a case on his complaint dated 23.03.2009 and to investigate the same in accordance with law. In the said petition, the Appellant/Plaintiff had erred his grievance (as party-in-person) to the effect that he was not paid any commission for his service as brokerage and that this Court on 25.07.2009 had observed that failure or refusal to claim service charges claimed by him would adverse to give rise for a civil suit and the same would not amount to criminal offence. Further, this Court opined that the complaint had not disclosed the commission of any cognizable offence and ultimately, dismissed the petition by making an observation that the Appellant/Plaintiff (Petitioner in Crl.O.P.No.19676 of 2009) can seek redressal of his grievance by approaching the Civil Court.

46.The Appellant/Plaintiff by relying on the observation of this Court in Crl.No.19676/2009 dated 25.07.2009 to the effect that he can seek redressal of his grievance by approaching the Civil Court. It is represented on behalf of the Appellant/Plaintiff that the Appellant/Plaintiff filed police complaint on 22.02.2008 before the Commissioner of Police, Chennai City, Egmore and that on 07.03.2008, the Police issued summons under Section 160/91 of Cr.P.C. requiring him to appear on 07.03.2008 at 10.30 hrs with necessary document relating to his case with reference to his case No.1747/comp/visitor/08. Further, he had lodged a complaint on 07.01.2009 before the Assistant Commissioner of Police, Central Crimes, Egmore, Chennai and again lodged a complaint before the Commissioner of police on 23.03.2009 and ultimately, filed Crl.O.P.No.19676 of 2009 before this Court, wherein, this Court dismissed the petition on 25.07.2009 with an observation as stated supra.

47.It is to be noted that all the aforesaid events, would enable him to take refuge under Section 17 of the Limitation Act, 1963. In this connection, it is to be pointed out that exemption from the operation of limitation on the ground of

fraud cannot lie outside the statutory provisions and if a certain type of fraud alleged and proved is not covered by the words of Section 17, there is no protection against the same in the limitation Act as per decision Yeshwant Deo Rao V. Vasudeo Sakharam Soman [AIR 1951 SC 16]. Relief on the ground of fraud is based on the principle that right of the party defrauded is not affected by efflux of time or generally speaking by anything done or omitted to be done so long as he remains without any fault of his own in ignorance of the fraud that has been committed as per decision Syed Shah Gulam Ghouse Mohiuddin v. Syed Shah Ahmed Mohiuddin Kanisul Quaduri [AIR 1971 SC 2184]. Before passing any order extending the period of exclusion of the decree, the Court has to record a finding that the judgment debtor has by fraud or force prevented the execution of the decree within the period of limitation as per decision Rajkishore Saha V. Panna Lal Ghose [1997 AIHC 3416 para 6 (Gau)]. A Fraud is an act of deliberate deception taking an advantage of another. It is a cheating intended to get an advantage as per decision of the Hon'ble Supreme Court S.P.Chengalaraya Naidu V. Jagannath [AIR 1994 SC 853]. If a wrong or tortious act is done by a defendant and he fraudulently take steps to conceal the wrong from the plaintiff, limitation does not run against the plaintiff until he discovers the wrong. If a plaintiff or applicant was aware of his right to seek benefit of Section 17 of the Limitation Act, 1963 cannot be invoked by him as per decision Marappa Gounder V. In re [AIR 1959 Madras 26].

48.What a Section concerns itself with is knowledge of the right and not the exercise of it as per decision P.R.P.L. Chetty V. Lon Pow [AIR 1923 Rang 103]. Section 17 of the Limitation Act, 1963 in substance states that whether an application is based upon the fraud of the defendant or his agent or the application is for the relief from consequences of a mistake, the period of limitation shall not begin to run until the applicant is discovered the fraud or mistake or could with reasonable diligence, have discovered it. A person accessory to fraud would fall within a purview of the expression 'defendant or respondent or his agent' in sub Section (1) of the Section 17 of the Limitation Act, 1963. It is to be kept in mind that a litigant has come to Court within the prescribed time in law and if he claims the benefit of section 17 of the Limitation Act, 1963, he is to prove the same as per decision Raj Kumar Rawala V. Manabendra Banerjee [2004 (1) CLJ 341 (Cal)].

49.As per Section 17 of the Limitation Act, where the suit is based on fraud of the defendant or his agent or where knowledge of such right on which the suit is vested was concealed fraud, period of limitation would commence only from the date when fraud was discovered. Where cause of action remain concealed due to mistake, suit can be filed within the

period of limitation computed from the date or knowledge of mistake provided mistake could not have been discovered earlier even after exercise of due diligence.

50. In Section 18 of the Limitation Act, 1963, Knowledge referred to is clear and definite knowledge of the facts constituting the particular fraud and not a mere suspicion as per decision Shamsuddeen V. Lakshmi [AIR 1951 TC 107]. It is not sufficient for a defendant to exhibit that the plaintiff used means for coming to know of fraud as per decision Giribala V. Usha Giri Devi [AIR 1955 (Assam) 177].

51. In the light of the above, whether the Appellant/Plaintiff's suit in C.S.No.14 of 2012 is barred by the plea of limitation or not is the considered opinion of this Court as the matter to be ascribed without any cloud or shroud at the time of hearing of the main suit, since the said aspect/issue centres around a mixed question of Law of Fact. Also, whether the Appellant/Plaintiff is entitled to exclusion of time under the Limitation Act, 1963, since he had originally filed police complaint on 22.02.2008, that finally led to filing of Crl.O.P.19676 of 2009 before this Court and the orders being passed on 25.07.2009 enabling him to seek redressal of his grievance by approaching the Civil Court or all matters which are to be gone into or traversed in the main suit after recording of evidence of the parties. Before that, one cannot conclude that the present suit C.S.14 of 2012 on the file of this Court is hopelessly barred by limitation. Even the aspect, the Appellant/Plaintiff should have exercised his right within the period of three years from the date of execution of Sale Deeds dated 06.10.2006 (4 Sale Deeds) is also a matter which requires to be gone into in the main suit after adducing of evidence by the parties since this aspect is basically a mixed question of fact of Law. As such, this Court unhesitatingly holds that the aspect of limitation cannot be decided at the initial stage of filing of the complaint by the Appellant/Plaintiff in the instant case on hand. Looking at from that angle, the view taken by the Learned Single Judge that the suit itself is barred by limitation is incorrect in the eye of Law.

52. In regard to the view taken by the Learned Single Judge at para 11 of the order in A.No.2859 of 2012 to the effect that the First Respondent/Plaintiff (Appellant) had not impleaded necessary and proper parties for claiming any relief. On the other hand, he had proceeded against the Proprietor of M/s.Chennai Silks, who was not the purchaser, and the Second Defendant, who is an employee of the company holding the post of the Public Relation Officer, it is to be pointed out that under Or.1 R.10 of the Civil Procedure Code, a person may be added as a party in the following case namely, 1) when ought to have been joined as a plaintiff or defendant and is not joined or 2) when, without his presence, the questions in the suit cannot be completely decided. A Civil

Court can certainly direct impleadment of a third party in a suit only in a case where it is a proper or necessary party and otherwise as an interest in the subject matter of the suit. Where the decision in the case would impinge or bearing on the right of the concerned party, then they can be added in the suit, immaterial of the fact that they had filed separate suit for the same. There is no two opinion of the fact that individuals who have no right or interest in the suit property would not be added as parties in the suit. Even the parties sought to be added as defendant need not be interested in the whole of the subject matter of the suit. Individual in whose absence controversy involved in the suit could not be effectively or efficaciously and completely decided as necessary parties to the suit, they are to be impleaded. A necessary party can be impleaded even in an appellate stage after dismissal of the suit by a trial Court. To put it differently, persons likely to be affected by the ultimate outcome of the case must be impleaded as necessary parties. Therefore, to come to the conclusion that the Appellant/First Respondent has not impleaded as necessary party for the relief in the suit by the Learned Single Judge in the order dated 21.09.2012 in A.No.2589 of 2012 is not a proper and sound one. In view of the fact that on that score, it cannot be said that the plaint cannot be rejected based on the principle of non-joinder of necessary parties. In short, the non joinder of parties would not come within the purview of 'barred by Law' as per Or.7 R.11 (d) of the Civil Procedure Code.

53.In the light of the detailed qualitative and quantitative discussions, this Court holds that the reasons assigned by the Learned Single Judge in allowing the A.No.2589 of 2012 and ultimately, rejecting the plaint in C.S.No.14 of 2012 are unsustainable in the eye of Law and accordingly, this Court sets aside the same and hence, allows the Original Side Appeal leaving the parties to bear their own costs. Resultantly, A.No.2589 of 2012 is dismissed and directed to be restored to file. The plaint in C.S.No.14 of 2012 stands restored to file. Liberty is granted to the respective parties to raise all factual and legal pleas before the Learned Single Judge in the main suit and to seek appropriate remedy if so advised.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

DP

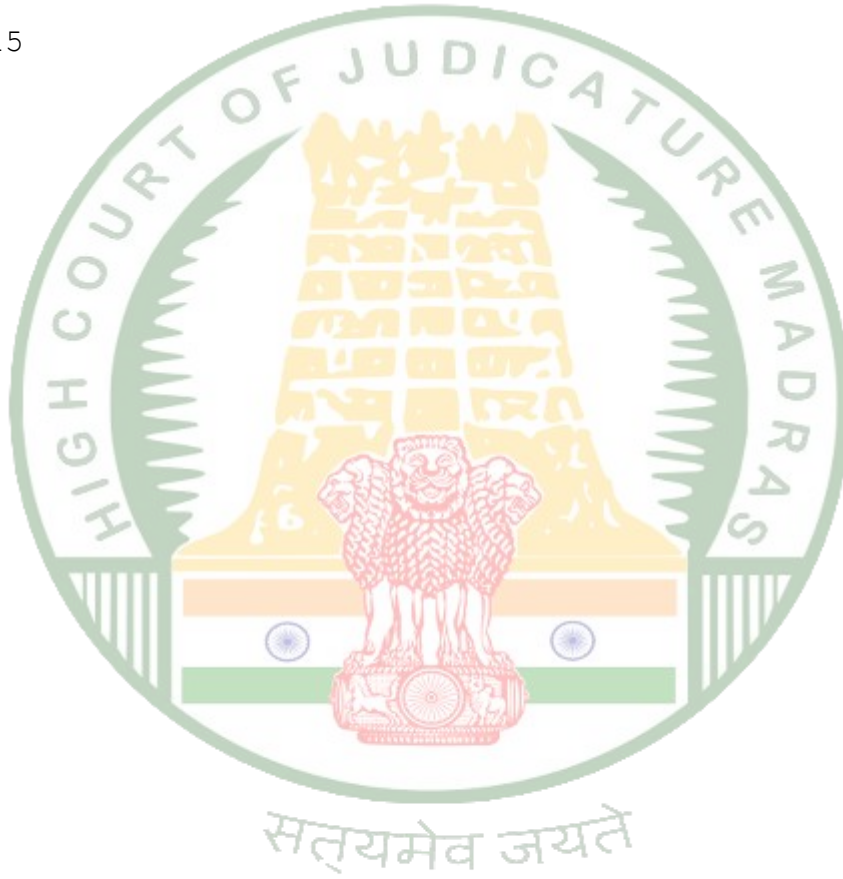
TO

Sub Assistant Registrar,
Original Side,
High Court, Madras.

+ 1 cc to Mr.V. Vijay Shankar, Advocate Sr.65408

O.S.A.296 of 2013

VS (CO)
EU 22.12.15



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