

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

APPEAL SUIT NO.1125 OF 2015 AND M.P.NO.1 OF 2015

N.Subramanian

..Appellant

..vs..

1.A.Anbalagan
2.R.Ramanathan
3.S.K.Elangovan
4.V.Karuppannan
5.T.K.Palaniappan

..Respondents

Appeal Suit filed under Order 41 Rule 1 r/w Section 96 of C.P.C. Against the Fair order and decretal order dated 05.02.2015 in I.A.No.41 of 2013 in O.S.No.189 of 2012 passed by the Principal District Judge, at Salem.

For Appellant : Mr.V.Sekar

For Respondents : Mr.S.Doraisamy, Senior Counsel for
M/s. Muthumani Doraisami

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH,J.,)

This Appeal has been filed as against the Fair and Decretal order dated 05.02.2015 made in I.A.No.41 of 2013 in O.S.No.189 of 2012, by the Principal District Judge, at Salem, rejecting the plaint under Order 7 Rule 11 of Civil Procedure Code.

2. The Appellant is the Plaintiff and the Respondents are the Defendants. The appellant/plaintiff has filed the suit for the following reliefs:-

- (i)for a declaration declaring that the amendment carried out in the supplement deed No.5, dated 10.11.2008 removing the plaintiff from the post of the Trustee is null and void and not binding the plaintiff;

- (ii)for a permanent injunction against the defendants restraining them from in any manner preventing the plaintiff from participating in the Trust activities;
- (iii)directing the defendants by way of mandatory injunction in allowing the plaintiff to participate in the Trust activities; and
- (iv)directing the defendants to pay the costs of the suit and granting such other reliefs that may be necessary in the circumstances of the case.

3. The case of the plaintiff is that he founded and started a Public Charitable Trust by name Kavery Educational Trust by a Trust Deed dated 23.05.1997 registered as document No.25 of 1997 on the file of the Sub-Registrar of Mecheri. The plaintiff was working in a Polytechnic and formed an idea to start educational Institution and thereafter to fulfill his desire he founded the above said Charitable Trust with the aim to provide education to the needy poor people in the village. The plaintiff on his own has made the defendants 1 to 5 as the Trustees of the Trust. None of the defendants conceived or possessed any idea about the Trust or had any experience in starting an educational Institution. Only on the plaintiff's personal strength with the object of starting the Trust to achieve his aim, he took every step in applying, getting the approval for starting the educational institutions. As a founder, the plaintiff was the Chairman of the Trust and he looked after all the day to day affairs of the Trust and the Institutions. With his continued efforts, the objects of the Trust were able to get materialized and as a result of which Kavery Polytechnic, Kavery Engineering College and Kavery Teacher Training Institutions were started. The plaintiff has contributed a huge amount of his personal funds towards the development of the Trust as a result of which the object of the Trust were able to be achieved by starting the Institutions. The defendants were all made as Trustees and they were continuing their efforts in starting and running the educational Institutions. As per the Deed of Trust the Chairman of the Managing Committee shall be the Managing Trustee for the period of five years.

4. After the tenure of the plaintiff the first defendant became the Chairman of the Trust. Right from the date when the first defendant became the Chairman of the Trust, the object and colour of the Trust started to fade. The Trustees started to keep the Charitable Trust as that of a partnership firm and Institutions started were allowed to be treated as the properties of the Trustees and the Trustees conceived the idea to share the ratio of profits of the Institutions which is opposed to the Trust Act. The defendants started to apply to the Banks and Financial Institutions for the development of the Institutions but on the contrary major portions of the amount

advanced by the banks and financial Institutions were siphoned off by the Trustees which almost come to a sum of Rs.50 lakhs to each of the Trustees. Moreover, the defendants have started to collect huge amount as fees and donations from the economically poor students completely defying the object of the Trust. The entire funds so collected have been partitioned among the selected Trustees. The plaintiff was not able to accept the illegal activities of the Trust, started questioning the conduct, acts and maladministration of the Trust. As the plaintiff started questioning the activities, the other Trustees particularly, the defendants have all become inimical towards the plaintiff and as a result of which the defendants were trying all possible methods to somehow remove the plaintiff from the Trusteeship.

5. The plaintiff as the Founder of the Trust is the ex officio Chairmanship and Managing Trustee of the Trust and the other Trustees do not have any power to remove the plaintiff as a Trustee from the Trust. In order to overcome the situation, the other Trustees went to the extent of fabricating and forging the plaintiff's signature and created documents as though the plaintiff has voluntarily resigned from the Trust. The Trustees, particularly the defendants have kept all the proceedings in dark and only now the plaintiff came to know about the fraudulent activities of the other Trustees in manipulating the documents by forging the signatures and have filed amendment deeds by removing the plaintiff from the post of Trusteeship itself. The defendants had executed an additional supplement deed No.5 dated 10.11.2008, by which the plaintiff has been removed from the Trust which is illegal, void and unenforceable. The amendment has been carried out and kept in dark only to facilitate the other Trustees to achieve their illegal object of siphoning off the properties and monies of the Trust and its Institutions. The plaintiff did not sign any of the documents or the resignation letter alleged in the deed and they are rank forged ones, manipulated and created by the defendants. The defendants do not have any power to remove the plaintiff from the Trust as he is the founder of the Trust. Moreover, the defendants have not entrusted any of the activities of the Trust to the plaintiff. The defendants inducted even minor children as Trustees who are in no way connected with the Trust and continue to administer the Trust as a family property. All the things have been created only for the purpose of removing the plaintiff from the Trust to facilitate the other Trustees to achieve their illegal objects. The defendants did not inform the plaintiffs about their removal from the Trust. It was only on 12.07.2010 the plaintiff came to know by e-mail.

6. The plaintiff had issued a legal notice dated 12.07.2010 questioning the acts of the Defendants. All the defendants

purposely refused to receive such notice, smelling them to have been sent by the plaintiff. The defendants are not amenable for any peaceful solution in taking back the plaintiff into the Trust. Hence, the suit has been filed for the relief stated supra, within three years from the date of knowledge of his removal.

7. Opposing the case of the plaintiff, the defendants have filed a written statement stating that the suit is hopelessly barred by limitation. The suit is filed for the relief of declaring the Supplement Deed No.5 dated 10.11.2008 is null and void and not binding upon the plaintiff. The suit has not been filed within the stipulated period as contemplated under the Limitation Act. The plaintiff is also estopped from contending that the above amendment is Null and Void because he has submitted his resignation on his own accord on 28.08.2003. Again he submitted a reminder letter on 10.11.2003. After that the plaintiff has not participated in any of the affairs for the past about 9 years. After his resignation all the subsequent events and developments were made with great difficulty by all the defendants for the upliftment of the Trust. So, it cannot be questioned by the plaintiff after lapse of several years. Kavery Educational Trust was originally formed on 23.05.1997 with 14 Trustees. Out of the above, three Trustees namely the appellant herein, Mr.S.K.Elangovan and Mr.Ramanathan were working with Dharmapuri District Co-operative Sugar Mills Polytechnic, Palacode. Out of them Mr.Elangovan is the Senior Teaching Faculty and the appellant is Junior to him. Based on his experience Mr.Elangovan only initiated the idea of starting the Public Charitable Trust for establishing Educational Institutions. After deciding to start the Trust the above said three Trustees contacted various persons to accommodate them as Trustees in the proposed Trust. Finally 14 persons including the appellant are agreed to join as Trustees in the proposed Trust. It is clear from the Parent Trust Deed itself in para No.2, the Bank Account shall be jointly operated by the Chairman, Secretary and Treasurer but not the Founder. The Chairman and other office bearers may be changed once in 5 years. In Para 2 and 3 of the Parent Trust Deed the collective responsibilities of the Trustees and their Powers are clearly stated as follows:-

"The Trustees are hereby authorized and empowered to do all areas and things necessary responsible, reasonable and proper maintenance, production and expansion for the prosperity of the Trust."

"The Trustees also are hereby authorized to print, publish, edit and exhibit any book pamphlet, periodicals and notices for the improvement and Expansion of the Trust."

8. From the above facts it is very clear that the Trust is managed jointly by all the Trustees, not by any single Trustee. In the initial time, the Trust faced acute financial crisis. At that time the plaintiff have not done anything to solve the Financial Problem. But others only approached the Bankers for loan. The Bankers asked to provide the personal asset of the Trustees as collateral security. The other Trustees agreed for the same but the appellant/plaintiff has refused to provide any collateral security for availing bank loans for the development of the Educational Institutions. During the period the appellant/plaintiff was acting as Trustee, the Trust is able to start only one Educational Institution namely the Kavery Polytechnic College. The appellant/plaintiff made false statements towards the contribution made by him. The total loan contributed by all the Trustees during the year 1997-98 is Rs.24,48,350/-. Out of this the appellant/plaintiff contribution is only Rs.1,74,882/- which comes to 7.14% on the total loan. The remaining 13 Trustees also contributed each 7.14% which is totally 92.86%. Also in the year 1998-99 the total loan is Rs.41,96,350/-. Out of this the plaintiff's contribution is only Rs.3,09,344/- which comes to 7.37%. Similarly, during the year 1999-2000 the total loan contributed by the Trustees is Rs.56,21,350/- out of which the plaintiff contribution is Rs.4,34,344/- which is 7.73% of the loan.

9. The plaintiff named as the Chairman cum Managing Trustee on 23.05.1997 and continued in the same position more than 6 years. The plaintiff did not have any role from the beginning of the Trust itself. The plaintiff not even filed Income Tax Return from the year 2002-03 itself, which is the statutory requirements for the Trust. For the year 2002-03, the same was filed by the then Secretary Mr.S.K.Elangovan. The plaintiff is in the office of Chairman cum Managing Trustee for more than 6 years and thereafter due to his inability and out of fear about the future of the Trust and the survival of its educational institution and also for the repayment of bank loans he himself voluntarily tendered his resignation from the Trustee of the Trust. Also either during his tenure or after that the present trustees did not do any illegal activities or acting against the objects of the Trust. If any one did the same the plaintiff as a Managing Trustee of the Trust had been removed them from the Trust. The plaintiff only is not co-operating with the other Trustees for taking necessary steps for the development of the Trust. When all the trustees are in favour of availing further bank loans for the development of the Trust Institutions he only opposed for the same. If the managing committee really wants to remove the plaintiff they would have done it well before his resignation because from the beginning itself he is opposed to avail any loan and develop the Trust activities.

10.The Managing Trustee of the Trust only has the power to remove a Trustee who acting against the interest of the Trust. But the plaintiff was removed from the Trust based on his resignation letter. The present Managing Committee members made all efforts to save this Educational Institutions. The present Managing committee is well known that they are the administrator of the Public Charitable Trust and no one have got any benefit from the Trust. The plaintiff did not turn a single stone for the development of the Trust. Actually, the plaintiff on the date of submission of his resignation letter itself well aware that once his resignation is accepted, he will be removed from the Trust's Membership. In fact the plaintiff got the copy of the supplement deed on 06.09.2010 from the Sub-Registrar Office, Mecheri and knew the contents, the allegation that he did not know the same for the long time is not correct.

11.The first minor Selvi A.Aarthi was admitted as Trustee in the first supplement deed dated 23.09.1998. At that time, the plaintiff did not raise any objection for the same and also signed the above deed as one of the Trustees. After waiting for a long period of 14 years now he has raised the minor issue reflects the real intention of the plaintiff. The plaintiff's submission that he did not know the acceptance of his resignation is false because after that he did not attend any meeting and also did not represent the trust in any forum even as the Trustee of the Trust. The plaintiff has not obtained any proper permission as contemplated under Section 92 of the Civil Procedure Code. Hence, the defendants sought for dismissal of the suit.

12. During the pendency of the suit the defendants have filed an Application in I.A.No.41 of 2013 under Order 7 Rule 11 of CPC. The averments in the affidavit filed in support of the Application is that the suit is filed for declaration declaring that the amendment carried out in the supplement deed No.5, dated 10.11.2008 removing the plaintiff from the post of the Trustee is null and void and not binding the plaintiff. The said suit is filed after a lapse of 5 years. So, the suit is not at all maintainable and hopelessly barred by limitation. The plaintiff has submitted his resignation as early as on 20.08.2003 without any compulsion and the resignation was also accepted and it was also acted upon. After that the plaintiff has not participated in any of the affairs of the said Trust for the past nine years. After his resignation all the subsequent events and developments were made by the defendants for the upliftment of the Trust. The plaintiff has not obtained proper permission under Section 92 of C.P.C. Hence, the plaint is liable to be rejected. Hence, he sought for setting aside the order of rejection of plaint.

13. The plaintiff has filed a counter contending that it is false to allege that the suit is barred by limitation. The unilateral removal of the plaintiff from the trusteeship came to be known to the plaintiff only in the year 2010. Hence, the suit is filed well within the time limit from the date of knowledge of the void supplement deed dated 10.11.2008. It is also false to allege that the plaintiff had submitted his resignation on his own accord without compulsion and it was acted upon. In fact the appellant's signature has been forged and fabricated by the defendants and the alleged resignation letter has been created by the defendants with ulterior motive to prevent the plaintiff from participating in the Trust meetings. The plaintiff was employed in the Dharmapuri District Co-operative Sugar Mills Polytechnic College as a Senior Lecturer. The said college authorities took disciplinary action against the plaintiff who was officiating the Chairman of the Trust and against one K.Elango who was officiating as the Secretary of the plaintiff Trust. For that purpose, the plaintiff submitted letters stating that he has resigned from the Chairman with effect from 24.09.2005. Likewise, the third Defendant, viz., S.K.Elangovan also submitted a letter of resignation from the post of the Secretary from 24.09.2005. The plaintiff or the said Elango did not resign from the Trusteeship of the plaintiff Trust. It is false to allege that the plaintiff has got the knowledge that he will be removed from Trusteeship on the basis of his resignation letter. The resignation is only with regard to the Chairmanship of the Trust and not for the primary membership of the Trust. The defendants have not produced any documentary evidence to show that the plaintiff has resigned from the primary membership of the Trust. The reason for not attending the Trust meeting is only for want of notice of the Trust meeting. No notice of the meeting was served on the plaintiff or his wife. It is incorrect to state that the plaintiff has to be obtained proper permission under Section 92 of the Civil Procedure Code. It is incorrect to state that the plaintiff was estopped from filing the suit. Thus, he sought for dismissal of the Application.

14. The learned trial Judge, after hearing the submission made by the counsel appearing on either side, has allowed the Application for rejection of the plaint on the ground that the argument of the plaintiff that he has resigned the Chairmanship of the Trust only and not the post of primary membership of the Trust cannot be accepted and that the suit is barred by limitation since the plaintiff has not produced any document to show that he had knowledge about the disputed document viz., supplement deed No.5 dated 10.11.2008 only in the year 2010. Aggrieved over the same the plaintiff has filed the present appeal.

15. Heard Mr.V.Sekar, learned counsel for the appellant and Mr.S.Doraisamy, learned Senior Counsel for respondents.

16. The learned counsel for the appellant/plaintiff submitted that the trial Court has allowed the application filed by the respondents/defendants for rejection of the plaint under Order 7 Rule 11 of CPC on the ground of limitation. Question of limitation is a mixed question of fact and law which cannot be decided while deciding the petition under Order 7 Rule 11(d) of CPC to reject the plaint on the ground of limitation. So far as the present case is concerned, the specific case of the appellant/plaintiff in the counter filed by him in I.A.No.41 of 2013 is that he had knowledge about the unilateral removal from the Trusteeship only in the year 2010 and therefore, the suit filed by him is well within the period of limitation viz., within three years from the date of knowledge of the removal from the Trusteeship. Since the respondents/defendants are disputing the contention of the appellant/plaintiff that he had knowledge about the removal from the Trusteeship only in the year 2010 and he has filed the suit within a period of three years, the same is a question of fact which has to be decided only by framing an issue in this regard as to whether the suit was hit by limitation, by conducting trial. It is further submission of the learned counsel for the appellant/plaintiff that the appellant/plaintiff had resigned the Chairmanship of the Trust alone and not the primary member of the Trust. This issue also has to be decided by framing issue in this regard by conducting trial. Therefore, based on these pleadings the trial Court has to frame the issues and decide the same by conducting trial and thereafter only the court can come to the conclusion as to whether the appellant/plaintiff has resigned from the primary member of the Trust or only from the Chairmanship of the Trust. It is well settled legal principle that disputed question of fact could be decided only after conducting trial. The learned counsel for the appellant/plaintiff has also relied upon some of the judgments in support of his contentions. They are:-

1. Balasaria Construction (P) Ltd., v. Hanuman Seva Trust and others [(2006) 5 SCC 658];
2. Hindustan Petroleum Corporation Limited v. Aditya Rao [(2014) 2 MLJ 599];
3. Rabiammal Ahamed Maideen Educational Trust vs. K.A.Ahamed Maideen [2012-4-L.W.141];
4. M.Prince Manohar v. Bhima Lakshmi Narasammah [2014 (1) CTC 160];

17. Countering the submissions made by the learned counsel for the appellant, the learned Senior Counsel for the Respondents/ Defendants submitted that in the instant case the letter dated 08.10.2009 sent by the appellant to the Chairman of the Trust which was filed along with the plaint would show that the appellant/plaintiff has not attended the Board meeting from 05.10.2003 onwards, which would show that since he has resigned from the Trusteeship, he has not attended the Board meeting. Therefore, the contention of the appellant/plaintiff that he had knowledge about the removal from the trusteeship only in the year 2010, cannot be accepted since he himself voluntarily resigned from the trusteeship as early as in the year 2003. Furthermore, the suit was filed in the year 2012, that is beyond the period of limitation. There is nothing on record to show that the appellant/plaintiff had knowledge about the supplement Deed No.5 only in the year 2010. Considering all these aspects, the learned trial Judge has rightly rejected the plaint. That apart the learned Senior Counsel for the respondents/defendants also submitted that the suit filed by the appellant/plaintiff against the Public Trust is not maintainable since the appellant/plaintiff has not obtained any leave, as contemplated under section 92 of CPC. On that ground also the order passed by the learned trial Judge in the application filed under Order 7 Rule 11 is perfectly correct.

18. Keeping in mind the rival submissions, we have carefully gone through the entire materials. As contended by the learned counsel for the appellant/plaintiff, since the question of limitation is purely a mixed question of fact and law, which cannot be decided while deciding the petition under Order 7 Rule 11(d) of CPC to reject the plaint on the ground of limitation, on the ground of limitation the plaint cannot be rejected. In this regard it would be relevant to rely upon the judgment relied upon by the learned counsel for the appellant/plaintiff.

20. In Balasaria Construction (P) Ltd., v. Hanuman Seva Trust and others [(2006) 5 SCC 658], the Hon'ble Supreme Court has held as follows:-

"After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the

reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure."

21. In Hindustan Petroleum Corporation Limited v. Aditya Rao [(2014) 2 MLJ 599], a learned Single Judge of this Court held as follows:-

".....it cannot be decided at this state without framing any issue as to whether the appellant/first defendant is in possession of the property as statutory tenant as alleged by it or a trespasser as alleged by the first respondent plaintiff and whether Article 67 of the Limitation Act would apply to the facts of the case and all these are mixed question of fact and law, which cannot be decided while deciding the petition under Order 7 Rule 11(d) of CPC to reject the plaint on the ground of limitation."

22. In M.Prince Manohar v. Bhima Lakshmi Narasammah [2014 (1) CTC 160], a learned Single Judge of this Court held as follows:-

"Clause (a) of Order 7 Rule 11, CPC deals about the disclosure of cause of action. The idea undermined in the said provision is that, when no cause of action is disclosed in the plaint, the Court will not unnecessarily protract and the party should not be unnecessarily harassed in the Suit. For the purpose of invoking the power, the Court has to read the plaint whether it discloses the cause of action and if it does, then the plaint cannot be rejected by the Court by exercising power under Order 7, Rule 11, C.P.C. It is a trite law that the cause of action is a bundle of facts and whether the plaint discloses cause of action is a question of fact which has to be gathered based on the averments made in the plaint in its entirety by taking those averments to be correct. So long as the plaint discloses some cause of action which requires determination by the Court, the mere opinion that the plaintiff may not succeed cannot be a ground for rejection of the plaint."

23. In P.V.Guru Raj Reddy v. P.Neeradha Reddy [(2005) 2 MLJ 377 (SC)], the Hon'ble Supreme Court held as follows:-

"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."

24. In Rabiammal Ahamed Maideen Educational Trust vs. K.A.Ahamed Maideen [2012-4-L.W.141], a learned Single Judge of this Court held as follows:-

"31. In this case, the suit relates to a Public Charitable Trust and there is no dispute about the same. But no allegation was made about the breach of Trust and no direction was sought for the administration of the Trust. Though, one of the reliefs prayed for was to remove the 7th respondent from the post of Trustee, that would not make the suit to fall under the provision of section 92 CPC when the essential ingredient, namely allegation of breach of trust and direction was sought for the administration of the Trust are absent, the suit cannot be brought within the ambit of section 92 of CPC.

32. It is also made clear in the judgment reported in AIR 1974 SCC 2141 [Swami Parmatmanand Saraswati and another vs. Ramji Tripathi and another], wherein their Lordships have categorically held that if the allegation of breach of Trust is not substantiated or that the plaintiff has not made out a case for any direction by the court for proper administration of the Trust, the very foundation of a suit under the section would fail, even if all the other ingredients of a suit under section 92 are made out. The prayers in the suit

are for declaration that the first appellant is a Public Charitable Educational Trust, for declaration that the supplementary and amended deed of Trust, dated 26.05.2005 is illegal and null and void, for declaration that the meeting held on 04.01.2006 removing the plaintiffs 2 to 4 from the office of the Secretary/Treasurer/Trustee and removing the plaintiffs 2 to 4 from the members of the Board of Trust and appointing the 7th respondent/defendant as member/Secretary as illegal and null and void and for consequential injunction. Therefore, by no stretch of imagination, it can be contended that the appellants 2 to 4 have filed the suit to vindicate the public rights and they only filed the suit to vindicate their personal rights, namely to establish their position as Trustees of the first appellant Trust and for the cancellation of the appointment of the 7th respondent from the post of Secretary/Treasurer in the meeting, dated 04.01.2006. Therefore, having regard to the judgment referred to above and the prayers sought for and in the absence of any allegation regarding the breach of Trust and no direction was sought for the administration of the Trust, the trial court has rightly held that the suit will not come within the scope of section 92 CPC and therefore, there is no need to obtain the leave and without properly appreciating the various judgments of the Hon'ble Supreme Court, the lower appellate court committed a serious error in holding that the suit falls under the ambit of section 92(1) of CPC.

33.As a matter of fact, the lower appellate court committed an error in holding that the suit is not maintainable without the leave of the court after holding that the plaintiffs 2 to 4 have filed the suit for their own personal benefit. Hence, the substantial question of law No.2 is answered in favour of the appellant and I hold that the nature of allegation made in the plaint and the nature of the relief prayed for, would not bring the suit within the scope of section 92 of CPC and therefore, the suit filed by the appellants/plaintiffs is maintainable and there is no need to obtain any leave, as the suit is not filed under section 92 of CPC."

25. Therefore, we are of the opinion that catena of decisions relied upon by the learned counsel for the appellant/plaintiff would show that the suit cannot be dismissed

on the ground that it is barred by limitation. Taking into consideration the above decisions we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Further, whether the appellant/ plaintiff has really got knowledge about the Supplement Deed No.5 only in the year 2010 or earlier is a purely disputed question of fact and the same can be decided only after framing issue and conducting trial. Though the learned Senior Counsel for the respondents/defendants submitted that since the appellant/plaintiff has not obtained leave under Section 92 of CPC., it is the submission of the learned counsel for the appellant/plaintiff that in the present case the appellant/plaintiff is not agitating any public right and he is only vindicating his personal right. Therefore, leave is not necessary. However, we are of the opinion whether the appellant/plaintiff is agitating public or right personal right also has to be decided only during the course of trial.

26. Therefore, we are of the considered opinion that there is infirmity in the order passed by the trial court in allowing the application under Order 7 Rule 11 CPC, thereby rejecting the plaint. Therefore, we inclined to set aside the same. Accordingly, the order and decretal order dated 05.02.2015 in I.A.No.41 of 2013 in O.S.No.189 of 2012 passed by the Principal District Judge, at Salem is hereby set aside and the matter is remitted back to the trial Court. The learned Principal District Judge is directed to conduct trial after framing necessary issues with regard to the limitation and all other aspects and also with regard to the obtaining of leave under Section 92 of CPC, as well as all other relevant aspects and after recording the evidence on either side, dispose of the suit on merits, within a period of six months from the date of receipt of copy of this order. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

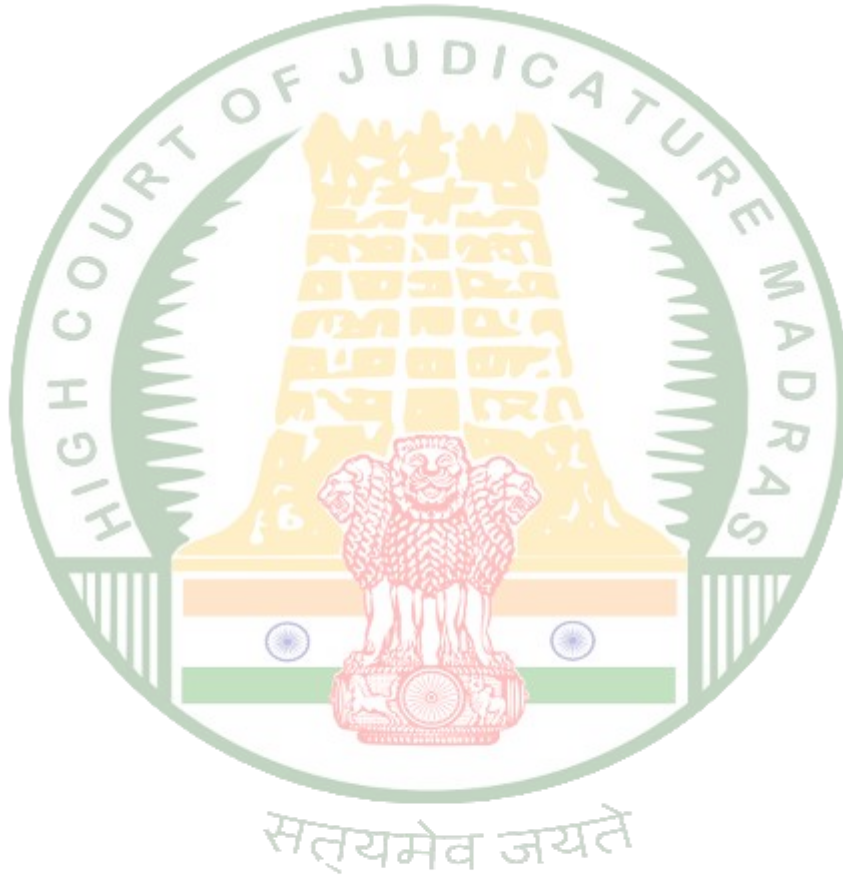
The Principal District Judge, at Salem.

+lcc to Mr.V.Sekar, Advocate, S.R.No.54860

+lcc to M/s. Muthumani Doraisami, Advocate, S.R.No.55616

A.S.No.1125 of 2015

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