

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2017

DELIVERED ON : 17.07.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(PD)No.4415 of 2013

and

M.P.No.1 of 2013

K.Shanmughavel

.. Petitioner

vs

1.P.V.Jalendran
2.V.Mangayarkarasi
3.P.V.Valleesan
4.P.V.Vinayagam
5.M.Renuka
7.P.Sundaresan

.. Respondents

Revision is filed under Article 227 of Constitution of India against the order passed in 02.02.2013 made in I.A.No.941 of 2012 in O.S.No.748 of 2011 on the file of the Additional District Munsif Court, Alandur.

For Petitioner

: Mr.M.Selvam

for M/s.R.Sreenivasalu

For Respondents

: Mr.T.S.Vijaya Raghavan

ORDER

This Civil Revision Petition has been filed by the petitioner against the order dated 02.02.2013 made in I.A.No.941 of 2012 in O.S.No.748 of 2011 on the file of the learned Additional District Munsif Court, Alandur, dismissing the petition filed by the petitioner under Order 7, Rule 11 of CPC.

2. The 8th defendant is the petitioner and the respondents are plaintiffs in the suit. For convenience, the parties are referred to as per their array in the suit.

3. The plaintiffs have filed the suit being O.S.No.748 of 2011 for declaration to declare them as persons who are legally entitled to be in management of Arulmighu Agastheeswarar and Allied temples, Pozhichalur village, Alandur taluk, Kancheepuram District as co-hereditary trustees along with the hereditary trustees who are already in office and for costs of the suit.

4. The 8th defendant filed I.A.No.941 of 2012 in O.S.No.748 of 2011 under Order 7, Rule 11 of CPC to reject the plaint as not

maintainable both in law and as well as on facts. In the affidavit filed in support of the petition, the 8th defendant alleged that according to the pleadings in paragraph 5 of the plaint during the year 1972 itself the available legal heirs have raised their claim and declared themselves as legal heirs. In such circumstances, after the period of 40 years now as an afterthought, at this belated stage, the plaintiffs have chosen to file the suit for declaration, which is barred by limitation. Further, the cause of action arose in the year 1972 itself, if anything available to the plaintiffs for their claim.

5. It is further alleged that according to the pleadings in paragraph 7 of the plaint, the plaintiffs came to know the declarations in the year 1981 itself when the consecration of the temple was proposed. If it is so, the limitation starts in the year 1981, thereby the claim of the plaintiffs in the present suit is barred by limitation. In fact, the plaintiffs and their father have relinquished their right over the temple even prior to four decades. Keeping silent and did not proceed with any civil suit for those period of limitation, now the plaintiffs are not entitled to hold the office of hereditary trustee and even they are not entitle to maintain the present suit. Further, HR & CE Department already directed the plaintiffs to approach the civil

court for proper remedy, but the plaintiffs have not approached the civil court in time.

6. It is alleged that the 4th plaintiff already filed suit in O.S.No.866 of 2008 before the learned Additional District Munsif Court, Alandur against the 8th defendant for permanent injunction and in the said suit, the 4th plaintiff nowhere claimed as trustee to the temple and had filed the suit as if devotee. The suit O.S.No.866 of 2008 later came to be dismissed on merits. The impleading petition filed by the plaintiffs 1 and 4 in O.S.No.118 of 2009 nowhere claimed as trustees to the temple and the petition was dismissed. Suppressing all material facts, the plaintiffs have filed the suit and there is no *prima facie* case made out by the plaintiffs. Further, there is no cause of action for the suit. Hence, the 8th defendant filed the petition to reject the plaint.

7. Resisting the petition, the plaintiffs have filed counter stating that right of hereditary trusteeship is comparable to a right of a co-owner in a joint family property. The said right is exercisable at any stage and the same is not barred by any Law of Limitation. The 3rd plaintiff claimed hereditary trusteeship in the year 1981 and continued to discharge his duties as hereditary trustee till the year

1998 when a cloud was cast on his entitlement by the 8th defendant. In fact, after the death of P.S.Murugesa Mudaliar, the 3rd plaintiff was elected as Managing Hereditary Trustee in the presence of the Executive Officer, P.S.Kumarasamy Mudaliar and other trustees. The 8th defendant had acted under the 3rd plaintiff. After the death of P.S.Subramania Mudaliar, the 1st plaintiff was appointed as hereditary trustee. Even after the appointment of 1st plaintiff, the 1st plaintiff and the 8th defendant have conducted festivals. The 8th defendant and his father have thus acquiesced to plaintiffs right and are now estopped from raising any objection.

8. It is stated that the question of limitation is a mixed question of fact and law which can be gone into only at the time of trial and the claim of certain persons alone will not disentitle the other hereditary trustees from claiming the same. It was only the available legal heirs who had filed O.A.No.100 of 1972 and not others. The filing of the present suit is only consequential to the order in M.P.No.1 of 1999 dated 26.11.1999 and what has to be seen is whether the suit is barred by limitation. The suit is not barred by law as the plaintiffs have filed the present suit within 12 years from 26.11.1999.

9. It is further stated that the 8th defendant is gobbling up properties worth 300 Crores belonging to the temple and is scared that plaintiffs appointment as trustees would hamper 8th defendant's illegal activities. Except the 8th defendant who is a dismissed trustee, no one else seems to have any objection and prayed for dismissal of the petition.

10. Before the trial Court, on the side of 8th defendant, Exs.P1 to P4 were marked and on the side of the plaintiffs, Exs.R1 to R17 were marked. No oral evidence on both sides.

11. Upon considering the rival submissions and also the documents produced before it, the trial Court dismissed I.A.No.941 of 2012. Aggrieved by the same, the 8th defendant has filed the present Civil Revision Petition.

12. Assailing the impugned order of the trial Court, the learned counsel for the 8th defendant submitted that the trial Court failed to appreciate the scope of Order 7, Rule 11 of CPC and Article 107 of the Limitation Act and has wrongly assumed the facts to his own whims. He would submit that the trial Court failed to note that

the cause of action in the plaint discloses that P.S.Vedachala Mudaliar was omitted to be declared as trustee in O.A.No.100 of 1972 which clearly establishes that the plaintiffs or their predecessor under whom they are claiming were not all declared as trustees.

13. The learned counsel further submitted that the trial Court failed to look into the fact that the plaintiffs are themselves not sure about their rights and status which is evident from the averments in paragraphs 7, 9 and 13 of the plaint, where the 1st plaintiff claimed that he is the descendant of Subramania Mudaliar and the 3rd plaintiff claimed as descendant of Venkatasubramania Mudaliar and in paragraph 20, the plaintiffs claimed as descendants of Vedachala Mudaliar, who was omitted to be included in O.A.No.100 of 1972. Even if it is taken that the plaintiffs father was omitted to be included in O.A.No.100 of 1972, the remedy is to file an appeal before the HR & CE Department as per Section 69(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to "as the Act"). Having failed to exhaust the remedy available under the Act within the period of limitation, the suit has been filed to overcome the limitation prescribed under the Act. Therefore, the suit filed by the plaintiffs is clearly barred as per Section 108 of the Act and it has to be

dismissed as there was no cause of action.

14. The learned counsel next submitted that the plaintiffs themselves admitted that their claim as hereditary trustees was as descendant of their parental uncle Venkatasubramania Mudaliar and Subramania Mudaliyar and the same was rejected by the 9th defendant. Therefore, the civil court cannot determine the hereditary trusteeship when the dispute of succession is involved. He would submit that the trial Court committed error in dismissing the petition filed by the 8th defendant and prayed for setting aside the same.

15. Per contra, reiterating the findings of the trial Court, the learned counsel for the plaintiffs submitted that the office of the hereditary trusteeship has become adverse to the plaintiffs 1 and 3 from 26.11.1999 by virtue of the order passed in M.P.No.1 of 1998 and not at any time prior to the same. Though four grounds have been raised for rejecting the plaint, all the issues seem to have emanated from the issue of limitation. The suit having been filed within 12 years from 26.11.1999, the same is within the limitation period. He would submit that the 8th defendant has initiated several litigations to swindle the properties belonging to the temple and does

not want any other hereditary trustees in office.

16. The learned counsel further submitted that the 8th defendant attempted to convert the public temple into a private temple and to keep the authorities and other hereditary trustees at bay has filed several litigations. The learned counsel then submitted that the 8th defendant has acquiesced to the right of the plaintiffs 1 and 3 by functioning together and conducting various festivals. Having found that the claim of the 8th defendant is frivolous, the trial Court rightly dismissed the petition and no valid grounds have been made to interfere with the order of the trial Court and thus, prayed for dismissal of the revision.

17. Arulmighu Agastheeswarar temple and its allied temples at Pozhichalur is a trusteeship temple. As per the order of the Deputy Commissioner (Judicial), HR & CE (A) Department, Madras dated 24.9.1973 passed in in O.A.No.100 of 1972 (i) Venkatasubramania Mudaliar; (ii) Subramania Mudaliar; (iii) Kumarasami Mudaliar; (iv) P.S.Murugesu Mudaliar and (v) P.S.Sambandha Mudaliar were declared as hereditary trustees of Arulmighu Agastheeswarar temple and its Allied temples.

18. It appears that the plaintiffs are the legal heirs of P.S.Vedachala Mudaliar. The said P.S.Vedachala Mudaliar has failed to claim right over the hereditary office and further he did not choose to object and/or challenge the order dated 24.9.1973 passed in O.A.No.100 of 1972. Thus, it is clear that P.S.Vedachala Mudaliar relinquished his right of trusteeship over the hereditary office in the year 1973 itself and P.S.Vedachala Mudaliar did not challenge the order passed in O.A.No.100 of 1972 till his life time and died on 1.11.1982.

19. It also appears that the plaintiffs 1 and 3 and others have filed M.P.No.1 of 1998 under Section 54 of the Act before the Joint Commissioner, HR & CE claiming hereditary right through parental uncle Venkatasubramania Mudaliar and Subramania Mudaliar and not his father Vedachala Mudaliar. Pending M.P.No.1 of 1998, the legal heirs of Subramania Mudaliar have filed application to implead themselves in M.P.No.1 of 1998 claiming rights. By the order dated 03.11.1999, the Joint Commissioner dismissed M.P.No.1 of 1998. While dismissing M.P.No.1 of 1998, the Joint Commissioner has granted liberty to the legal heirs of P.S.Venkatasubramania Mudaliar,

P.S.Subramania Mudaliar, P.S.Murugesu Mudaliar and Sambandha Mudaliar to file appropriate succession certificates and get their succession recorded.

20. As far as the case of the plaintiffs 1 and 3 is concerned, the Joint Commissioner dismissed M.P.No.1 of 1998 holding that there was no proof that the office of the deceased P.S.Subramania Mudaliar devolved on the plaintiffs 1 and 3 and further holding that there was no proof to relate P.S.Vedachala Mudaliar to the families of the declared trustees in O.A.No.100 of 1972. The Joint Commissioner, in its order also held that the applicants in M.P.No.1 of 1998 have failed to produce documents and since there were objections qua their succession as hereditary trustees, only a competent civil court can grant such a relief.

21. The learned counsel for the plaintiffs submitted that succession to hereditary office is automatic and the same does not require any sanction and even assuming but not admitting that the office of the trustee has become adverse to the plaintiffs 1 and 3, by virtue of the orders passed in M.P.No.1 of 1998 by the Joint Commissioner even then the suit has been filed within a period of 12

years from the date of passing of the order. The learned counsel submitted that the order of the Joint Commissioner is dated 26.11.1999 and not 03.11.1999. Thus, according to the learned counsel, only in this stated position of law, the plaintiffs 1 and 3 were advised to file the present suit to establish their rights as hereditary trustees. The learned counsel further submitted that the question of limitation is a mixed question of fact and law which can be gone into only at the time of trial.

22. Countering the arguments of the plaintiffs, the learned counsel for the 8th defendant contended that as far as plaintiffs 1 and 3 is concerned, M.P.No.1 of 1998 was dismissed holding that there was no proof that the office of the deceased P.S.Subramania Mudaliar devolved on the plaintiffs 1 and 3 and no proof relate to P.S.Vedachala Mudaliar. He would submit that the civil court only decide who are the legal heirs successor of the last holding office of hereditary trustee. In the present case, the plaintiffs 1 and 3 are not the direct legal heirs of P.S.Venkatasubramania Mudaliar and P.S.Subramania Mudaliar to claim right under Section 54(1) of the Act and the father of the plaintiffs was not acted as hereditary trustee as per the original order in O.A.No.100 of 1972.

23. This Court finds some force in the above submissions of the learned counsel for the 8th defendant.

24. It is clear from the pleadings of both sides that the plaintiffs 1 and 3 have preferred petition being M.P.No.1 of 1998 before the Joint Commissioner claiming hereditary trusteeship under Section 54(1) of the Act. The averments in the present plaint clearly states that the plaintiffs 1 and 3 claiming their father's right after a lapse of about 39 years in the suit, which is not sustainable and the suit appears from the averments in the plaint is barred by law.

25. Article 107 of the Limitation Act provides:

<i>Description of suits</i>	<i>Period of limitation</i>	<i>Time from the period begins</i>
For possession of a Hereditary office	Twelve years	When the defendant takes possession of the office adversely to the plaintiff

Thus, Article 107 clearly contemplates that for possession of hereditary office, the period of limitation is only 12 years.

26. The learned counsel for the plaintiffs submitted that if at all the office of the hereditary trusteeship has become adverse to the plaintiffs 1 and 3, it is from 26.11.1999 by virtue of the order passed in M.P.No.1 of 1998 and not at any time prior to the same and the suit having been filed on 06.11.2011, the same is within the period of limitation. On a perusal of the copy of the plaint, it is seen that in the verification itself the plaintiffs have stated that the date signed on 08.11.2011. Thus, it could be easily taken the date of filing of the present suit as 08.11.2011.

27. It may be worthwhile to mention here that the language of Order 7, Rule 11 of CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. There is no dispute that law within the meaning of clause (d) of Order 7, Rule 11 of CPC must include the law of limitation as well.

28. It would be appropriate to set out the plaint paragraphs 5 to 7, which read as under:

"5.The plaintiffs submit that during the year 1972, the younger brothers of the said P.S.Vedachala Mudaliar viz., P.S.Venkatasubramania Mudaliar, P.S.Murugesha

Mudaliar and P.S.Sambandha Mudaliar hailing from different families filed a petition in O.A.No.100 of 1972 before the Deputy Commissioner of the Hindu Religious and Charitable Endowments Department and got a declaration under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the Act) that the Office of the Trustees of the Temple is Hereditary in nature besides the petitioners therein were declared to hold the office of the Trusteeship of the Temple as Hereditary Trustees. The family trees of P.S.Kumarasamy Mudaliar & P.S.Murugesu Mudaliar (both sons of Pa.Shanmugha Mudaliar and P.S.Sanbandha Mudaliar) is filed along with this plaint and the same may be treated as part and parcel of this plaint. A separate sheet showing the details of the applicants in O.A.No.100 of 1972 is also filed along with this plaint and the same may be treated as part and parcel of this plaint.

6.The plaintiffs submit that at the time of filing O.A.No.100 of 1972, P.S.Vedachala Mudaliar and P.S.Rajakannu Mudaliar were not added as parties for reasons best known to the applicants therein. In fact, it is surprising to find from the order dated 24.9.1973 that P.S.Vedachala Mudaliar, elder brother of the 1st and 2nd applicants therein, was reported to be blind, being not interested in the management of the Temple and that he had left the village without coming back.

The same is contrary to truth as P.S.Vedachala Mudaliar was not a blind person and had not left the village.

7.The plaintiffs further submit that after such declaration in O.A.No.100 of 1972, P.S.Murugesa Mudaliar was appointed as the Managing Hereditary Trustee. In the year 1977, P.S.Vekatasubramania Mudaliar died and his eldest son P.V.Kuppusamy Mudaliar assumed office as Hereditary Trustee and his other 2 sons, P.V.Raman and P.V.Kandasamy did not assume office since they did not show any interest in the same. In the year 1981, the consecration of the temple was proposed and only when the invitations were printed, it came to the knowledge of the plaintiffs that the applications in O.A.No.100 of 1972 had suppressed the right of P.V.Vedachala Mudaliar to the Office of the Hereditary Trustees and had made the above untrue statements regarding him. The plaintiffs 1 and 3 immediately raised their claim as Hereditary Trustees. Immediately after the consecration, the said P.V.Kuppusamy Mudaliar restrained himself from discharging his function as Hereditary Trustee though he continued to be a Hereditary Trustee. The said P.V.Kuppusamy Mudaliar did not attend the meeting of the Trustees for consecutive times. However, the then Trustees including P.V.Kuppusamy Mudaliar in office resolved and the 3rd plaintiff assumed office as Hereditary Trustee."

(emphasis supplied)

Thus, from the above plaint averments, it is clear that the plaintiffs, particularly, plaintiffs 1 and 3, came to know as to the declarations made in O.A.No.100 of 1972 in the year 1981 itself when the consecration of the temple was proposed. Therefore, as rightly argued by the learned counsel for the 8th defendant the limitation starts from the year 1981 itself.

29. The trial Court, while dismissing the petition to reject the plaint, held that the 8th defendant also shown as hereditary trustee of the temple and therefore, he cannot object the suit filed by the plaintiffs and the 8th defendant is estopped from objecting and raising as trusteeship of the plaintiffs. It was further held that only on the order passed by the Joint Commissioner, the plaintiffs have approached the Court for declaration of trusteeship and therefore, Article 107 of the Limitation Act is not applicable to the facts of the present case. The aforesaid findings of the trial Court are unsustainable for the reason that the plaintiffs came to know the declarations granted in O.A.No.100 of 1972 in the year 1981 itself when consecration of the temple was proposed.

30. It would be appropriate to extract the provisions of Order

7, Rule 11 of CPC:

"11. Rejection of plaint – The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provision of rule 9:*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper , as the case may be, within the time

fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

31. In *Hardesh Ores (P) Ltd. v. Hede and Company*, reported in (2007) 5 SCC 614, the Hon'ble Supreme Court held:

"25. The language of Order 7, Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order 7 Rule 11 must include the law of limitation as well. It is well settled 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. For the said purpose the averments made in the plaint in their entirety must be held to be correct. 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 clause (d) of Rule 11 of Order 7 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. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success 1 (2004) 9 SCC 512 and Popat and Kotecha Property v. State of Bank of India Staff Assn. (2005) 7 SCC 510."

32. A reading of the plaint averments, it is clear that the plaintiffs and his father have relinquished their right over the temple about 39 years back. Keeping silent and did not proceed with any civil proceedings for those period, now the plaintiffs cannot entitle to maintain the suit.

33. It is to be noted that there were other suits filed by the parties. The 4th plaintiff and two others have filed a suit being O.S.No.866 of 2008 before the Additional District Munsif Court, Alandur against the 8th defendant and the officials of Electricity Board and the HR & CE Department for permanent injunction restraining the 8th defendant and his persons from in any manner getting electricity service connection in his name or his nominees name to the suit property viz., Arulmighu Agastheeswarar Temple land situated at Pozhichalur village, Alandur Firka, Tambaram Taluk, Kancheepuram

District, comprised in S.No.205 measuring to an extent of 1 Acre 70 Cents and also restraining the officials of the Tamil Nadu Electricity Board not to give electricity service connection to the 8th defendant. In the plaint, it has been stated that the 4th plaintiff and two others have filed the suit in the capacity as devotees. The 4th plaintiff nowhere claimed as trustee to the temple in the said suit. By the judgment dated 2.12.2011, O.S.No.866 of 2008 came to be dismissed after full fledged trial.

34. The 8th defendant filed O.S.No.118 of 2009 before the Additional District Munsif Court, Alandur against the HR & CE Department in the capacity as Managing Hereditary Trustee of Arulmighu Agastheeswarar Temple and Allied temples seeking declaration that the plaintiff's temples situated in residential place Grama Natham in Survey No.210/2 private land properties is not coming under the purview of the Act and for permanent injunction restraining the Joint Commissioner, HR & CE Department and his subordinates either from conducting any enquiry against the 8th defendant unless and until the character of institution is decided and others reliefs. By the judgment dated 5.11.2009, the said suit was decreed ex parte.

35. According to the 8th defendant, the plaintiffs 1 and 4 herein and two others have filed petitions being I.A.Nos.462 to 464 of 2009 in O.S.No.118 of 2009 to implead them as defendants 4 to 7 therein alleging that they are the devotees of Arulmighu Agastheeswarar temple and Allied temples. By the order dated 29.07.2009, the trial Court dismissed I.A.Nos.462 to 464 of 2009 by observing that the proposed defendants 4 to 7 were not parties to the earlier proceedings between the 8th defendant and the HR & CE Department. Further, the trial Court observed that the proposed defendants 4 to 7 have not filed any documents to show their status in the temple and in view of the fact that the proposed defendants 4 to 7 have not filed documents to show their interest in the suit temple and in view of the relief claimed against the HR & CE Department, they are not necessary parties. As against the order passed in I.A.Nos.462 to 464 of 2009, no appeal was preferred by the plaintiffs 1 and 4 herein. As stated supra, thereafter, the suit being O.S.No.118 of 2009 decreed ex parte on 05.11.2009.

36. The learned counsel for the plaintiffs contended that the Joint Commissioner, HR & CE has filed petition to set aside the ex

parte decree along with delay condonation petition. In the said petition, the 8th defendant preferred an application to cross-examine the deponent of the affidavit to set aside the ex parte decree and the said application was allowed directing the Joint Commissioner to appear for cross-examination. Against which, the Joint Commissioner preferred C.R.P.No.1123 of 2014 before this Court, wherein this Court granted order of stay of the judgment made in O.S.No.118 of 2009.

37. On the other hand, the learned counsel for the 8th defendant submitted that the trial Court by an order dated 24.7.2014 dismissed the delay condonation petition being I.A.No.1069 of 2009.

38. The dismissal of I.A.No.1069 of 2009 is not denied by the plaintiffs. As stated supra, as against the order passed in I.A.Nos.462 to 464 of 2009, the plaintiffs 1 and 4 have not preferred any appeal. Thus, the ex parte decree passed in O.S.No.118 of 2009 attained finality.

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39. The earlier suit being O.S.No.866 of 2008 has been filed by the 4th plaintiff and two others in the capacity as devotees of the temple and not hereditary trustees and the said suit was dismissed on

merits on 02.12.2011. When the suit O.S.No.866 of 2008 was pending, the plaintiffs suppressing the pendency of the suit have filed the present suit claiming hereditary trusteeship of the temple.

40. The trial Court while dismissing I.A.No.941 of 2012 in O.S.No.748 of 2011 failed to consider Ex.P3-copy of judgment in O.S.No.866 of 2008 and Ex.P4-copy of the order passed in I.A.Nos.462 to 464 of 2009 in O.S.No.118 of 2009. On the contrary, the trial Court stated that the plaintiffs were not parties to O.S.No.866 of 2008 and the fact remains that in O.S.No.866 of 2008, one of the plaintiffs is the 4th plaintiff herein. Therefore, it cannot be said the plaintiffs have no knowledge about the decree passed in O.S.No.866 of 2008.

41. It is clear from the pleadings that having lost right through their natural father, the plaintiffs have filed the present suit claiming that they are descendants of the deceased Subramania Mudaliar and Venkatasubramania Mudaliar. Further, the Joint Commissioner dismissed M.P.No.1 of 1998 directing the plaintiffs 1 and 3 to produce the succession certificate obtained from the civil court to prove their claim of descendants of the deceased Subramania Mudaliar and Venkatasubramania Mudaliar. In the same order, liberty was

given to the plaintiffs 1 and 3 to prefer a fresh application under Section 54(1) of the Act after production of succession certificate. However, the plaintiffs by wrong interpretation of the order of the Joint Commissioner filed the present suit claiming right over the hereditary office by way of declaration as if they were granted liberty to prefer the suit. No Court of Law is entitled to grant any liberty to overcome the statutory Act and especially Limitation Act. Once the limitation starts, it will run.

42. It is pertinent to note that in M.P.No.1 of 1998, the Joint Commissioner, HR & CE had passed the order on 03.11.2009. It is seen that the said order was issued by the Manager by signing and putting the date as 26.11.1999. The learned counsel for the plaintiffs submitted that the suit having been filed within 12 years from 26.11.1999 i.e., on 06.11.2011, the suit is within the limitation period. On a perusal of the order passed in M.P.No.1 of 1998, at the top of the order above the Coram, the Tamil date has been mentioned as "*Prammathi Aandu, Ayppasi Thingal 17, Thiruvalluvar Aandu 2030*", which is equivalent to English date 03.11.1999. Thus, it is clear that the Joint Commissioner had passed the order in M.P.No.1 of 1998 on 03.11.1999. When the plaintiffs claim reliefs based on the order

passed in M.P.No.1 of 1998, how the suit could be within the period of limitation since the suit was filed beyond the period of 12 years i.e., on 08.11.1999. There is no explanation forthcoming from the plaintiffs on this aspect. On this ground also, the suit is barred by limitation.

43. The 8th defendant also seeks rejection of plaint on the ground that there was no cause of action as to the relief sought for in the suit and the plaintiffs does not disclose a correct cause of action.

44. It is clear that the claim of the plaintiffs 1 and 3 in M.P.No.1 of 1998 and liberty granted for production of succession certificate is different from framing of the present suit based on the cause of action alleged by the plaintiffs and claiming right over the hereditary office by way of declaration through P.S.Vedachala Mudaliar.

45. As stated supra, the plaintiffs and his father having knowledge over the order as to the appointment of trustees in O.A.No.100 of 1972 kept silent all those years without challenging the said order. The plaintiffs have failed to establish how the relief claimed first time in the present suit after a lapse of a period of 40 years is

sustainable. Assuming that the limitation to file the suit starts from the date of the order passed in M.P.No.1 of 1998 as stated supra, the present suit has been filed beyond the period of 12 years and the same is barred by limitation. The suit is also not maintainable on the ground of suppression of material facts i.e., filing of earlier suits and participation of the plaintiffs 1, 3 and 4 therein.

46. It is settled law that a suit which does not furnish the correct cause of action can be dismissed.

47. The Court has power to reject the suit under Order 7, Rule 11 of CPC, if no cause of action remains. A suit can be summarily rejected at the threshold of the stage if the basic defect persists even at that stage. The starting of the trial or settlement of issues is no bar to such an action. Order 7, Rule 11 of CPC does not place any restriction in that respect. Order 7, Rule 11 of CPC does not restrict the power of the Court or say that it could be only at any particular stage.

48. The whole purpose of conferment of powers under Order 7, Rule 11 of CPC is to ensure that a litigation which is meaningless

and bound to prove abortive should not be permitted to occupy the time of the Court. Even in an ordinary civil litigation the Court readily exercises the power to reject a plaint if it does not disclose correct cause of action or vexatious parts of the pleadings or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law.

49. The provisions of Order 7, Rule 11 of CPC are not exhaustive and the Court has got inherent powers to see that the vexatious litigations are not allowed to take or consume the time of the Court. In appropriate cases, directions can be given to the Court in which the suit is filed not to entertain the suit, if on reading the allegations in the plaint reveal that the same is abuse of process of law.

50. A reading of the plaint would show that it is manifestly a vexatious plaint and the correct cause of action has been camouflaged. Therefore, this Court is of the view that the present suit is liable to be rejected on the ground that from the averments in the plaint, the suit is apparently barred by law of limitation within the meaning of clause (d) of Order 7, Rule 11 of CPC and also liable to be rejected on the

ground that the plaintiffs have not disclosed the correct cause of action within the meaning of clause (a) of Order 7, Rule 11 of CPC. In view of the above, I am of considered opinion that without properly appreciating the materials produced before it, the trial Court dismissed the petition filed by the 8th defendant to reject the plaint.

51. The trial Court also failed to see that the basic principles envisaged under Order 7, Rule 11 of CPC is to save the judicial time of the Court in deciding the vexatious suit. Viewed from all angles, this Court is of the view that the trial Court committed error in dismissing I.A.No.941 of 2012 in O.S.No.748 of 2011 filed by the 8th defendant and therefore, the same is liable to be set aside.

52. For the foregoing discussions, this Court is of the view that the suit viz., O.S.No.748 of 2011 filed by the plaintiffs through their deceased father P.S.Vedachala Mudaliar is time barred under Article 107 of the Limitation Act and also does not disclose the correct cause of action and thus, hit by Order 7, Rule 11 (a) and (d) of CPC and consequently, the plaint in O.S.No.748 of 2011 is liable to be rejected.

53. In the result:

(a) The Civil Revision Petition is allowed by setting aside the order passed in I.A.No.941 of 2012 in O.S.No.748 of 2011, dated 02.02.2013 by the learned Additional District Munsif, Alandur.

(b) The suit in O.S.No.748 of 2011 pending on the file of the learned Additional District Munsif, Alandur is hereby struck off from its file. No costs. Consequently, connected miscellaneous petition is closed.

17.07.2017

vs

Note: Issue order copy on 22.01.2019

Index : Yes

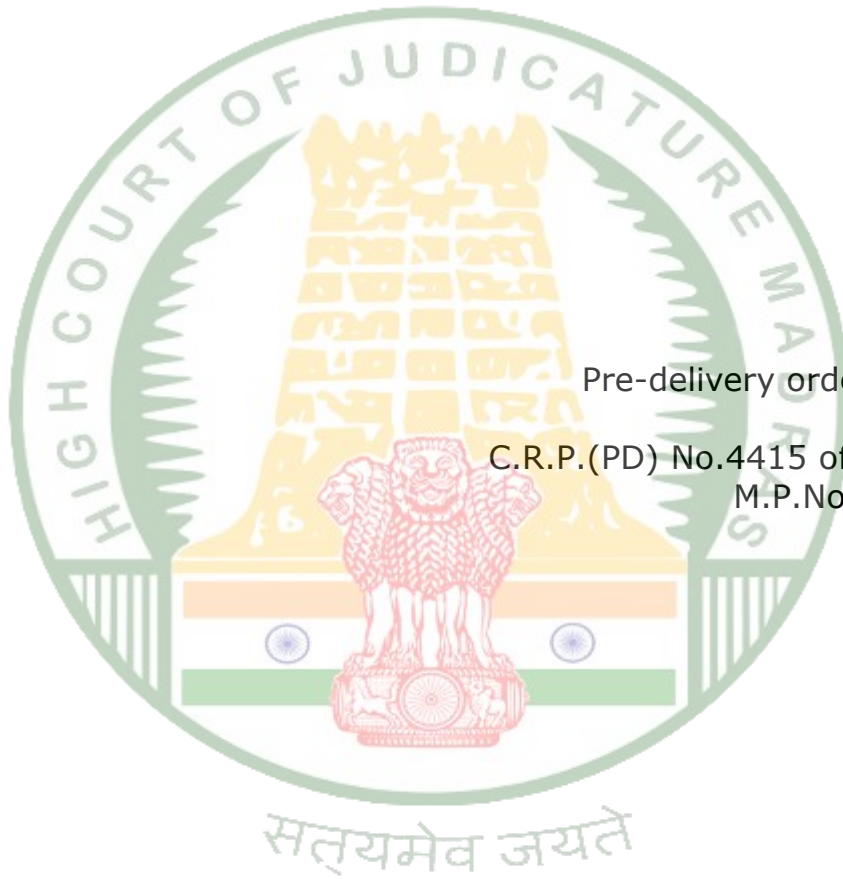
To

The Additional District Munsif,
Alandur.

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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in

C.R.P.(PD) No.4415 of 2013 and
M.P.No.1 of 2013

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17.07.2017