

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2018

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD) No.1699 of 2015

Judgment reserved on 09.02.2018	Judgment pronounced on 07.03.2018
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1.S.Kanakaraj
2.T.S.Banumathi ... Petitioners / Defendants

Vs

S.Ramalingam ... Respondent / Plaintiff

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India to strike down the plaint in O.S.No.191 of 2014 on the file of the Subordinate Judge, Udumalpet.

For Petitioners : Mr.Palani Selvaraj

For Respondent : Mr.N.Manokaran

ORDER

This Civil Revision Petition is filed to strike down the plaint in O.S.No.191 of 2014 on the file of the Subordinate Judge, Udumalpet.

2. The petitioners are defendants, the respondent is plaintiff. The respondent who is the brother of first petitioner and brother-in-law of second petitioner filed suit in O.S.No.191 of 2014 for partition, separate possession and to declare the sale deed dated 14.11.2003 executed by second petitioner in favour of first petitioner as null and void.

3. The respondent in the suit has stated that he is the younger brother of first petitioner and both of them have purchased the suit property from their father Sakthivel by the deed of sale dated 29.06.1993. From that date onwards, they are in possession and enjoyment of the suit properties. After purchase, they demolished the old building and put up new construction and let out the same to various third parties for rent. The respondent is residing in a room in the second floor alongwith his family. He was collecting the rent from the tenants and sharing the same with the first petitioner. On 30.06.2013, the petitioners informed the respondent that they are the absolute owners of the suit properties and the respondent has no right and created problem with the respondent. The respondent lodged a complaint with Inspector of Police, Udumalpet Police Station. The respondent came to know

about the fraudulent general Power of Attorney obtained by the second petitioner from the respondent and sale deed executed by the second petitioner in favour of the first petitioner. He also gave complaint to the Land Grabbing Cell, Tirupur. The respondent did not execute any general Power of Attorney in favour of the second petitioner. Having come to know about the fraudulent Power of Attorney, cancelled the same by deed of cancellation on 22.09.2014. The respondent sent a notice on 02.12.2009 through his counsel to the petitioners. The respondent filed suit for partition and declaration as petitioners have played fraud on the respondent.

4. The petitioners have come out with the present Civil Revision Petition for striking off the plaint on the ground of limitation and suppression of materials facts by the respondent. The learned counsel for the petitioners contended that the respondent agreed to sell his $\frac{1}{2}$ share in the suit property and executed an agreement of sale dated 10.09.2001 and handed over the possession to the first petitioner. He received Rs.2,50,000/- and balance sale consideration payable is Rs.50,000/-. The respondent executed general Power of Attorney dated 31.10.2003 and the same was registered. By the said general Power of Attorney, the second petitioner was appointed as Power of Attorney

of the respondent and she executed and registered the sale deed dated 14.11.2003 in favour of the first petitioner. The period of limitation has to be computed from 10.01.2001 or 31.10.2003 or 14.11.2003, as per Article 58 of the Limitation Act. The respondent has filed suit after thirteen (13) years of handing over possession, as per agreement of sale dated 10.09.2001 and ten (10) years after execution of the sale deed dated 14.11.2003 which is barred by limitation and is liable to be struck off at the threshold itself. The respondent is a party to the Power of Attorney and sale deed. Both the parties can seek to set aside the sale, within three years, even if all the averments made are true. The suit filed by the respondent is fraudulent, vexatious and is against public policy.

5. When a person signs a document, he is deemed to have read and understood the contents of the document. The sale agreement, Power of Attorney and sale deed are in Tamil. Power of Attorney and sale deed are executed and registered before Sub Registrar, as per the provisions of the Registration Act. It is imaginary that documents are executed for loan transaction. As per Order VII Rule 6 CPC, the plaintiff must state the ground for exemption for limitation. The grounds must be lawful and tenable. On the date of execution of sale deed on 14.11.2003, the first

petitioner paid the balance sale consideration of Rs.50,000/- and respondent issued receipt for the same. The respondent issued notice on 02.12.2009 through his Advocate to the first petitioner and to all the tenants stating that the first petitioner is not sharing the rent to the respondent; the name in the property tax and EB service connection have been transferred in the name of the first petitioner and the first petitioner refused to divide the property. In the said notice, the respondent suppressed the execution of sale agreement, general Power of Attorney and sale of his ½ share in the suit property to the first petitioner. The first petitioner sent reply notice dated 14.12.2009 to the counsel for the respondent through his counsel denying various averments made by the respondent and execution of the sale deed dated 14.11.2003 whereby the respondent sold his share of the property to the first petitioner. On receipt of the said notice, the respondent initiated criminal proceedings stating that he did not execute any general Power of Attorney and did not give any consent for transfer of property and the petitioners have committed forgery, fraud, fabrication of documents, impersonation, etc.

6. After enquiry, the criminal proceeding was closed as not proved. The learned counsel for the petitioners referred to the complaint given by the petitioner to the Inspector of Police, Land Grabbing Cell, Tirupur wherein it has been stated that the respondent gave complaint against the petitioners on 05.05.2010 which was registered as Crime No.7/2010 for the offences under Sections 120(B), 490, 420, 464, 465, 468 & 471 IPC. After investigation, the Inspector of Police, Land Grabbing Cell closed the complaint on 08.07.2013 as mistake of fact. In spite of the same, the respondent has given another complaint against the petitioners. The learned counsel for the petitioners also referred to the reply notice sent by the tenants to the counsel for the respondent stating that they have sent reply dated 29.01.2010 for earlier notice dated 02.12.2009 stating that they are paying the rents only to the first petitioner and they are tenants under the first petitioner. Referring to these documents, the learned counsel for the petitioners contended that respondent was aware of the sale dated 14.11.2003 in the year 2009 itself when reply was sent to the learned counsel for the respondent. In view of this fact, the suit filed on 16.12.2014, after five years of reply notice dated 14.12.2009 is barred by limitation on the face of the record.

7. The learned counsel for the petitioners further contended that the suit filed by the respondent is vexatious, fraudulent and against public policy. Having executed general Power of Attorney and sale deed and filed criminal proceedings and complaints, the respondent is alleging a new spurious and illusive cause of action. The respondent has come out with the present suit only to harass and blackmail the petitioners. The suit is abuse of process of law and court. The suit is against public policy and respondent has no chance of succeeding in the suit. The respondent has no interest in the property to claim partition. Without having any right or interest, the respondent cannot file a suit for partition which is nothing but spurious, frivolous and liable to be thrown out at the threshold itself. The respondent has filed suit for partition only to evade payment of court fee. Even though he is a party to the sale deed, he did not seek for setting aside the sale deed only to avoid payment of *ad valorem* court fee. There is no cause of action for the respondent to file the suit and also no triable issues pleaded in the plaint. Only to waste the time of the court, the respondent has come out with the present suit. The relief claimed by the respondent cannot be granted.

7(a) The learned counsel for the petitioners, in support of his contention, relied on the following judgments -

(i) 1994 (1)SCC 1 [S.P.Chengalvaraya Naidu (Dead) by LRs v. Jagannatha(Dead) by LRs. and others

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-1S) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

**(ii) 2013 (6) CTC 809 [N.A.Chinnasamy and another
v. S.Vellingirnathan]**

38. As the revision petition has been filed under [Article 227](#) of the Constitution of India, it being the superintending power of the High Court over all subordinate Courts, including Tribunals, this Court can interfere, only if there is clear abuse of process of Court, based on the averments or pleadings of the plaint. If it is established that the suit has been filed as an abuse of process of Court, in order to prevent the abuse of process of court and to avoid miscarriage of justice, this Court has to order strike off the plaint. The Hon'ble Supreme Court in the decisions referred to above has categorically ruled that where there is abuse of process of Court or filing the suit itself is contrary to justice and against public policy, this Court has to exercise its power under [Article 227](#) of the Constitution. If it is a frivolous or vexatious suit, as per the pleadings of the plaint and the Court process is being wasted, this Court has to exercise its power under [Article 227](#) of the Constitution of India to strike off the plaint. However, such jurisdiction should be exercised sparingly. When the Court is satisfied that there is no chance of the suit succeeding, as held by the Hon'ble Apex Court in [K.K.Modi v. K.N.Modi](#) (cited supra), petition filed under [Article 227](#) of the Constitution of India, has to be allowed by this Court, to prevent abuse of process of law and to meet the ends of justice.

41. It is a well settled proposition of law that as per [Section 114](#) (e) of the [Indian Evidence Act](#), the Court has to presume the existence of any judicial or official act, that same has been regularly performed, until the contrary is proved. In such circumstances, the burden is upon the person, disputing the genuineness of a judicial or official act, hence, no one is entitled to raise a vexatious or frivolous plea, which is not acceptable to any reasonable prudent person.

51. In the instant case, a perusal of the averments made in the cause of action, para of the plaint by the respondent / plaintiff could not be construed as cause of action, in the eye of law, to maintain the suit, for the relief sought for in the plaint. Having executed the registered sale deed, 12 years after the execution of the sale deed, the respondent / plaintiff has come forward with the present suit, by raising an unsustainable plea, that on the date of executing the deed, he was thinking that it was a mortgage deed and not a sale deed. 12 years after executing the deed, he has raised such an unreasonable plea, hence, such an abuse must be deprecated. After executing the sale deed before the Sub-Registrar's Office, as per the earlier registered agreement for sale, it is not open to the respondent / plaintiff to raise a self contradictory plea stating that he had signed in the Sub-Registrar's Office in various papers, 12 years later in the last week of June 2012, he came to know that it was a sale deed, though he was thinking that it was only a mortgage deed, for which he received a loan of Rs.2,00,000/-, out of which, Rs.1,00,000/- and interest was paid without getting any receipt or acknowledgement, saying that the petitioners / defendants were not in the habit of issuing receipt. Such unsustainable, frivolous plea against the registered document executed by him would show that the respondent / plaintiff has not come forward with clean hands and also spoken the truth in the plaint. The self contradictory version of the respondent / plaintiff, which is against law, cannot be construed as cause of action to maintain the suit. In a case of vexatious litigation, it would be the solemn duty of this Court to invoke [Article 227](#) of the Constitution to struck off the plaint, which contains improper and unreasonable pleadings of the respondent / plaintiff, which could not be accepted by any reasonable prudent man. The suit has been filed after 12 years, after executing the sale deed is hopelessly barred by limitation and the respondent is not entitled to raise a plea of date of knowledge, as he was party to the sale deed.

8. Per contra, the learned counsel for the respondent contended that -

(a) the respondent is the younger brother and the first petitioner is the brother-in-law of the second petitioner. The petitioners are well educated and are holding responsible posts. The respondent is an illiterate person. In view of the same and being younger brother of the first petitioner, the respondent had faith in him and was doing everything as per the instructions of the first petitioner.

(b) the first petitioner and respondent purchased the suit property from their father by the deed of sale dated 29.06.1993 for a total sale consideration of Rs.1,50,000/-. Both of them contributed Rs.75,000/- each.

(c) After purchase, the petitioner and the respondent demolished the old dilapidated house and shops, obtained building permission and approval of

building plan on 10.09.2001. They obtained loan from ICICI Bank, Udumalpet for constructing shops in the ground and first floor and completed the construction and house warming ceremony was conducted on 22.05.2002.

(d) the first petitioner and the respondent were jointly in possession and enjoyment of the suit property.

(e) the petitioners asked the respondent to come to Tirupur on 31.10.2003 for signing the documents in respect of the loan taken for construction of the building. They obtained signatures of the respondent in stamped papers, pro-notes and other papers. They took the respondent to Sub Registrar Office on the pretext to register the loan documents. They fraudulently got the general Power of Attorney from the respondent appointing the second petitioner as the Power of Attorney of the respondent.

(f) the respondent did not have any intention of selling his share of the property to the first petitioner.

The petitioners, taking advantage of the illiteracy of the respondent and close relationship, cheated the respondent and fraudulently got the general Power of Attorney executed by him in favour of the second petitioner with a view to grab the property of the respondent.

(g) Based on the general Power of Attorney, the second respondent executed a sale deed dated 14.11.2003 in favour of the first petitioner and rectification deed dated 09.09.2004. In these documents, the petitioners have mentioned an unregistered agreement of sale dated 10.09.2001 alleged to have been executed by the respondent. All these documents are invalid and illegal as they have been obtained by playing fraud on the respondent.

(h) Even after the alleged sale deed, the respondent was collecting the rents from the tenants and sharing the same with the first petitioner. The petitioners never disclosed the alleged sale deed by the respondent through the second petitioner.

(i) only during 2009, the first petitioner has compelled the tenants to pay the rents only to him and not to the respondent. The respondent issued notice dated 02.12.2009 to the first petitioner and tenants of shops and also a complaint to the police and enquiry was conducted on his complaint.

(j) During June 2013, both the petitioners created problem to the respondent and his family members who are residing in the second floor of the suit property stating that they are the absolute owners of the suit property. The respondent gave a complaint to the Inspector of Police, Udumalpet Police Station. Only during enquiry, the respondent came to know about the general Power of Attorney in favour of the second petitioner and sale deed executed by the second petitioner in favour of the first petitioner. Immediately, the respondent gave a complaint to Land Grabbing Cell against the petitioners and the same is pending.

(k) The respondent, on coming to know of the fraud played by the petitioners on 22.09.2014, cancelled the alleged general Power of Attorney executed in favour of the second petitioner.

(l) The respondent and his family members are residing in a room in second floor and is paying the electricity charges.

(m) The petitioners tried to interfere with the possession of the respondent during June 2013 and respondent has filed the suit on 16.12.2014. Hence, the suit is in time.

For the above reasons, the respondent has filed the suit for partition and declaration that the sale deed dated 14.11.2003 is null and void and for injunction. In view of the fraud played by the petitioners, the respondent is entitled to the decree as prayed for.

8 (a) The learned counsel for the respondent, in support of his contention, relied on the following judgments -

**(i) 2012 (1) MWN (civil) 701 [K.Ponnamali & Ors.
v. V.Thayanban & Ors.]**

10. The only question therefore that falls for consideration is as to whether in the facts and circumstances of the case, can this Court, in exercise of its supervisory power under [Article 227](#) of the Constitution of India strike off the plaint.

18. In the light of the principles laid down by the Supreme Court, in the aforesaid cases, it can safely be concluded that :

(i) power of judicial superintendence under [Article 227](#) must be exercised sparingly only to keep the courts and tribunals within their bounds of authority and not to correct mere errors;

(ii) the supervisory jurisdiction conferred on the High Court under [Article 227](#) of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameter and not to correct an error apparent on the face of the record;

(iii) where the law provides remedy by filing an appeal or revision, then exercise of power under [Article 227](#) may be refused, on the ground of availability of such alternative efficacious remedy by way of appeal or revision to the aggrieved party.

(ii) 2014 (6) SCC 508 Jacky v. Tiny Alias Antony and Ors.]

2. The only question which is required to be determined in this case is whether the High Court while exercising its power under Articles 226 and 227 of the Constitution of India is competent to set aside the plaint ?

9. While according to the appellant Writ Petition under Articles 226 and 227 of the Constitution of India

was not maintainable to quash the plaint or the suit proceedings and/or the injunction order passed by the trial Court, per contra according to the 1st respondent it was open to the High Court to issue such writ on being satisfied that the order obtained by the appellant was by deceitful means in order to harm the 1st respondent.

10. From the impugned order, we find that the appellant challenged the very maintainability of the writ petition and argued that the writ petition was not maintainable to quash any plaint or a civil suit. The High Court noticed the stand taken by the 1st respondent who pleaded as follows:

The appellant has fraudulently filed the suit to harass the 1st respondent and to ensure that the business run in the shop is closed down. The said suit was filed by the appellant after having failed in all illegal attempts to evict the 1st respondent from the shop room which was in his possession as a tenant for a very long time. The appellant deliberately and fraudulently omitted to have implead the 1st respondent as a defendant to the suit in order to obtain an order from the court so that it could be misused to cause Municipal Corporation to pass an order to close down the shop.

15. A petition under [Article 226](#) or [Article 227](#) of Constitution of India can neither be entertained to decide the landlord-tenant dispute nor it is maintainable against a private individual to determine an intense dispute including the question whether one party harassing the other party. The High Court under [Article 227](#) has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them within the bounds of their authority but it was not the case of the 1st respondent that the order passed by the Munsiff Court was without any jurisdiction or was so exercised exceeding its jurisdiction. If a suit is not maintainable it was well within the jurisdiction of the High Court to decide the same in appropriate proceedings but in no case power under Articles 226 and 227 of Constitution of India can be exercised to question a plaint.

(iii) 2014 (16) SCC 125 Surjit Kaur Gill and anr. v. Adarsh Kaur Gill and anr.]

10.....This having happened in 1992, the original plaintiff was constrained to file the suit for the partition of the property belonging to Smt.Abnash Kaur. Smt. Abnash Kaur having made a Will about her property, the original plaintiff had to see to it as the administrator of the will that the property is distributed in accordance therewith. This being the position, in his submission it is [Article 58](#) which is the relevant Article for all these prayers, which provides for a period of 3 years when the right to sue first accrues. In the present case, it will be when the dispute arose because of the conduct of the respondent No.1 herein. The issue of limitation is always a mixed question of facts and law, and therefore, it could not be held that no case was made out for proceeding for a trial. Mr. C.A. Sundaram submitted that the respondent No.1 disputed the writing dated 12.2.1991, and it had to be forensically tested. This submission all the more justifies that the trial had to proceed. For deciding an application under Order 7 rule 11, one has to look at the plaint and decide whether it deserved to be rejected for the ground raised. In our view, the view taken by the Division Bench is clearly erroneous. The appeal is therefore allowed and the judgment and order of the Division Bench is set aside. The application made under Order 7 Rule 11 moved by the respondent No.1 herein will stand rejected. We may however clarify that all the observations herein are only for the purpose of deciding this appeal.

(iv) 2004 (9) SCC 468 [Krishna Mohan Kul Alias Nani Charan Kul and anr. v. Pratima Maity and Ors.]

12. There was challenge by the plaintiffs to validity of the deed. The onus to prove the validity of the deed of settlement was on defendant No. 1. When fraud, mis-representation or undue influence

is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation. But, when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position, he has to prove that there was fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bona fide. In such a case the burden of proving the good faith of the transaction is thrown upon the dominant party, that is to say, the party who is in a position of active confidence. A person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the Court watches with zealously all transactions between such persons so that the protector may not use his influence or the confidence to his advantage. When the party complaining shows such relation, the law presumes everything against the transaction and the onus is cast upon the person holding the position of confidence or trust to show that the transaction is perfectly fair and reasonable, that no advantage has been taken of his position. This principle has been engrained in [Section 111](#) of the Indian Evidence Act, 1872 (in short the '[Evidence Act](#)'). The rule here laid down is in accordance with a principle long acknowledged and administered in Courts of Equity in England and America. This principle is that he who bargains in a matter of advantage with a person who places a confidence in him is bound to show that a proper and reasonable use has been made of that confidence. The transaction is not necessarily void ipso facto, nor is it necessary for those who impeach it to establish that there has been fraud or imposition, but the burden of establishing its perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed. The rule applies equally to all persons standing in confidential relations with each other. Agents, trustees, executors, administrators, auctioneers, and others have been held to fall within the rule. The Section requires that the party on whom the burden of proof is laid should have been in a position of active confidence. Where fraud is alleged, the rule has been clearly established in England that in the case of a stranger equity will not set aside a voluntary deed or donation, however, improvident it may be, if it be free from the imputation of fraud, surprise,

undue influence and spontaneously executed or made by the donor with his eyes open.

(v) 2010 (8) SCC 383 [Meghmala and Ors. v. G.Narasimha Reddy and Ors.]

20. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors. AIR 1994 SC 853). In Lazarus Estate Ltd. Vs. Besalay 1956 All. E.R. 349), the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

21. In Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills & Anr. AIR 1994 SC 2151; and State of Maharashtra & Ors. Vs. Prabhu (1994) 2 SCC 481. this Court observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and sub-letties invented to evade law."

9. Heard the learned counsel for the petitioners as well as respondent and perused the materials available on record.

10. The present Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.191

of 2014 on the grounds of barred by limitation, abuse of process of court, suppression of material facts and suit filed only to harass and blackmail the petitioners.

11. This Court has superintending power overall the subordinate courts including Tribunal. The power under Article 227 of the Constitution of India is an extraordinary discretionary power which has to be used sparingly. This Court can exercise such power to strike off the proceedings at the initial stage itself, if such proceeding is -

(i) clear abuse of process of court based on the averments in the plaint ;

(ii) if the suit proceedings is frivolous or vexatious or contrary to justice and court time/process is being wasted ;

(iii) if the suit is barred by limitation on the face of the averments made in the plaint ;

(iv) if materials facts are suppressed ;

(v) the cause of action alleged is illusory or cause of action is created by clever drafting ;

(vi) the court can entertain and decide the Civil Revision Petition under Article 227 of the Constitution of India even if the defendant did not initiate any proceedings under Order VII Rule 11 CPC for rejection of plaint.

12. The point to be considered in this Civil Revision Petition is ***Whether the suit is barred by limitation, abuse of process of Court based on the averments made in the plaint itself and the respondent has suppressed the material facts.***

12(a) The respondent is seeking partition of the suit property and for separate possession as well as declaration that the sale deed dated 14.11.2003 executed by the second petitioner as his Power of Attorney in favour of the first petitioner as null and void. The contention of the respondent is that on the guise of executing the loan documents, the petitioners, by playing fraud on the respondent, got the Power of Attorney executed by him on 31.03.2003. Based on the invalid Power of Attorney, the second petitioner executed sale deed on 14.11.2003 in favour of the first petitioner. In view of the fraud, the sale deed dated 14.11.2003 is invalid. The respondent filed the suit on 16.12.2014. According to

the respondent, the first petitioner, in June 2013 informed the respondent that he has no right over the suit property and tried to evict the respondent and his family members from the room in the second floor of the suit property. Immediately, he gave a complaint to the Inspector of Police, Udumalpet Police Station. During enquiry, he came to know about the Power of Attorney executed by him in favour of the second petitioner and the sale deed and rectification deed executed by the second petitioner in favour of the first petitioner. He cancelled the Power of Attorney dated 22.09.2014, gave a complaint to the Land Grabbing Cell and filed suit on 16.12.2014.

12(b) According to the respondent, the cause of action for the suit arose during June 2013. This contention is contrary to the pleadings in the earlier part of plaint. The respondent has categorically stated that during 2009, the first petitioner claimed exclusive right over the suit property and asked the tenants to pay the rent only to the first petitioner. It is the case of the respondent that he issued a notice dated 02.12.2009 through his Advocate to the first petitioner seeking partition and also to the tenants. This clearly shows that the respondent was aware of the claim of the absolute ownership by the first petitioner. The first petitioner sent a

reply on 14.08.2009 through his Advocate denying the various allegations made in the notice dated 02.12.2009 and also mentioning the sale deed dated 14.11.2003 executed by the respondent. The tenants also sent replies informing the respondent that they are tenants of first petitioner and that they are paying rent to the first petitioner. The respondent has suppressed the reply notice dated 14.12.2009 issued by the first petitioner and tenants.

12(c) The respondent has created an illusory cause of action as though the cause of action for the suit arose only during June 2013 to file suit for declaration that the sale deed dated 14.11.2003 is invalid besides claiming partition. From the notice dated 02.12.2009 issued by the respondent through his Advocate, it is clear that cause of action for the suit arose atleast on 02.12.2009 and respondent ought to have filed the suit on or before 01.12.2012. Further, the respondent gave a complaint to the Inspector of Police, Udumalpet Police Station during that time and FIR was registered against the petitioners under Sections 120(B), 490, 420, 464, 465, 468 & 471 IPC. This is an additional factor to show that the respondent was aware of the general Power of Attorney and sale deed in the year 2009 itself. Inspite of the

same, the respondent has not filed the suit within three years from 02.12.2009.

13. From the materials on record, it is seen that respondent has issued a notice to the first petitioner through his counsel on 02.12.2009 and also to the tenants and first petitioner through his counsel sent a reply dated 14.12.2009 mentioning the sale in his favour and contending that he has become absolute owner of the suit property. The tenants also sent replies informing that they are tenants under the first petitioner. The respondent has deliberately did not mention the reply by first petitioner and tenants. Further, the respondent had given complaint to the police against the petitioners and the said complaint was registered under Sections 120(B), 490, 420, 464, 465, 468 & 471 IPC. The said complaint was closed after enquiry. The respondent mentioned the complaint given by him and suppressed the fact that police closed the said complaint. The Hon'ble Apex Court held in the judgment reported in **1998 3 SCC 573 (K.K.Modi Vs. K.N.Modi and others)** that parties are expected to approach the Court with clean hands. If any of the parties abuse the forum, the said proceedings are liable to be struck off. It was also held that frivolous and vexatious proceedings may also amount to abuse of process of Court, especially, the

proceedings are absolutely groundless. The Court can nip the attempt in the initial stage itself. From a reading of the plaint as a whole, it is clear that respondent has suppressed the material fact and has not approached the Court with clean hands and the claim of the respondent is baseless.

14. From the facts stated above, the contention of the learned counsel for the petitioners that the suit on the averments in the plaint itself is barred by limitation and respondent has suppressed the material facts and plaint is liable to be struck off has considerable force.

15. For the above reasons, I hold that this is a fit case to exercise the extraordinary power of this Court under Article 227 of the Constitution of India to strike off the plaint in O.S.No.191 of 2014. Therefore, plaint in O.S.No.191 of 2014 is struck off.

16. In the result, this Civil Revision Petition is allowed. No costs.

07.03.2018

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Index : Yes

Speaking / Non-speaking order

Note: Issue order copy by 09.03.2018

V.M.VELUMANI, J.

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To

The Subordinate Judge,
Udumalpet..

**Pre-delivery Order in
C.R.P. (PD) No.1699 of 2015**

07.03.2018