

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.830 of 2015
and M.P.No.1 of 2015

1.S.Venkatasubramaniam
2.S.Saraswathi
3.A.Lakshmi
4.Nandini
5.Minor Nethra
6.M/s.Kgeyes Residency Pvt. Limited
Rep.by its Managing Director
Mr.P.V.Shanmugam
Having office at No.10,
II Cross Street, Raja Annamalaipuram
Chennai – 600 028

...

Petitioners

Vs.

1.Ramani
2.G.R.Sekar
3.P.Parvathi
(3rd respondent is not a necessary
party hence given up)

...

Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 13.02.2015 made in I.A.No.802 of 2014 in O.S.No.5893 of 2013, on the file of XV Asst. City Civil Court, Chennai.

For Petitioners : Mr.T.R.Rajagopalan,
Senior Counsel for
M/s.N.Anand Venkatesh

For Respondents : Mr.S.Chellapandian,
Senior Counsel for
Mr.M.Santhanaraman
for R1 & R2.

R3 – Given up

ORDER

This Civil Revision Petition has been filed against the fair and final order dated 13.02.2015 made in I.A.No.802 of 2014 in O.S.No.5893 of 2013, on the file of XV Asst. City Civil Court, Chennai.

2. The petitioners are defendants 1 to 3, 5 to 7, respondents 1 & 2 are plaintiffs and 3rd respondent is the 4th defendant in O.S.No.5893 of 2013 on the file of City Civil Court, Chennai. The respondents 1 & 2 filed the above suit against the petitioners, third respondent and others for declaration declaring that the decree passed in O.S.No.14133 of 1996 dated 20.10.2006 as null and void and not binding upon the respondents 1 & 2 and for permanent injunction restraining the petitioners 1 to 3, 5 & 6 and 3rd respondent and others from encumbering the suit schedule

property. The petitioners alongwith third respondent filed I.A.No.802 of 2014 in O.S.No.5893 of 2013 under Order VII Rule 11 CPC r/w Section 151 CPC for rejection of plaint on the following grounds -

(i) in view of the earlier suit C.S.No.640 of 2010 filed before this Court by respondents 1 & 2, the present suit is hit by principles of res judicata

(ii) the respondents have not obtained leave under Order II Rule 2 CPC for filing fresh suit.

2(a) According to the petitioners, the respondents 1 & 2 earlier filed C.S.No.640 of 2010 on the file of this Court for declaration of their title. The respondents 1 & 2 were called upon to pay the deficit court fee and they did not pay the same. The respondents 1 & 2 challenged the same by filing O.S.A.No.6 of 2012 and the said OSA was dismissed. Ultimately, the suit was dismissed for non-payment of deficit court fee. The relief now sought for in the present suit was available at the time of filing of C.S.No.640 of 2010 itself and they did not obtain any leave to file subsequent suit.

(iii) the suit is barred by limitation

2(b) The respondents 1 & 2 were aware of the decree passed in O.S.No.14133 of 1996 dated 20.10.2006 in the year 2009 itself and therefore the present suit is barred by limitation.

(iv) plaint does not disclose any cause of action :-

2(c) The present suit filed by the respondents does not disclose any cause of action.

(v) the present suit is abuse of process of court :-

2(d) The petitioners contended that by abuse of process of court, the petitioner has come out with the present suit and is liable to be rejected.

3. The respondents 1 & 2 filed counter affidavit and denied all the above contentions. According to the respondents, C.S.No.640 of 2010 was not decided on merits and the relief sought for in the above suit is different and the present suit is not hit by principles of resjudicata and there is no necessity to obtain leave in the above suit to file any subsequent suit. Respondents 1 & 2 came to know about the fraudulent decree only in the year 2013 and

therefore the suit is not barred by limitation. Respondents 1 & 2 have stated in Para 14 of the plaint as how the cause of action has arisen. The petitioners are seeking to reject the plaint not based on the averments in the plaint or documents filed alongwith the plaint. The averments made in the petition filed under Order VII Rule 11 CPC and documents relied on by the petitioners are not relevant to decide the said application.

4. The learned Judge, considering the averments in the affidavit, counter affidavit, averments in the plaint and documents filed alongwith the plaint, dismissed the application holding that -

(i) the question of limitation is a mixed question of fact and law which can be decided only by appreciating the evidence let in by the parties during trial. सत्यमेव जयते

(ii) the earlier suit in C.S.No.640 of 2010 was not decided on merits. The respondents have not paid deficit court fee and even when the suit was dismissed for non-payment of deficit court fee, the respondents 1 & 2 can file fresh suit under Order VII Rule 13 CPC.

(iii) the cause of action is a bundle of facts. The averments in the plaint alone is necessary to decide whether the plaint discloses cause of action or not. A reading of the plaint discloses cause of action.

(iv) the earlier suit was not decided on merits and therefore a leave under Order II Rule 2 is not necessary.

(v) with regard to the contention of the learned counsel for the petitioners that the present suit is abuse of process of court, the learned Judge rejected the same on the ground that the petitioners have not substantiated their case that respondents have forged the documents and filed the suit. Whether the partition deed relied on by the respondents is genuine or not can be decided only by appreciating the evidence let in by the parties during trial.

5. Against the said order of dismissal dated 13.02.2015 made in I.A.No.802 of 2014 in O.S.No.5893 of 2013, the present Civil Revision Petition is filed by the petitioners.

6. The learned Senior Counsel appearing for the petitioners submitted that the revision arises out of the order dismissing the

application under Order VII Rule 11 CPC filed by the petitioners. He submitted that the learned Judge failed to see that the respondents have filed present suit in O.S.No.5893 of 2013 seeking for declaration to declare the decree in O.S.No.14133 of 1996 dated 20.10.1996 as null and void and for permanent injunction with regard to the suit property. Even before the filing of the present suit, the respondents have filed a suit against the petitioners claiming for the relief of declaration of title and for permanent injunction over the same suit property mentioned in C.S.No.640 of 2010 filed before this Court. In the said suit, the petitioners filed applications to determine the market value of the suit property and for a direction to pay the deficit court fee and this court, by order dated 16.11.2011 directed the respondents to deposit the deficit court fee and since the respondents failed to deposit the deficit court fee, the plaint was rejected by order dated 22.02.2012 and the OSA filed by the respondents were also dismissed on 13.03.2012.

6(a) The learned Judge failed to see that the respondents, having failed in their attempt in seeking for declaration of title over the suit property, had subsequently filed the above suit in O.S.No.5893 of 2013 merely for seeking for declaration of the

decree in O.S.No.14133 of 1996 dated 20.10.2006 as null and void and for permanent injunction without reserving their right under Order II Rule 2 seeking for declaration of title over the suit property. The learned Judge failed to see that the right of the respondents to seek for declaration of title in the present suit is barred by limitation and they ought to have obtained leave of the court under Order II Rule 2 CPC. The learned Judge failed to see that in the plaint filed by the respondents, in their previous suit in C.S.No.640 of 2010 before this Court, marked as Ex.P1, they have categorically admitted about the knowledge of the decree in OS No.14133 of 2006 dated 20.10.2006 in the year 2009 itself.

6(b) The learned Judge failed to see that the respondents have already instigated one Mr.Eby Thomas who was the 13th defendant in the present suit to file a suit in O.S.No.4879 of 2013 on the file of XVI Asst. Judge, City Civil Court, Chennai and the said suit was transferred to this Court and re-numbered as Tr.C.S.No.713 of 2013 and the respondents have already filed impleading petition in the said suit and the same is still pending. The respondents are initiating various litigations for the same suit property and the present suit is nothing but an abuse of process of law. The plaint does not disclose any cause of action for the

respondents 1 & 2 to file the present suit and they have already lost their title over the suit property and as such they have no locus standi to file the present suit. There is absolutely no averment with regard to limitation in the plaint and the learned Judge erred in holding that the limitation is a mixed question of law and fact.

6(c) It is well settled that for rejection of plaint, the documents which ought to have been filed with the plaint which have been deliberately withheld by the respondents will also be a ground for rejection of plaint. The respondents failed to file their plaint in C.S.No.640 of 2010 and other related documents. The learned Judge erred in holding that the earlier suit filed by the respondents in C.S.No.640 of 2010 was dismissed only for non-payment of court fee and under Order VII Rule 13 CPC, it is not a bar to file a fresh suit which is totally incorrect since the relief sought for in the earlier suit was for declaration of title whereas the present suit is filed for declaring a decree as null and void, without seeking for declaration of title. The learned Judge erred in holding that the above suit is maintainable even in the absence of leave of the court under Order II Rule 2 CPC and failed to exercise his jurisdiction in deciding the application for rejection of plaint.

6(d) The respondents have already executed an agreement in November 2009 in favour of one Mr.Eby Thomas, 13th defendant in the suit who entered into an Memorandum of Understanding with the 6th petitioner herein. The said agreement clearly indicates that there was a compromise by which the respondents 1 & 2 have received a sum of Rs.2 Crores from the petitioners. The petitioner herein independently filed a suit in O.S.No.4879 of 2013 in City Civil Court, Chennai claiming certain rights based upon that Memorandum of Understanding. The petitioners have filed application for appointment of Advocate Commissioner regarding the valuation of the suit schedule property. Advocate Commissioner was appointed and a sum of Rs.41,50,000/- was arrived as the deficit court fee. It is well settled that whenever a decree is not binding upon, then there is no need to set aside the decree. In other words, when a decree is binding, it needs to be set aside.

6(e) Two suits cannot be filed for the very same cause of action. Since the respondents failed to pay the deficit court fee and contest the suit on title, this Court has rejected the plaint. The respondents have to pay the court fee and seek for declaration of title. The respondents should have raised the said plea in the earlier suit itself. Else, they should have obtained leave of the court

under Order II Rule 2 CPC. The respondents have also filed WP No.6035 of 2010 before this Court to declare G.O Ms.No.397 Revenue Department dated 01.07.2009 as null and void, which was issued pursuant to the decree of the City Civil Court, Chennai granting patta in respect of the suit schedule property and this Court, by order dated 15.06.2010 directed the Tahsildar, Mylapore-Triplicane Taluk to dispose of the representation of the respondents seeking patta in respect of the suit property after due enquiry and the same is pending. Without seeking declaration of title, the present suit is filed for the very same cause of action for declaration that decree is null and void.

6(f) The learned Senior Counsel for the petitioners, in support of his contention, relied on the following judgments -

(i) 1977 (4) SC 467 [Arivanandan v. Satyapal]

5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever,

drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."

(ii) 1998 (2) SCC 70 [ITC Ltd. v. Debts Recovery Appellate Tribunal & others]

14. We shall next deal with the question whether the allegations in the plaint prove a cause of action against the appellant for recovery by the Bank of the amounts already paid under the irrevocable Letters of Credit.

(iii) 2005 (5) SCC 548 [N.V.Srinivasa Murthy & others v. Mariamma (dead) by proposed L.Rs. & others]

9. The cause of action is said to have arisen when the Assistant Commissioner by order dated 28.4.1994 confirmed the orders of the lower authorities directing mutation of the names of the defendants on the suit lands and then again in the first week of July 1995 when the defendants as alleged had made an attempt to interfere with the plaintiffs' possession and enjoyment of suit lands. The suit was filed on 26.8.1996. In the prayer clause, the relief claimed in the suit are (a) declaration that the plaintiffs are absolute owners of the suit lands (b) permanent injunction restraining defendants from wrongfully entering the scheduled property and from interfering with the peaceful possession and enjoyment of scheduled lands.

10. As seen from the pleadings it is clear that foundation of the suit is that the registered sale deed dated 5.5.1953 was, in fact, only a loan transaction executed to secure the amount borrowed by the plaintiff's predecessor. The amount borrowed was alleged to have been fully paid back on 25.3.1987 and in acknowledgement thereof a formal receipt was obtained. At the same time, there was an alleged oral agreement by the defendants to reconvey the property to the plaintiff by registered deed.

11. On the above averments, relief of declaring the registered sale deed dated 5.5.1953 to be a loan transaction and second relief of Specific Performance of oral agreement of re-conveyance of the property by registered instrument should and ought to have been claimed in the suit. A suit merely for declaration that the plaintiffs are absolute owners of the suit lands could not have been claimed without seeking declaration that the registered sale deed dated 5.5.1953 was a loan transaction and not a real sale. The cause of action for seeking such a declaration and for obtaining re-conveyance deed according to the plaintiff's own averments in paragraph 9 of the plaint, arose on 25.3.1987 when the plaintiffs claimed to have paid back the entire loan amount and obtained a promise from the defendants to reconvey the property. Reckoning the cause of action from 25.3.1987, the suit filed on 26.8.1996, was hopelessly barred by time.

(iv) 2007 (5) MLJ 593 (SC) [Hardesh Ores Pvt. Ltd. v. Hede and Company]

32. We are of the view that the respondent is right in contending that enforcement of the negative covenants presupposes the existence of a subsisting agreement. As noticed earlier, the law is well settled that the renewal of an agreement or lease requires execution of a document in accordance with law evidencing the renewal. The grant of renewal is also a fresh grant. In the instant case, the appellant-plaintiff did exercise their option and claimed renewal. The respondents denied their right to claim renewal in express terms and also unequivocally stated that the agreement did not stand renewed as contended by the appellants. Having regard to these facts it must be held that a cause of action accrued to the appellant-plaintiff when their right of renewal was denied by the respondents. This happened in December, 2001 and, therefore, within three years from that date they ought to

have taken appropriate proceedings to get their right of renewal declared and enforced by a court of law and/or to get a declaration that the agreement stood renewed for a further period of 5 years upon the appellants' exercising their option to claim renewal under the original agreement. The appellants-plaintiffs have failed to do so.

(v) 2011 (3) CTC 153 [N.Ravindaan v. V.Ramachandran]

23. As held by the Supreme Court in *C. Natrajan v. Ashim Bai*, (2007) 14 SCC 183, the limitation would not commence unless there has been a clear and unequivocal threat to the right claimed by the plaintiff. In the case on hand, the plaint averments would clearly show that there has been a clear and unequivocal threat to the right claimed by the plaintiff. As pointed out earlier, in paragraph No.10 of the plaint, the plaintiff has categorically averred that in November 2002, one Mohan Kumar claiming to be a builder called upon the plaintiff and threatened him to vacate the suit premises as he (Mohan Kumar) proposed to purchase the property to put up several flats. It is also averred in the plaint that the plaintiff lodged a police complaint on 2.12.2002. In paragraph No.12 of the plaint, the plaintiff has averred that following several telephone calls threatening him he filed suit O.S.No.6514 of 2002. Before filing the suit, the plaintiff issued legal notice on 18.11.2002 calling upon the defendant to receive the balance consideration of Rs.13,00,000/- and to execute the sale deed. Stating that the defendant has not come forward to execute the sale deed, in December 2002, plaintiff has filed the suit O.S.No.6514 of 2002 for bare permanent injunction. In the plaint averments in C.S.No.264 of 2007, there is a repeated reference to the threats by the defendant in November/December 2002 and also his refusal to fulfil his obligation. Suit for specific performance should have been filed atleast by 2.12.2005. Even though there was such clear and unequivocal threat to the alleged agreement of sale/undertaking, the plaintiff has not chosen to file the suit for specific performance; but filed the suit for specific performance -C.S.No.264 of 2007 only in the month of November 2006. The suit is clearly barred by limitation. Even though the question of limitation is a mixed question of facts and law, the facts are writ large on the face

of it to hold that the suit for specific performance C.S.No.264 of 2007 is barred by limitation. On the factual matrix of this case the ratio of the decision of the Supreme Court in (2007) 14 SCC 183 is not applicable to the facts of the case on hand.

(vi) 2012 (4) CTC 308 [The Church of Christ Charitable Trust & Educational Charitable Society v. Ponniammam Educational Trust]

8) While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

10. It is useful to refer the judgment in *Bloom Dekor Ltd. vs. Subhash Himatlal Desai & Ors.* (1994) 6 SCC 322, wherein a three Judge Bench of this Court held as under:

"28. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (*Cooke v. Gill*, 1873 LR 8 CP 107). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit."

It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.

(Forms 47 and 48 of Appendix A of the Code)

(vii) 2013 (6) CTC 789 [State Bank of India v. Gracure Pharmaceuticals Ltd.]

15. When we go through the above quoted paragraph it is clear that the facts on the basis of which subsequent suit was filed, existed on the date on which the earlier suit was filed. The earlier suit was filed on 15.03.2003 and subsequent suit was filed on 21.05.2003. No fresh cause of action arose in between the first suit and the second suit. The closure of account, as already indicated, was intimated on 20.03.2002 due to the alleged fault of the respondent in not regularizing their accounts i.e. after non-receipt of payment of LC, the account became irregular. When the first suit for recovery of dues was filed i.e. on 15.03.2001 for alleged relief, damages sought for in the subsequent suit could have also been sought for. Order 2 Rule 2 provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the same cause of action. Respondent is not entitled to split the cause of action into parts by filing separate suits. We find, as such, that respondent had omitted certain reliefs which were available to it at the time of filing of the first suit and after having relinquished the same, it cannot file a separate suit in view of the provisions of sub-rule 2 of Order 2 Rule 2, CPC. The object of Order 2 Rule 2 is to avoid multiplicity of proceedings and not to vex the parties over and over again in a litigative process. The object enunciated in Order 2 Rule 2, CPC is laudable and it has a larger public purpose to achieve by not burdening the court with repeated suits.

7. The learned Senior Counsel appearing for the respondents 1 & 2 contended that a plaint can be rejected only when the defendant satisfied the court with regard to ingredients of Order VII Rule 11 CPC. The averments made in the plaint and documents filed alongwith the plaint alone are relevant to decide the application filed under Order VII Rule 11 CPC. The averments made in the

affidavit filed in support of the application filed under Order VII Rule 11 CPC for rejection of plaint, written statement filed by the defendants or documents relied on by the defendants are not relevant to decide the application for rejection of plaint.

7(a) The learned Senior Counsel for the respondents 1 & 2 further contended that the suit property was purchased by the father of the respondents 1 & 2 in the year 1946 by registered sale deed. Till 1992, the respondents' father was in possession and enjoyment of the suit property. After his death, both the respondents 1 & 2 in this case are the only legal heirs and they were enjoying the property. They have entered into a registered partition in the year 2008. However, the revision petitioners have filed the suit in O.S.No.14133 of 1996 without impleading the real owners as a party and stating that the property belongs to them. To get a patta in their name, filed the suit against the revenue officials, without impleading the respondents as a party and got the order. Based on that order, the petitioners have obtained patta for the land belonging to the respondents. On the basis of the said patta issued by the revenue officials, the petitioners have encumbered the property and also claiming title over the suit schedule property. Hence, the prayer in the present suit itself is to

declare that the decree obtained by the petitioners as null and void. The prayer in the earlier suit in C.S.No.640 of 2010 is for different relief but the relief sought for in the present suit is against the Government officials as well as private respondents to declare that the decree obtained by the petitioners as null and void. The parties, prayer as well as the cause of action in the present suit are different.

7(b) The learned Senior Counsel appearing for the respondents 1 & 2, in support of his contention, relied on the following judgments -

(i) LN IND 2017 MAD 2906 [N.Subramanian v. A.Anbalagan & Others]

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.

(ii) 2014 (7) MLJ 732 [Thillai Selvan v. Shyna Paul & anr.]

13. Insofar as the question of limitation is concerned, as rightly submitted by the learned counsel for the first respondent/plaintiff, it is purely a mixed question of law and fact, and therefore, based on such allegations, the plaint cannot be rejected even before trial is conducted to find out as to whether such allegations are true and sustainable in the eye of law.

(iii) AIR 2008 SC 363 [C.Natarajan v. Ashim Bai & Anr.]

Head Note: *To attract the provision of Order VII Rule 11 (d) of Code of Civil Procedure (5 of 1908), the averments in the plaint, without addition or subtraction, must show that the suit is barred by any law. Question of limitation is a mixed question of law and fact. Hence the plaint cannot be rejected under Order 7 Rule 11 (d) of CPC on the ground that the suit is barred by limitation.*

7(c) The learned Senior Counsel appearing for the respondents 1 & 2 referred to the following judgments, relied on by the learned counsel for the petitioners and contended that these judgments are not applicable to the facts of the present case.

(i) 1977 (4) SC 467 [Arivanandan v. Satyapal]

(ii) 2005 (5) SCC 548 [N.V.Srinivasa Murthy & others v. Mariamma (dead) by proposed L.Rs. & others]

8. Heard the learned Senior Counsel appearing for the petitioners as well as respondents and perused all the materials available on record and the impugned order.

9. The petitioners are seeking to reject the plaint on four grounds.

9(a) The contention of the learned Senior Counsel appearing

for the petitioners that suit is hit by principles of resjudicata and that respondents can not maintain the present suit as they have not obtained leave to file fresh suit under Order II Rule 2 CPC is not acceptable. In C.S.No.640 of 2010, respondents 1 & 2 claimed declaration of title and respondents were directed to pay the deficit court fee and this Court dismissed the OSA filed by the respondents challenging the said order and suit was dismissed for non-payment of deficit court fee. The said suit was not decided on merits and not dismissed after contest.

9(b) According to the petitioners, the respondents 1 & 2 were aware of the decree dated 20.10.2006 made in O.S.No.14133 of 1996 in the year 2009 itself and therefore the suit is barred by limitation. On the other hand, the respondents 1 & 2 contended that they came to know about the decree only in the year 2013 and that said decree is fraudulent one. Whether the respondents 1 & 2 were aware of the decree in the year 2009 or in the year 2013 can be decided only by appreciating the evidence let in by the parties. The contention of the learned Senior Counsel for the petitioners that the question of limitation can be decided in the application for rejection of plaint is untenable and the judgments relied on by the learned Senior Counsel on this point is not applicable to the facts of

the present case. In the judgment reported in **2005 (5) SCC 548 and 2007 (5) MLJ 593 (SC)** cited *supra*, relied on by the learned Senior Counsel for the petitioners, from the averments in the plaint itself, it is seen that the suit is barred by limitation. In the present case, from the averments in the plaint, it cannot be said that the suit is barred by limitation.

9(c) As far as the contention of the learned Senior Counsel for the petitioners that the plaint does not disclose any cause of action for the present suit is concerned, the respondents 1 & 2 have avered in the plaint as to how they are entitled to the relief sought for in the plaint. The cause of action is bundle of facts and whether the averments made by the respondents 1 & 2 is real cause of action for the suit or illusory can be decided only by appreciating the evidence let in by the parties.

9(d) As far as abuse of process of court is concerned, the respondents 1 & 2 claimed to be the owners of the property measuring 1 acre 36 cents being purchased by their father and property is situated in Paimash No.967, Survey No.172/3, T.S.No.3 Block No.57. According to the respondents 1 & 2, the father of the petitioners 1 to 4 purchased adjacent property in Paimash No.970,

Survey No.172/4 measuring 2 cawnies and 8 veesams i.e. 2.66 Acres and 288 sq.ft. only. The petitioners, by suppressing Patta No.55 and other documents have obtained decree in question by misrepresentation and by fraud. In view of such allegation, it cannot be said that the suit filed by the respondents 1 & 2 is abuse of process of court.

10. The application for rejection of plaint can be decided by considering the averments in the plaint as well as the documents relied on by the plaintiff. The learned Judge has considered each and every point raised by the petitioners and rejected the same by giving cogent and valid reasons. The said reasons are proper and valid. There is no irregularity or illegality in the order impugned in this revision warranting interference by this Court.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2018

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Index : Yes
Speaking/Non-speaking order

V.M.VELUMANI, J.

To

The XV Asst. Judge,
City Civil Court,
Chennai.



C.R.P.(PD) No.830 of 2015

23.01.2018

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