

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.08.2018

PRONOUNCED ON : 11.09.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.412 of 2015

1. Nachimuthu Gounder (deceased)
 2. Marathal @ Ponnammal
 3. N.Jayakumar
 4. Kanageswari
-Appellants

(Appellants 3 & 4 brought on record as legal heirs of the deceased, 1st appellant vide order of the Court dated 27.07.2017 made in CMP No. 2223/17 in SA 412 of 2015)

Vs.

1. Umamaheshwari
 2. Kavitha
-Respondants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 18.03.2015 passed in A.S.No.11 of 2014 on the file of Second Additional District and Sessions Court, Tirupur, confirming the fair and decretal order dated 28.03.2014 passed in I.A.No.735 of 2013 in O.S. No.45 of 2013, on the file of Subordinate Court, Tirupur.

For Appellant : Mr.P.Valliappan

For Respondent : Mr.P.Anbarasan

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 18.03.2015 passed in A.S.No.11 of 2014 on the file of Second Additional District and Sessions Court, Tirupur, confirming the fair and decretal order dated 28.03.2014 passed in I.A.No.735 of 2013 in O.S. No.45 of 2013, on the file of Subordinate Court, Tirupur.

2.The second appeal has been admitted on the following substantial questions of law.

a) Whether the courts below are correct in law in invoking the provisions of Order 7 Rule 11 of the Code of Civil Procedure overlooking the fact that reasons for which plaint was sought to be rejected, are all matters warranting a full-fledged trial and not enough to reject the plaint?

2. When the vendor of the appellants viz. D.Rathinamani had been clearly acquitted by the Division bench of this Hon'ble Court, are the courts below correct in law in proceeding on the erroneous footing that the vendor of the appellants is a murderer, based only on the verdict rendered by the Magistrate, which had been subsequently set aside by this Hon'ble Court?

3. When the provisions of Sections 25 and 27 of the Hindu Succession Act, 1956 can be invoked only if it is proved that a person is guilty of murdering a person regarding whose property he or she, intends to inherit, whether the courts below are correct in law in applying the aforesaid provisions particularly when D.Rathinamani was acquitted in the criminal case?

4. When even assuming without admitting that D.Rathinamani cannot succeed to the estate of her deceased husband and when she had acquired right over $\frac{3}{4}$ th share by virtue of the Release Deed executed by her three daughters including the respondents, whether the courts below are correct in law in applying the provisions of Sections 25 & 27 of the Hindu Succession Act, 1956, overlooking the nature of the right acquired by D.Rathinamani?"

3. Parties are referred to as per their rankings in the trial Court.

4. The suit in O.S.No.45 of 2013 has been laid by the plaintiffs against the defendants for recovery of money and the plaintiffs have laid the above suit on the footing that they had purchased the house property described in the plaint schedule from one D.Rathinamani @ Nagarathinamani by way of a sale deed dated 04.03.2010 and the defendants are the daughters of the abovesaid D.Rathinamani @ Nagarathinamani and the vendor

abovestated has delivered the possession of the house property to the plaintiffs. However, the vendor did not hand over the main document of title as it was represented that the same had been lost and the plaintiffs were also made to believe that the original document of title had been lost on the strength of the publication given in the newspaper and the receipt given by the police as regards the loss of the title deed. On that premise, it is stated that the plaintiffs had purchased the house property from the vendor by paying the entire sale consideration. Later, the plaintiffs came to know that their vendor had deposited the original documents with HDFC Bank Ltd., Tirupur with a view to create an equitable mortgage for the purpose of securing loan availed by a partnership firm by name Diam Exports in which the vendor was also one of the partners and the plaintiffs also came to know that the HDFC Bank Ltd., had initiated recovery proceedings for the recovery of the amount due to them and thereby took steps to bring the property for sale. On coming to know of the same, the plaintiffs filed a suit in O.S.No.146 of 2010 on the file of District Munsif Court, Tirupur for an order restraining State Bank of India, Tirupur from paying the amount available with them in the name of the plaintiffs' vendor so as to enable the creditor bank i.e., HDFC Bank to recover the amount by taking appropriate and necessary action and appropriate the same towards the amount due to them. The above steps had been taken by the plaintiffs only with a view to save the property purchased by them and accordingly the District Munsif Court had also passed an order directing the State Bank of India to maintain status quo. Thereupon, the HDFC Bank Ltd., initiated proceedings through Debt Recovery Tribunal for the attachment of the above said amount available with State Bank of India, Tirupur and in fact received the amount and appropriated the same towards the sum due to them on account of Diam Exports. Despite the same, a sum of Rs.6,89,305/- was still due to HDFC Bank. The Debt Recovery Tribunal, Coimbatore had passed a final order that any deficient amount remaining to be recovered shall be paid by the plaintiffs within 7 days of the demand raised by the HDFC Bank on them and in case of non payment and also in case for any reason the HDFC bank is unable to or prevented to realise the money lying in the account of SBI Bank, HDFC Bank shall be entitled to realise its outstanding dues by bringing the plaint schedule property mortgaged to them for sale and in the abovesaid proceedings of Debt Recovery Tribunal, the plaintiffs had been arrayed as the defendants 6 and 7 and accordingly, in view of the abovesaid order, the plaintiffs were forced to pay the said amount and accordingly paid the abovesaid amount of Rs.6,89,305/- to HDFC Bank Ltd on 04.05.2012 and discharged the mortgage loan in full and if the plaintiffs had not paid the amount, the bank would have brought the property for sale, which has been purchased by the plaintiffs and subsequent to the payment of the abovesaid

amount, the Debt Recovery Tribunal had also returned some documents of title to the plaintiffs. The plaintiffs' vendor D.Rathinamani @ Nagarathinamani died on 18.03.2012 and the defendants who are her daughters succeeded to the property left by her mother and therefore, the defendants are liable to pay the abovesaid sum of Rs.6,89,305/- paid by the plaintiffs to the bank with interest from and out of the properties left by their mother to which they succeeded as legal heirs. As per law, the plaintiffs are entitled to be reimbursed by the person on whose account money was paid. The defendants, being the legal heirs of D.Rathinamani @ Nagarathinamani, on whose account money was paid and are liable to reimburse the amount with interest from and out of the property left by their mother and accordingly after the death of their vendor, the plaintiffs approached the defendants and requested them to pay the amount due to them several times. However, the defendants did not pay the amount and on the other hand, the first defendant preferred a complaint against the plaintiffs and their son Jayakumar for the offence called as land grabbing and the police have registered a case against the plaintiffs and their son for various offences of IPC and thereby the defendants are now trying to extract money from the plaintiffs and the property described in the petition filed by the plaintiffs for attachment before judgment is one of the properties left by their vendor from and out of which the defendants are liable to pay the amount due to the plaintiff and hence the suit.

5. In the above suit, the defendants after having entered appearance, had laid a petition in I.A. No.735 of 2013 under Order VII Rule 11(a) and (d) of the Code of Civil Procedure and Section 151 of CPC, for rejection of the plaint and in the said petition after adverting to the plaintiffs' suit, according to the defendants, the case laid by the plaintiffs proceeds on the basis of pious obligation by fixing the responsibility on the defendants to pay the suit amount and according to them, the transaction entered into between their mother and the plaintiffs are illegal and void abinitio and according to them the suit property jointly belongs to the defendants and the defendants had severed the joint status by means of the final decree passed in O.S.No.617 of 2012 and the same has been registered as document No. 819 of 2013 on the file of Joint I Sub Registrar, Tirupur and further according to the defendants, the plaintiffs in order to grab the valuable property entered into an illegal transaction of sale with their mother under the greedy mind of their son Jayakumar and in this connection, they had issued a detailed legal notice to the plaintiffs and their son on 29.03.2012 and despite the receipt of the same, the plaintiffs had failed to give any reply to the same and thereafter, they had lodged a land grabbing complaint against the plaintiffs and their son in crime No.15/2012, District Crime Branch, Tirupur

and the alleged sale deed dated 04.03.2010 projected by the plaintiffs is nothing but a pure outcome of fraud and all kinds of illegality and the suit property is in the joint possession of the defendants on the date of abovesaid fraudulent sale deed and it is only the defendants who are enjoying the same by paying tax, etc. The suit property was originally purchased by the father of the defendants and he was murdered by their mother, who was prosecuted for murder and awarded hanging punishment and in such view of the matter, according to the defendants, as per Section 25 and 27 of Hindu Succession Act 1956, their mother is disqualified to inherit the property of her husband, whom she had murdered and hence the sale deed dated 04.03.2010 executed by their mother in favour of the plaintiffs is void abinitio and has to be ignored and further according to the plaintiffs, the above suit is barred under Section 6(4) of Hindu Succession Amendment Act 2005, and it is also stated that the plaintiffs in their illegal process had paid money to HDFC Bank as per the orders of the Debt Recovery Tribunal and the Debt Recovery Tribunal had not granted any right to the plaintiffs to recover the amount from their mother or the defendants and in the absence of such direction, the plaintiffs are not entitled to claim any amount from the defendants and on the other hand, the plaintiffs and their son are forcibly collecting monthly rent in respect of the suit property and liable to return the same to the defendants and therefore, it is the case of the defendants that the suit laid by the plaintiffs does not disclose any cause of action and also barred by law as above stated and liable to be rejected.

6. The abovesaid petition laid by the defendants has been resisted by the plaintiffs by filing a detailed counter and in the counter, the plaintiffs had averred the plaint averments in detail and further also pleaded that the case projected by the defendants that their mother stands disqualified from inheriting the property of her husband on the footing that she had murdered her husband is false and according to the plaintiffs, the defendants had suppressed the judgment of the High Court of Madras in the murder case and a perusal of the judgment of High Court of Madras would clearly establish that the plaintiffs' vendor is no way connected with the alleged murder case and therefore the alleged disqualification said to have been incurred by the plaintiffs' vendor in inheriting the property of her husband is legally incorrect and therefore the defendants are estopped from disputing the rights of the plaintiffs' vendor over the suit property on account of their subsequent conducts and hence the sale deed executed by the plaintiffs' vendor dated 04.03.2010 in favour of the plaintiffs is legally valid and binding upon the defendants and the suit is filed against the property of the deceased vendor in the hands of the defendants who are now representing the said estate as the legal

representatives and no personal decree is asked against the defendants. As per law, the plaintiffs are entitled to proceed against the property of the deceased vendor, which had come into the hands of the defendants as her legal representatives and in as much as the plaintiffs had paid the amount due to the creditor bank as per the orders of the Debt Recovery Tribunal, which their mother owed to the bank and accordingly it is stated that the petition laid by the defendants for rejection of the plaint does not merit acceptance and liable to be dismissed.

7. The abovesaid application preferred by the defendants for the rejection of the plaint had come to be entertained by the courts below and challenging the same, the present second appeal has been laid.

8. The materials placed on record go to show that the plaintiffs have purchased the house property described in the plaint schedule from D.Rathinamani @ Nagarathinamani by way of a sale deed dated 04.03.2010. The defendants are the daughters of the plaintiffs' vendor. Now according to the plaintiffs, prior to the sale of the abovesaid property in favour of the plaintiffs, their vendor had deposited the original documents of title with HDFC Bank with a view to create an equitable mortgage for the purpose of securing a loan in respect of the partnership concern of which their vendor was also one of the partners and accordingly it is stated that the HDFC Bank Ltd., had initiated proceedings against one and all by bringing the property purchased by the plaintiffs as above stated under the sale deed dated 04.03.2010 for sale and accordingly it is case of the plaintiffs that as per the orders of the Debt Recovery Tribunal, Coimbatore, in which the proceedings had been laid by the HDFC Bank Ltd., it is stated that they had been forced to pay a sum of Rs.6,89,305/- to the bank with a view to save the property purchased by them from sale and thus according to the plaintiffs, as their vendor had undertaken to indemnify the plaintiffs in case of any defect in the title of the property, which she has alienated and in as much as the defendants, as the daughters, had inherited the properties belonging to the vendor and enjoying the same, according to the plaintiffs, the defendants are liable to pay the amount paid by them to HDFC Bank Ltd., from and out of the assets in their hands left by their vendor, who, according to the plaintiffs died on 18.03.2012.

9. The defendants preferred an application to reject the plaintiffs' case on the footing that the sale deed dated 04.03.2010 projected by the plaintiffs for claiming the suit amount is a fraudulent document as their mother is not legally competent to alienate the said property as the legal heir of her husband Duraisamy in as much as she had murdered her husband and

being convicted and sentenced to death punishment and therefore, it is stated that the plaintiffs cannot lay any valid claim of title to the property acquired by them and therefore, it is their case that the plaintiffs' action in paying the amount to HDFC Bank cannot be legally accepted and according to the defendants in as much as their mother stands disqualified from inheriting the property of their father under Sections 25 and 27 of Hindu Succession Act 1956, they cannot be made liable on the plea of pious obligation to pay the amount to the plaintiffs and accordingly the defendants sought for the rejection of the plaintiffs' suit.

10. Countering the same, in brief, the plaintiffs had resisted the said application on the footing that though the defendants' mother stood charged with the offence of murdering her husband, according to them, she had been acquitted by the High of Madras and therefore, there is no disqualification in inheriting the property of her husband and further it is stated that the defendants, who had inherited the estate of their deceased vendor, are liable to pay the amount paid by the plaintiffs to HDFC Bank Ltd., and accordingly, it is the case of the plaintiffs that they have a valid cause of action to lay the suit and there is no bar by the law as projected by the defendants and hence the petition is liable to be dismissed.

11. Though it is found that the plaintiffs' vendor had been convicted for death sentence on the charge that she is one of the conspirators in committing the offence of the murder of her husband by the Sessions Court, however, as could be seen from the judgment of the High Court of Madras dated 20.01.2003 in Referred Trial No.5 of 2002 and Criminal Appeal Nos.1709 & 1825 of 2002 and 82 of 2003, it is found that the plaintiffs' vendor as well as the other accused involved in the alleged offence had been acquitted by the High Court of Madras in toto.

12. On a perusal of the judgment of the High Court of Madras above sated, it is seen that the High Court of Madras has held after discussing the evidence adduced in the criminal trial, as follows:

"In as much as, we have found that there is absolutely no legal evidence to show even prima facie that all the three accused who were put up for trial along with the other two absconding accused were ever seen together either in a particular place or in any other place, we hold that the prosecution definitely failed to establish the charge under Section 120-B IPC and on that conclusion A1 and A2 being made liable for the murder only in their capacity as conspirators, go out of the case immediately, since they are not

directly involved in this case. The proceedings do not say that they were present in the occurrence place.

In the light of our discussions we hold that the prosecution had failed to establish the charge of criminal conspiracy; failed to establish the involvement of A3 in the occurrence and consequently all the three appeals are allowed by setting aside the conviction and sentence imposed on the three accused. All the three accused are acquitted of the various offences for which they are charged, tried and convicted. In view of the disposal of the appeals, the reference is not accepted. Fine amount, if any paid by the accused is directed to be refunded to them. We make it clear that our appreciation and comments on the materials placed by the prosecution before court, is only in the context of the truth or otherwise of their case against A1 to A3 and our judgment will not come in the way of the court below., if on any day the absconding accused are apprehended and put up for trial and at that stage the court is at liberty to appreciate the materials and evaluate the same in accordance with law without in any way being influenced by anything said in this judgment. Even if by over sight we have said anything in this judgment in favour of the absconding accused, the same shall not be taken as issues raised, argued, heard and decided on merits."

13. Accordingly, on a perusal of the judgment of High Court rendered in the abovesaid matter, if analysed, as above noted, it is found that after noting that the prosecution has failed to establish even prima facie, the involvement of the accused in the offence of murder with which they had been charged, accordingly, the High Court had decided that the capital punishment inflicted upon them is liable to be set aside and accordingly came to the conclusion that the accused arrayed in the murder had not been established to have committed the offence of murder or conspired to have committed the offence of murder with the absconding accused and resultantly acquitted them of the various offences for which they had been charged, tried and convicted by the Sessions court. In such view of the matter, when the plaintiffs' vendor had been acquitted of the offence of murder with which she had been charged, it is seen that the defendants cannot be allowed to contend that the defendants' mother stands disqualified in inheriting the property of her husband, whom she is alleged to have murdered.

In this context, it is apposite to refer to Sections 25 & 27 of Hindu Succession Act 1956.

25. Murderer disqualified. - A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

27. Succession when heir disqualified - If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

14. The courts below seems to have placed whole reliance upon the abovesaid sections and accordingly though they had been put on notice that the plaintiffs' vendor had been subsequently acquitted of all the offences with which she had been charged, by the High Court Madras, still concluded that in as much as she has been charged as having committed the murder of her husband, accordingly she incurs the disqualification from inheriting the property of her husband and thereby held that the plaintiffs' claim of acquiring title to the plaint schedule property i.e., the sale deed dated 04.03.2010 from her is a void document and cannot be relied upon as per law and accordingly held that the plaintiffs have no cause of action to institute the suit and the suit is barred by the above provisions of law and accordingly entertained the rejection petition preferred by the defendants.

15. Reiterating the abovesaid conclusion of the trial court, the defendants' counsel placed reliance upon the decision of the Apex Court reported in AIR 2005 SC 2587 (Vellikannu Vs. R.Singaperumal and Ors) as well as the decisions reported in

2012-1-LW340

(M.Nagarajan Vs. V.M.Nagammal)

AIR1970AP407 (Nannepuneni Seetharamaiah and Ors Vs. Nannepuneni Ramakrishnaiah)

(1904) ILR 27Mad591 (Vedanayaga Mudaliar Vs. Vedammal)

Orders of this Court dated 15.07.2015 in W.P. Nos.19942 to 19944 of 2002

2002(3) Cal. L.T.208 (Ram Chatterjee and anr. Vs. Smt. Tapati Mukherjee and anr.)

AIR 1982 BOMBAY 68 (Minoti Vs. Sushil Mohansingh Malik and another)

1955(2) SCR 270 (Anil Behari Ghosh Vs. Smt.Latika Bala Dassi and others)

Decision of the Kerala High Court dated 06.06.2012 passed in SA. No. 231 of 1997.

16. Per contra, the plaintiffs' counsel, on his part, contended that the disqualification incurred by their vendor would cease to operate on she having been acquitted by the High Court and thereby she would be entitled to inherit the property of her husband. In this connection, he placed reliance upon the decisions reported in AIR 1977 DELHI 97 (Chaman Lal Vs. Mohan Lal and others) and AIR 2007 BOMBAY 133 (Sarita Chauhan Vs. Chetan Chauhan).

17. The fact remains that the plaintiffs' vendor had been acquitted by the High Court of Madras by way of a judgment dated 20.01.2003, and only thereafter, it is found that she had chosen to alienate the house property described in the plaint schedule to the plaintiffs by way of a sale deed dated 04.03.2010. No doubt, the plaintiffs' vendor had been charged of murdering her husband, however, in my considered opinion, when the plaintiffs vendor had been acquitted in toto of the abovesaid charge levelled against her by the High Court of Madras and there had been no further challenge to the decision of the High Court acquitting her of all the charges put forth against her, it is seen that the charge of the offence of murder put forth against her ceases to remain in the record in all aspects and therefore, after the judgment of the High Court, she cannot be still held to be responsible for the offence of murdering her husband. No doubt, Section 25 of Hindu Succession Act, 1956 speaks of only the disqualification of person who commits the murder or abets the commission of murder from inheriting the property of person murdered, and does not refer to the position of the said person who stands acquitted of the said offence of murder with which she or he had been charged with. However, there had been conflicting decisions of various High Courts above referred to and as per the decision of the Apex Court reported in AIR 2005 SC 2587 (Vellikannu Vs. R.Singaperumal and Ors), it is seen that the murderer after having disqualified under Hindu Succession Act from succeeding the estate of the person, whom he has murdered, is so disqualified upon the principles of justice, equity and good conscience and as per Section 27 of the Hindu Succession Act, it shall be deemed as if such person had died before the intestate.

18. In the decision reported in (2013) 15 Supreme Court Cases 222 (Central Bureau of Investigation Vs. Ashok Kumar Agarwal and another), the Apex Court while cautioning the lower court in exercising the grant of pardon under Section 306 of Code of Criminal procedure 1973, impressed the lower court to consider the consequences of the same by taking into consideration and view with care the policy of the state as regards the same, particularly, qua Sections 25 and 27 of Hindu Succession Act, 1956 and accordingly cautioned the lower court that in the end, person who had been charged with the offence of murder has been granted the pardon mechanically without any application of mind while exercising the power conferred under Section 306 of Cr.PC, on the mere asking of the same by the accused concerned and duly supported by the state, the Apex court pointed out to the disqualification which such person would incur under Section 25 of Hindu Succession Act 1956 which is based on the principles of justice, equity and good conscience and accordingly brought home that such person who had been granted the pardon would likely to not only escape the law in the criminal trial but would also become entitled to succeed in inheriting the property of the person whom he is alleged to have murdered and accordingly it is seen from the above veering view of the Apex Court that the person who seeks and get pardon under Section 306 of CrPC would also obtain the entitlement of the property of the person alleged to have been murdered by him but for the grant of pardon, he would otherwise be not permissible to succeed to his properties in the light of Section 25 of the Hindu Succession Act 1956, and the above position of law has been outlined by the Apex Court in the following manner:-.

33. In view of the above and considering the judgment of the Privy council in Bawa Faqir Singh, we are of the view that the grant of pardon by a court under Section 306 CrPC on being asked by the accused and duly supported by the State is a judicial act and while performing the said act, the Magistrate is bound to consider the consequences of grant of pardon taking into consideration the policy of the State and to certain extent compare the culpability of the person seeking pardon qua the other co-accused.

34. For illustration, we take a case where a person hires a professional criminal to kill his entire family i.e. father and brothers and succeeds in the said mission. Later on, if he turns approver, the mercenary who got paid to execute the conspiracy gets hanged while the principal accused who hired the mercenary has not only escaped the liability in criminal trial but

would also succeed in inheriting the entire property of his family which otherwise is not permissible in view of the law of succession, etc., under Section 25 of the Hindu Succession Act, 1956, the murderer stands disqualified for inheritance. The provision reads as under:

25; Murderer disqualified - A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder."

The section deals with the disqualification from inheritance of a person who commits murder or abets commission of murder. The provision of the section provides for a statutory recognition to the Hindu Law whereunder the rule is applied not on the basis of text but upon the principle of Justice, equity and good conscience. (Vide *Kenchava Kom V. Girimallappa Channappa*). The rule had been made applicable by all courts consistently including this court as is evident from the judgment in *Villikannur Vs. R. Singaperumal*).

35. Once the immunity extends to the accused and the accused is made an approver, he stands discharged whereupon he ceases to be an accused and would be examined only as a witness unless the said privilege is revoked on violation of the condition of disclosing complete truth (See *State (Delhi Admn.) V. Jagjit Singh and Jasbir Singh*).

36. Thus, the illustration cited hereinabove quoting Section 25 of the 1956 Act reflects the policy of law and the court must be alive to such situation while passing an order otherwise the consequences may be too abhorrent.

19. Such being the view of the Apex Court in the abovesaid decision, in my considered opinion, when applying the same to the facts at hand, when it is found that, as far this case is concerned, the plaintiffs' vendor had been acquitted of all the charges put forth against her on the footing that the prosecution has not even, prima facie, established the case levelled against her and resultantly the High Court had acquitted her of the charges, it is seen that as far as the

plaintiffs vendor is concerned, she stands on a better footing and the disqualification sought to be projected against her under Section 25 and 27 of the Hindu Succession Act 1956 would cease to operate and in such view of the matter, it is found that the courts below are not correct in rejecting the suit without considering the abovesaid aspects of the matter in detail by enabling the parties to adduce evidence in the matter. Only after assessing the evidence, that may be adduced by the parties in the matter and analysing the positions of the parties above referred to in detail, in my considered opinion, the court would be in a position to consider whether the plaintiffs would be or not entitled to recover the amount from the defendants as put forth by them.

20. Furthermore, in the light of the decision of the Apex Court reported in (2006) 3 Supreme Court Cases 100 (Mayar (H.K.) Ltd. And others Vs. Owners & parties, Vessel M.V. Fortune Express and others), when it is found that the plaint cannot be rejected on the basis of the allegations made by the defendants in the written statement and while deciding an application for rejection of the plaint, the court has to read the entire plaint as a whole to find out whether it discloses the cause of action and that be so, when the plaint cannot be rejected by the court exercising the powers under Order VII Rule 11 of CPC based on the allegations in the written statement or in the application for rejection of the plaint and essentially whether the plaint discloses the cause of action is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety by taking those averments to be correct and in such view of the position of law as adumbrated by the Apex Court in the abovesaid decision for determining the rejection application filed under Order VII Rule 11 of CPC and when the perusal of the plaint averment of the plaintiffs discloses that the plaintiffs had a prima facie cause of action to institute the suit against the defendants coupled with materials projected by the plaintiffs in the matter, it is seen that the courts below are not correct in rejecting the plaint. As to whether the plaintiffs had suppressed any vital material in the plaint, insofar as this case is concerned, there is no such finding by the courts below and also not even pleaded by the defendants in specific in the rejection application.

21. That apart, based on the materials placed on record, it is seen that the plaintiffs' vendor had not derived the title to the whole of the property from her husband Duraisamy and on the other hand, it is seen that as per the legal heir certificate of the deceased Duraisamy, it is found that he has left behind the plaintiffs' vendor and three daughters as his legal representatives and furthermore, it is seen that the three daughters of the deceased had relinquished their interest in

respect of the properties inherited by them from their father in favour of the plaintiffs' vendor by way of a release deed dated 08.06.2006 and thereafter it is further seen that the plaintiffs' vendor had settled the properties in favour of her daughter Chandra under a Settlement Deed dated 04.06.2007 and later Chandra had settled the properties in favour of the plaintiff's vendor by a deed of settlement dated 17.07.2008 and considering the abovesaid documents in toto when it is seen that on the strength of the abovesaid documents, the plaintiffs' vendor is found to have derived $3/4^{\text{th}}$ share of the properties by way of the release deed dated 08.06.2006 and the settlement deed dated 17.07.2008, as rightly put forth by the plaintiffs' counsel, even assuming for the sake of arguments that the plaintiffs' vendor cannot succeed to the estate of her deceased husband on account of the disqualification imposed under Sections 25 and 27 of the Hindu Succession Act, when on the materials placed, it is seen tat the plaintiffs' vendor had acquired $3/4^{\text{th}}$ share by way of the abovesaid release deed executed by her three daughters and the settlemet deed executed by her daughter Chandra, it is seen that the courts below had failed to consider the abovesaid aspects of the matter while invoking the provisions under Section 25 and 27 of Hindu Succession Act, 1956 by overlooking the nature of the right acquired by the plaintiffs' vendor. In such view of the matter, when it is seen that the plaintiffs' vendor had acquired $3/4^{\text{th}}$ right on the strength of the release deed executed by her daughters, the determination of the courts below that their vendor stands disqualified in toto on the pleading that she had committed the offence of murdering her husband, as such, cannot be accepted in any manner. Thus, it is found that so far as the issues involved in the suit, which had not been appreciated and considered by the courts below in the correct perspective, the courts below seems to have been carried away on the premise that the plaintiffs' vendor had been convicted of the offence of murder and sentenced to capital punishment. However, when the High Court had acquitted her of all the offences which she had been charged, it is seen that the disqualification which she had incurred ceases to operate and thereby it is found that she would be entitled to succeed to the properties left by her husband as one of the legal heirs. Furthermore, when it is found that the plaintiffs' vendor had acquired $3/4^{\text{th}}$ share from her daughters on the strength of the release deed executed by them and in such view of the matter, it is seen that those aspects are required to be gone into detail and the same could be determined only after the adduction of evidence by the parties concerned during the course of trial and in such view of the matter when the plaintiffs have projected prima facie the cause of action and when the suit is not shown to be, as such, barred under Sections 25 and 27 of Hindu Succession Act either as regards the whole of the property purchased by the defendants

or as regards the $\frac{3}{4}$ th shared derived by the plaintiffs' vendor from her daughters by way of the release deed abovestated, in all, it is seen that the courts below had failed to consider those aspects of matter and erred in entertaining the rejection application preferred by the defendants.

22. In the light of the above discussions, as rightly put forth, the courts below erred in rejecting the plaint when the case projected by the plaintiffs warrant a full fledged trial, particularly, when it is seen that plaintiffs' vendor had been clearly acquitted by the High Court and despite the same, the determination of the court below that the plaintiffs' vendor stands disqualified for the offence of murder, as such, cannot be readily accepted. In the decisions relied upon by the courts below, when it is seen that person who stood disqualified had not been acquitted of the offence of murder and accordingly held to be disqualified and the courts below had failed to distinguish the abovesaid decisions to the facts at hand, it is found that the courts below had committed a serious miscarriage of justice in ordering the rejection of the plaint at the instance of the defendants as above noted. Even otherwise, when, according to the plaintiffs, their vendor had derived the right from her daughters on the strength of the release deed and thereby entitled to $\frac{3}{4}$ th share in the properties, the courts below had failed to consider the above aspects of the matter and also as to whether the disqualification provided under Sections 25 and 27 of Hindu Succession Act, would apply in such a scenerio, accordingly, it is found that the plaintiffs have made out the cause of action to sustain the suit and when the issues involved in the matter could be determined only after a full fledged trial based on the evidence to be adduced by the parties and when prima facie, the suits laid by the plaintiffs is not shown to be barred by law as above discussed, it is seen that the judgment and decree of the courts below in rejecting the plaintiffs' suit, require interference and reversal and accordingly the same are set aside.

23. The substantial questions of law formulated in this second appeal are accordingly answered in favour of the plaintiffs and against the defendants.

24. In the light of the above discussion, the judgment and decree dated 18.03.2015 passed in A.S.No.11 of 2014 on the file of Second Additional District and Sessions Court, Tirupur, confirming the fair and decretal order dated 28.03.2014 passed in I.A. No.735 of 2013 in O.S. No.45 of 2013, on the file of Subordinate Court, Tirupur are set aside.

25. Resultantly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bga

To

1. Second Additional District and Sessions Court,
Tirupur.
2. Subordinate Court,
Tirupur.

+1cc to Mr.P.Valliappan, Advocate Sr.62866
+1cc to Mr.P.Anbarasan, Advocate Sr.63412

S. A.No.412 of 2015

gj[co]
srg 03/10/2018

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