IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

CRP.(PD).NO.1290 OF 2019 &
CMP.NO.8431 OF 2019

Mrs. Neelam Jain .. Petitioner

Vs

1. M. Balachandar
2. Mukesh
3. Praveen Kalra
4. Prakash Jain .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair order dated 14.2.2019 passed in I.A.No.14792 of 2016 in O.S.No.1581 of 2013 on the file of XIV Assistant Judge, City Civil Court, Madras (Full Additional Charge of XVIII Assistant Judge, City Civil Court, Madras)

For Petitioner : Mr. C. Ravichandran

For Respondent : No appearance for R1,R3 and R4
R2- notice not ready

O R D E R

This Civil Revision Petition is directed against the dismissal order passed in I.A.No.14792/2016 in O.S.No.1581 of 2013 filed for rejection of plaint under Or.VII R.11 CPC.

2. The 1st respondent herein filed a suit to declare the Power of Attorney executed by the 1st respondent/plaintiff on 27.11.2007 as null and void and also for a consequential injunction restraining the respondents from interfering with the peaceful possession.

3. According to the petitioner the suit filed by the 1st respondent/plaintiff is barred by limitation and abuse of process of law. The petitioner approached the Trial Court for rejection. However, without appreciating the facts in proper prospective the Trial Court has dismissed the same on the ground that the case is at the stage of trial and evidence being recorded. The facts are to be decided only at the end of the trial and therefore, the reasons are not sufficient to reject the plaint.

4. I have heard the submissions.

5. The short facts leading to the issue is that the 1st respondent/plaintiff had executed a mortgage deed in favour of the 3rd defendant vide Registered Document 975 of 2006 dated 06.03.2006. Admittedly, the consideration was passed by 3 cheques and the same were realized. The 1st respondent/plaintiff would allege that the amount was taken away from his bank account by one of his friends and the 3rd defendant himself. After that a legal notice was issued to the 1st respondent/plaintiff for non payment of EMI. On 17.08.2007 an auction notice was issued to auction the property of the 1st respondent/plaintiff in that process he filed a suit in O.S.No.5092/2007. It appears that a conditional order was passed to deposit a sum of rupees one lakh. Again, the property was brought for auction on 05.11.2007 and one Dilip Chordia became a highest bidder. Pursuant to the auction, the auctioneers directed the 1st respondent/plaintiff to execute a sale deed in favour of the successful bidder vide their letter dated 23.11.2007. On 27.11.2007, a Power of Attorney was obtained by force in favour of the 2nd respondent, who is the 1st Defendant in the suit. The same was registered as Document No.821 of 2007. Thereafter, as per the

plaint averment 1st respondent/plaintiff mortgaged the property again and also entered into a sale agreement on 30.08.2007 with the present petitioner who is the 2nd defendant in the suit. Thereafter, it appears that the 2nd respondent executed a sale deed in favour of the petitioner who is a agreement holder. After execution of the sale deed, the petitioner has filed two RCOP's vide R.C.O.P.Nos.889 and 890 of 2008 for fixation of fair rent and eviction on willful default of rent. The 1st respondent/plaintiff has contested the Rent Control proceedings till date. It is further averred in the plaint that in the year 2012 his friend viz Suresh Jain has informed about the illegal transaction before his death. Hence, he filed the present plaint to declare the Power of Attorney executed by the 1st respondent/plaintiff on 27.11.2007 as null and void and also for a consequential injunction restraining the respondents from interfering with the peaceful possession.

6. With this factual background, the issue has to be approached.

7. From the dates and events, it could be seen that the property was mortgaged in 2006 sold in auction on 2007 and the sale agreement was executed on 30.8.2007 in favour of the petitioner and also a sale deed executed thereafter. Thus, the entire transaction had taken place between 2006 and 2008. If at all the 1st respondent/plaintiff wants to set aside the Power of Attorney dated 27.11.2007, he should have filed the suit within a period of 3 years. But, admittedly the present suit has been filed only in the year 2013. The cause of action paragraph in the plaint does not disclose any transaction after 2007. Even though, there is an averment in the plaint to the effect that he was informed of the fraud committed by the defendants in the year 2012.

8. Thus, as discussed above, the plaint disclose the cause of action in the year 2007 and does not disclose any other cause of action within the limitation period. From the fact that there are two RCOP's filed in the year 2008 and the 1st respondent/plaintiff has been effectively defending the same, it is very clear that he had definite knowledge of sale made in favour of the petitioner herein as

early as 2008. Without challenging the sale deed 1[st] respondent/plaintiff seeks to set aside the Power of Attorney executed by him on 27.11.2007.

9. Or.VII R.11 (a) and (d) clearly spell out that when the plaint does not disclose the cause of action and barred by any law, it shall be rejected. In the present case, the averments made in the plaint disclose an illusionary cause of action that his friend at his death bed has informed the fraudulent activities. But, the fact remains that the 1[st] respondent/plaintiff had been effectively prosecuting the suit filed by him in O.S.No.5092 of 2007, lodged Police complaint and defending RCOP from the year 2007-2008 onwards. Therefore, he had definite knowledge of the transactions and it is clear that the cause of action to file the suit had arisen in the year 2007, but it is filed only in the year 2013. Hence, the plaint is clearly barred by limitation.

10. This Court in **RM.Subbiah Vs. S.Ramakrishnan (2012 (1) LW 437)** has observed as under:

" 15. Normally a plaint cannot be rejected exercising power under Article 227 of the Constitution. However, if a party comes to the Court with unclean hands and re-agitate the matter again and again, the Courts are not powerless to exercise its discretion in putting a full stop to the same. The suits that have been filed by the first respondent is a glaring example where the Courts have to exercise its power to stop the first respondent from proceeding with the matter endlessly. There is no rhyme or reason to allow the first respondent to proceed with the suit in spite of the fact that in various proceedings initiated at his instance he has lost in all the forums".

11. Learned counsel appearing for the petitioner would rely on the judgment of Honourable Division Bench of this Court reported in ***2017 (1) CTC 497 (Cambridge Solutions Limited, Bangalore 560 095 Vs. Global Software Limited),*** wherein, the judgment of the Hon'ble Supreme Court was referred and held as follows;

'21. This Court, after careful perusal of the Plaint, feels that the averments regarding fraud

and collusion are non-existent and have been made only to sustain the suit. Procedural irregularities by the Tribunal not affecting the parties concerned cannot amount to fraud. The Honourable Supreme Court in its decision reported in T.Arivanandam v. Satyapal, AIR 1977 SC 2421, has held as follows;

"5. We have not the slightest legislation 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 Plaints. The learned Munsif must remember that if on a meaningful – not formal – reading of the Plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, be should exercise his power under Order 7, Rule 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 10, 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".”

22. It is very clear from the above Judgment that it is the duty of every Trial Court to carefully analyze whether the cause of action pleaded in the averments in the Plaint is real or fictitious. In case, it is found to be surreal, the plaint must be rejected at the thresh hold with costs.

12. It is also beneficial to know the very same judgment, the Hon'ble Supreme Court in **T.Arivanandam (1977 (4) SCC 467)** has observed further as under:

'What is the horrendous enterprise of the petitioner? The learned Judge has, with a touch of personal poignancy, Judicial sensitivity and anguished anxiety, narrated the sorry story of a long-drawn out series of legal proceedings revealing how the father of the petitioner contested an eviction proceeding, lost it, appealed against it, lost again, moved a revision only to be rebuffed by summary rejection by the High Court. But the Judge, in his clement jurisdiction gratuitously granted over six months' time to vacate the premises. After having enjoyed the benefit of this indulgence the maladroit party moved for further time to vacate. AR these proceedings were being carried on by the 2nd respondent who was the father of the petitioner. Finding that the court's generosity had been exploited to the full, the 2nd respondent and the petitioner, his son, set upon a clever adventure by abuse of the process of the court. The petitioner filed a suit before the Fourth Additional First Class Munsif, Bangalore, for a declaration that the order of eviction, which had been confirmed right up to the High Court and resisted by the 2nd

respondent throughout, was one obtained by 'fraud and collusion'. He sought an injunction against the execution of the eviction order. When this fact was brought to the notice of the High Court, during the hearing of the prayer for further time: to vacate, instead of frowning upon the fraudulent stroke, the learned judge took pity on the tenant and persuaded the landlord to give more time for vacating the premises on the basis that the suit newly and sinisterly filed would be. withdrawn by the petitioner. Gaining time by another five months on this score, the father and son belied the hope of the learned judge who thought that the litigative skirmishes would come to an end, but hope can be dupe when the customer concerned is a crook.

The next chapter in the litigative acrobatics of the petitioner and father soon followed since they were determined to dupe and defy the process of the court to cling on to the shop. The trick they adopted was to institute another suit before another Munsif making a carbon copy as it were of the old plaint and playing upon the likely gullibility of *the new Munsif to grant an exparte injunction. The 1st respondent entered appearance and expose the, hoax played upon the court by the petitioner and the 2nd respondent. Thereupon the Munsif vacated the order of injunction he had already granted. As appeal was carried without success. Undaunted by all these defeats the petitioner came to the High Court in revision and managed to get an injunction over again. The 1st respondent promptly applied for vacating the temporary injunction and when the petition came up for hearing before Mr. justice Venkataramayya, counsel for the petitioner submitted that he should not hear the case, the pretext put forward being that the petitioner had cutely mentioned the name of the judge in the affidavit while describing the prior proceedings. The unhappy Judge, who had done all he could to help the tenant by persuading the landlord, found himself badly betrayed. He adjourned the case to the next day. The torment he underwent is obvious from his own order where he stated : "I spent a sleepless night yesterday."*

Luckily, he stabilised himself the next day *and heard arguments without yielding to the bullying tactics of the petitioner and impropriety of his advocate. He went into the merits and dismissed the revision. Of course, these fruitless proceedings in the High Court did not deter the petitioner from daring to move this Court for special leave to appeal.*

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 plaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, be should exercise his power under Or. VII r. 1 1 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."*

13. In the present case, the cause of action said to have arisen on 27.11.2007. Limitation period for filing th suit is 3 years, i.e suit should have been filed before 26.11.2010, but is was filed in the year 2013, is clearly barred by law of limitation. Even though, the 1st respondent/plaintiff pleads fraud and collusion, it is not established that it precluded him from filing the suit within the period of limitation. Once it is admitted that he is effectively contesting the RCOP from the year 2008, he cannot plead that fraud prevented him to approach the Court in time. Further more,

when the sale deed has been executed and possession is taken, the challenge to Power of Attorney executed on 27.11.2007, only amounts to illusionary cause of action and hence I'am of the considered opinion that suit is hopelessly barred by Law of Limitation.

14. The finding of the Trial Court, that the suit is at the stage of trial cannot be a reason for rejection of the petition. Hence, the the order passed by the learned XIV Assistant Judge, City Civil Court, Madras (Full Additional Charge of XVII Assistant Judge, City Civil Court) Madras in I.A.No.14792 of 2016 dated 14.02.2019 is set aside and consequently, the present Civil Revision Petition is allowed. No costs. Consequently, the connected C.M.P.No.8431 of 2019 is closed. The plaint in O.S.No.1581 of 2013 is rejected.

22.08.2019

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Index:Yes/No
Internet:Yes/No

M.GOVINDARAJ, J.

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