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Delivered on : 16.12.2019

A.Nos.3591, 3592, 7337 & 4526 of 2019 in
C.S.No.857 of 2018

K.KALYANASUNDARAM., J

These applications have been filed under Order 7 Rule 11 read with 151 of C.P.C. to reject the plaint in the suit filed for partition claiming 1/7th share in the suit property and for declaration to declare that the sale deeds dated 12.11.2005, 18.01.2006, 22.01.2008, 04.04.2007, 28.09.2007, 10.06.2009 are null and void and for permanent injunction.

2. The brief facts of the case necessary for disposal of these applications would run thus:-

The defendants 1 to 3 are brothers, the 4th and 5th defendants are sisters and the sixth defendant is the mother of the plaintiff. His father K.M.Muthukrishnan was employed in the Secretariat and later he was practising as an advocate. His father purchased the property measuring an extent of 4340 sq.ft vide sale deed, dated 30.01.1992.

3. The plaintiff would further state that the first defendant approached his father and an understanding was reached between the family members that each member of the family shall get one share in the suit property. The first defendant had shown interest in developing the property and hence, his father executed a Power of Attorney dated 05.05.2003 to develop the property. The first defendant assured to give a share in the property to his late father K.M.Muthukrishnan. In pursuance of the Power of Attorney, the suit schedule property was developed by the first defendant and it was sold to Mohamed Salim Sait, the 8th defendant on 12.11.2005. Similarly, the property was sold to 9th and 10th defendants, who are husband and wife, by a registered sale deed dated 18.01.2006.

4. It is alleged that since the first defendant did not keep up his promise, his father cancelled the Power of Attorney on 28.02.2007. Despite the same, the first defendant sold a portion of the property to the fourth defendant on 01.03.2007, who in turn sold on the same day to one Krishnaveni. However, on 02.03.2007, again his deceased father executed another Power of Attorney in favour of the first defendant. Thereafter, the sale deed executed in favour of the fourth defendant Thilagavathi and Krishnaveni were cancelled and the property was sold to the 11th defendant

on 04.04.2007, who in turn, sold the same to the defendants 13 and 14 by virtue of the sale deed, dated 10.06.2009.

5. The plaintiff would claim that both of his parents were looked after by him. After his father passed away on 26.06.2017, the sixth defendant has taken away the entire terminal benefits of his father, amounting to Rs.20,00,000/-. In view of the dishonesty practised by the first defendant, his father had given a letter dated 25.11.2015 stating that the plaintiff should get one share in the suit property. The sixth defendant has also admitted the entitlement of the plaintiff in a suit in O.S.No.5093 of 2019. Notwithstanding the same, his share in the suit property was not given and hence the suit.

6. The defendants 1, 2, 4, 5, 6, 8, 9, 10, 13 & 14 in the above suit have filed these applications to reject the plaint on the ground that there is no cause of action to file the present suit and the prayer sought for in the suit is barred by limitation.

7. The learned counsel for the applicants would argue that in pursuance of the joint venture agreement dated 10.12.2003, the first

defendant completed the construction of the flats in the year 2006 and they were sold to the third parties between 2006 and 2008. The purchasers were also put in possession and they are in enjoyment of the same. It is further contended that no challenge was made by the original owner till he passed away on 26.06.2017. It is the case of the applicants that on the date of suit, no property was available for partition and the suit filed after lapse of 11 years is clearly barred by limitation. It is also argued that the suit is an abuse of process of law.

8. In support of the above contentions, the following decisions have been relied upon, *T.Arivandandam vs. T.V.Satyapal and another reported in 1997 4 SCC 467* and *N.V.Srinivasa Murthy and others vs. Mariyamma (Dead) by Proposed LR's. and others reported in 2005 3 CTC 545*.

i) In *1997 4SCC 467 (supra)*, the Hon'ble Apex Court in paragraph 5 and 6 has held as follows:

"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. 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 hearing 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."

6. The trial court in this case will remind itself of s. 35-A C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned."

ii) In **2005 3 CTC 545**, it has been observed as follows:

"16.The High Court does not seem to be right in rejecting the plaint on the ground that it does not disclose any 'cause of action'. In our view, the trial court was right in coming to the conclusion that accepting all averments in the plaint, the suit seems to be barred by limitation. On critical examination of the plaint as discussed by us above, the suit seems to be clearly barred on the facts stated in the plaint itself. The suit as framed is prima facie barred by the law of limitation, provisions of Specific Relief Act as also under Order 2 Rule 2 of the Code of Civil Procedure.

17. This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant on the observations of this Court in the case of T. Arvindam vs.T.V.Satyapal [1977 (4) SCC 467] :-

"The trial court must remember that if on a meaningful - no formal - reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing

by examining the party searchingly under Order X, CPC. An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch.XI) and must be triggered against them."

18. *In the result, the appeal fails with costs incurred throughout by the respondents to be paid by the appellants. A further cost in the sum of Rs.10,000 (Rupees ten thousand only) is imposed on the appellant to be paid to the respondents for prosecuting and prolonging litigation up to this Court in a hopelessly barred suit."*

9. Per contra, the learned counsel for the respondents would urge that while considering the application under Order 7 Rule 11, only averments in the plaint have to be looked into and the delay and the laches on the part of the plaintiff cannot be a ground to reject the plaint.

10. The learned counsel has drawn the attention of this Court to the following decisions in support of his contentions:-

i) In ***P.V.Guru Raj Reddy vs. P.Neeradha Reddy 2015 (2) MLJ 377*** the Hon'ble Apex Court has observed that the averments in the plaint has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law.

ii) In ***Urvashiben and another vs. Krishnakant Kanuprasad Trivdei reported in 2019 (1) LW 559***, the issue that came up for consideration was, whether the suit for specific performance was filed in time. In that case it is observed that even assuming that there is an inordinate delay and laches on the part of the plaintiff, the same cannot be a ground for rejection of plaint under Order VII Rule 11(d) CPC and from a reading of the averments in the plaint, it cannot be said that the suit is barred by limitation.

iii) In ***Thulasidhara and another vs. Narayanappa and others reported in 2019 (7) Scale 488***, it was held that in a suit of oral partition, document of family settlement can be used as corroborative evidence even though it was not a registered document.

11. In the matter on hand, indisputably, the suit property is the self

acquired property of the father of the plaintiff and the defendants 1 to 5 and the husband of the sixth defendant, viz., K.Muthukrishnan. It is not disputed that the property was purchased by him on 30.01.1992 and he passed away on 26.06.2017. It is not equally disputed that the said Muthukrishnan gave power of attorney in favour of the first defendant to develop the suit property and on the basis of the power of attorney, he put up flats and they were sold to the defendants 8 to 14. It is relevant to note that the entire sale of the property was completed between 2005 and 2009 and the original owner had not challenged the same till his death in the year 2017.

12. The plaintiff seeks relief only on the basis of the letter said to have been given by his father on 25.11.2015. It is the case of the applicants herein that the said letter is a fabricated document and this suit is hopelessly barred by limitation.

13. It is the specific case of the applicants that on the date of filing of the suit, the plaintiff's father did not own any property and hence, he is not entitled for a share in the suit property. The disposal of the property is not disputed by the respondent herein. Article 59 of the Limitation Act

stipulates filing of a suit to set aside the sale within a period of three years. However, indisputably, the present suit came to be filed after lapse of 18 years based on the letter said to have been given by the father of the plaintiff on 25.11.2015. Taking note of the fact that the original owner had not challenged the sale during his life time, in my considered opinion, the observations of the Hon'ble Apex Court made in AIR 1997 4 SCC 467 that if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing, squarely applies to the case on hand. Further, as rightly argued by the applicants, the suit is an abuse of process of law. The decisions relied on by the learned counsel for the respondent are factually distinguishable and do not advance the case of the respondent.

14. For the foregoing reasons, this Court is of the considered opinion that the present suit is liable to be rejected under Order 7 Rule 11 CPC. Accordingly, all the applications are allowed.

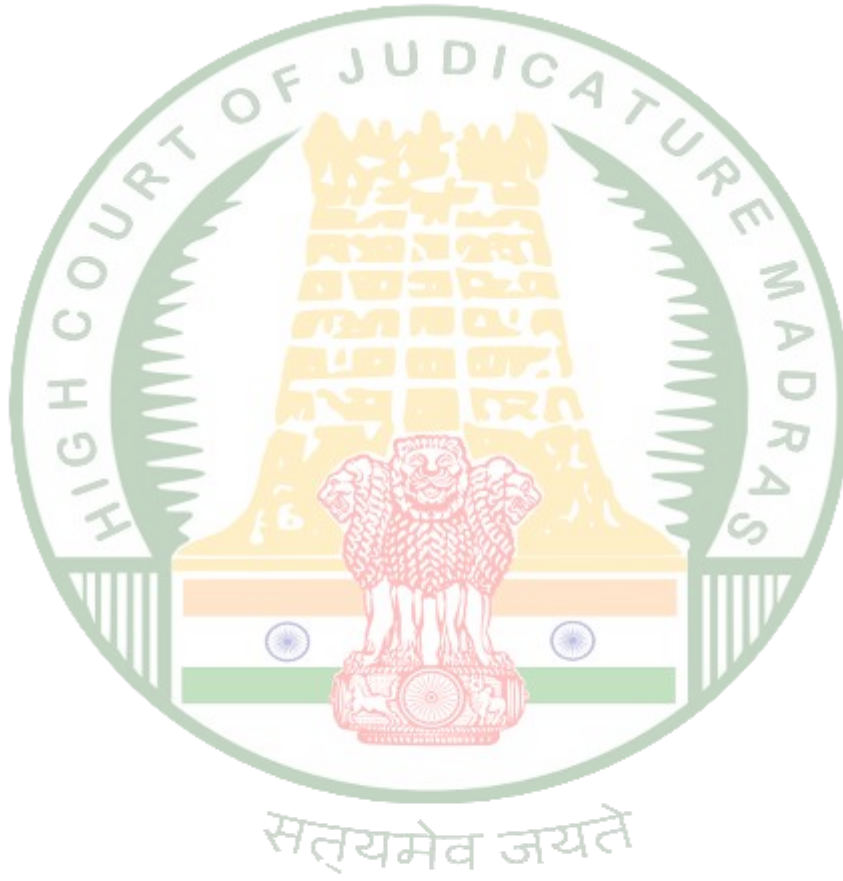
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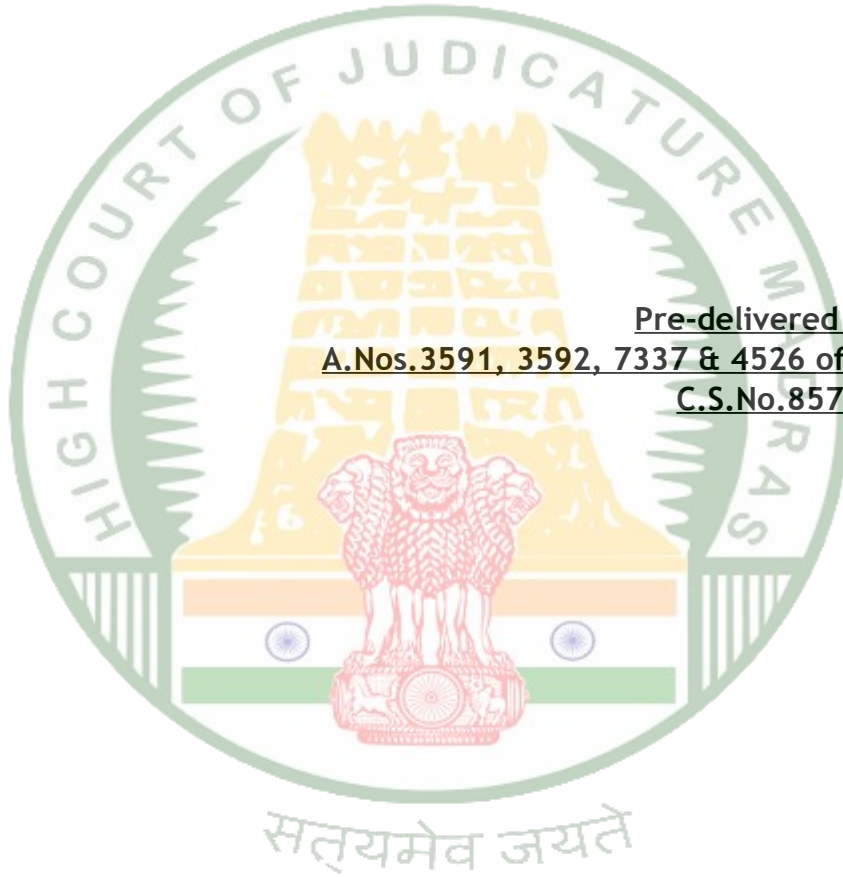


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