

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.10.2018

Pronounced on : 11.04.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

C.R.P(PD) No.2564 of 2018

and

C.M.P.No.15481 of 2018

Paul Marie Josephine

...Petitioner

V.

Louise Victorine Esperance Lafontaine

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to call for the records relating to O.S.No.141 of 2016 on the file of the Court of the III Additional District Judge, Puducherry and strike off the same from his file with exemplary costs.

For Petitioner : Mr.T.P.Manoharan, Senior counsel
for Mr.K.P.Jotheeswaran

For Respondent : Mr.K.Sasindran

ORDER

The present Civil Revision Petition has been filed, invoking Article 227 of the Constitution of India to strike the suit proceedings in O.S.No.141 of 2016, pending on the file of the learned III Additional District Judge, Puducherry.

2. Heard Mr.T.P.Manoharan, learned Senior counsel for the petitioner and Mr.K.Sasindran, learned counsel appearing on behalf of the respondent.

3. Mr.T.P.Manoharan, learned Senior counsel for the petitioner predominantly raised a ground that the plaint averments do not constitute a cause of action and therefore, the suit proceedings are liable to be struck down. According to the learned Senior counsel, an overall reading of the plaint, do not establish the allegation of fraud played in the execution of the Sale Deed dated 22.07.2005. The vague allegations of fraud averred in the plaint are illusory, averred through clever drafting and therefore, the plaint is liable to be struck down. It is his further submission that the suit for declaration that the sale deed is null and void, preferred after a

period of 11 years, is barred under Article 59 of the Limitation Act and since the suit is ultimately bound to be dismissed on the ground of limitation, this Court should exercise its powers under Article 227 of the Constitution of India and strike off the suit proceedings. The learned Senior counsel also submitted that since the suit proceedings are vexatious, the same amounts to an abuse of process of law and therefore is liable to be strike off on this ground also.

4. The learned counsel for the respondent submitted that the petitioner herein had played fraud by having the sale deed executed against the interest of the petitioner. According to the learned counsel, if at all, the petitioner is aggrieved that the plaint is liable to be rejected, the option available to him is under Order 7 Rule 11 of the CPC., and as such, the present Civil Revision Petition filed directly before this Court, by invoking Article 227, is not proper. The learned counsel submitted that the suit is well, within the period of limitation and therefore, the ground of limitation raised by the petitioner herein, being a question of mixed facts and law, requires adjudication by way of trial.

5. I have given careful consideration to the submissions made by the respective counsels.

6. The brief facts of the case, for the purpose of determining the various grounds raised by the counsels, are as follows:-

7. The respondent herein claims to be in possession of the property bearing Door No.85 at Montorsier Street, Puducherry for a considerable time (hereinafter referred to as 'suit property'). Alleging that the petitioner herein had tried to disturb her possession over the suit property, she had filed a suit in O.S.No.141 of 2016, seeking for the relief of permanent injunction. The petitioner herein had also filed a suit in O.S.No.979 of 2016, seeking for the same relief.

8. When both the suits were pending, the respondent herein had filed the suit in O.S.No.141 of 2016 before the learned III Additional District Judge, Puducherry, seeking for the relief of declaration to declare the Sale Deed dated 22.07.2005 as null and void. According to the respondent herein, the existence of the sale

deed was brought to her notice, only during the course of the criminal investigation on her complaint before the jurisdictional police station. Hence, the respondent herein had immediately filed the suit in O.S.No.141 of 2016 seeking for declaration to declare that the Sale Deed dated 22.07.2005 as null and void.

9. The learned Senior counsel for the petitioner had placed reliance on certain decisions and submitted that the plaint averments do not disclose a cause of action substantiating that the sale deed is liable to be set aside on the ground of fraud and misrepresentation, which also amounts to an abuse of process of law. In the decision of the Hon'ble Division Bench of this Court in ***Cambridge Solutions Limited, Bangalore-560 095 V. Global Software Ltd., Chennai-18 and 4 others*** reported in **2017 (1) CTC 497**, it was held that if the plaint averments on fraud is only illusory, the same can be struck down. For the same proposition, the decisions of this Court reported in **2010 (3) CTC 310 [Punjab National Bank, rep. by its Manager and Art Decors & Laminations & others rep. by Narender, No.168, Sydenhams Road, Periyamet, Chennai-3 V. J.Samsath Beevi & 3 others]** and **2017 (13) SCC 174 [Madanuri Sri Rama Chandra Murthy**

V. Syed Jalal] were also relied upon. The proposition the learned Senior counsel attempted to impress this Court is that the allegation of fraud in the plaint averments have been brought in through clever drafting, only to sustain the ground of fraud, which is only illusory. The ratio laid down in the aforesaid judgments is that, when the plaint averments regarding fraud and collusion are non existence and have been made through clever drafting, only to sustain the suit, such a plea of fraud is deemed to be only illusory and therefore, the plaint is liable to be struck down. It was also held therein that if a clever drafting of the plaint has created an illusion of a cause of action, the plaint requires to be struck off.

10. There is no quarrel on the propositions laid in the aforesaid three decisions. But to adopt such a ratio, would depend on the facts and circumstances of each case. While laying down the ratio in the aforesaid three decisions, the Courts had taken into consideration the facts of the entire case as revealed in the plaint averments and thus came to the conclusion, while analysing the scope of Order 7 Rule 11 of CPC. No doubt, such astute drafting is prevalent. But the ratio, as such, is precarious and requires to be

exercised with circumspection. For, all averments in the plaint can be discorded as astute and clever drafting, if the entire plaint is not read as a whole. Reading between the lines in the plaint, in order to discard the same, may not be judicious.

11. With the premise in mind and in order to ascertain as to whether such clever averments have been made in the present plaint, only for the purpose of sustaining the suit, the plaint was perused. Therein, it is seen that the respondent herein and her family members are alleged to be in possession and enjoyment of the suit property for more than a century. The plaintiff/respondent herein has claimed that she had looked after the defendant/petitioner herein from the childhood like a daughter. On 04.03.2016, when the respondent herein had claimed right over the suit property, their relationship became hostile. On 23.04.2016, the respondent herein had given a criminal complaint against the petitioner and during the course of investigation in the police station, the execution of the Sale Deed dated 22.07.2005, was revealed to the respondent herein.

12. The plaint averments also goes to say that the execution of the sale deed was through a fraud played upon the respondent herein. According to her, she had brought up the petitioner like her own daughter and on her request, she had signed in all the papers shown by the petitioner before several authorities honestly believing that it was only for the sake of conferring power upon the petitioner to look after the suit property. It is her further averment that there was no necessary for her to sell away their ancestral property to the petitioner herein at any point of time and her sister also has no such intention. She had also stated that there was no *consensus ad-idem* between the parties to the document and that there was no free consent therein. During the year 2005, the petitioner herein had cunningly and secretly prepared all the documents and informed the respondent and her sister that a deed is required to be executed in favour of the petitioner herein, granting powers to look after the maintenance works in the suit property. Reposing full confidence and reliability, the respondent herein and her sister had signed the papers without knowing its contents. The document was also prepared in tamil language, which the plaintiff/respondent herein and her sister were not acquainted with, since they could

read and write English and French language only. The respondent herein and her sister had never received any sale consideration towards sale transaction and that the petitioner herein had colluded with a named person for committing the fraud for the purpose of fraudulently having the sale deed registered. In such a detailed manner, the plaint averments have been made with an attempt to establish that the sale deed was executed through fraud and misrepresentation. These averments cannot be termed to be "clever drafting" or "an illusory cause of action" for the plea of fraud. When the respondent herein had come out with certain facts stating that the parties were in good relationship that there were not conversant with the tamil language and they were made to believe that they were called upon to execute a document of power deed and thereby had the same duly executed, the possibility of a fraud having committed, could be made out from such averments.

13. What requires to be kept in mind from reading of these plaint averments is that the petitioner herein now seeks to have the suit proceedings struck off, without the necessary issues being framed or by conduct of a trial. When there is a semblance of indication of the existence of fraud from the plaint pleadings, this

Court would not be justified in exercising its power to strike off the suit proceedings. As stated earlier, the manner which the plaint averments indicate the possibility of fraud, such pleadings requires to be tested only through framing of issues and through a proper trial.

14. The consequential ground raised by the learned Senior counsel for the petitioner is that since the plaint averments do not disclose a cause of action, the suit itself is an abuse of process of law. In support of his contention, the learned counsel for the petitioner relied upon the decision reported in **2013 (5) LW 810 [S.R. Nanda Kishore V. The Body of Villagers of No.29, Mambakkam Village, Chengalpattu Taluk, rep. by (i) Mr.S.Lakshmipathy Naidu S/o.Mr.Swami Naidu No.1/83, Pillaiyar Koil Street, Mambakkam Village & Post via Vandalur, Chennai-600 048, Chengalpattu Taluk, Kancheepuram District & others]** and **2013 (6) CTC 809 [N.A.Chinnasamy and another V. S.Vellingirinathan]**. The propositions laid down in the aforesaid decisions are to the effect that, whenever there is an abuse of process of law, the suit proceedings could be struck off at any stage of the proceedings.

But in the present case, this Court has held in the aforesaid paragraphs that there exists a cause of action for maintaining the suit to set aside the sale deed on the grounds of fraud and misrepresentation. Only in the absence of such a cause of action, can the suit proceedings be termed as an abuse of the process of law. The proposition in the aforesaid decisions are well settled law. It is only that the facts as projected by the petitioner does not fit into these proposition and as such, the question of an abuse of process of law will not arise.

15. The learned Senior counsel for the petitioner also submitted that the suit is liable to be dismissed as barred by limitation, since the sale deed was executed more than 11 years prior to the initiation of the suit. Article 59 of the Limitation Act provides a period of limitation of three years to cancel or set aside the sale deed and such a period shall begin from the time when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside the contract rescinded, first become known to him. When the plaint averments reveal that the knowledge of the sale deed itself was brought to his notice on 23.04.2016 during the course of interrogation in the police station in connection with a

criminal complaint, the plaint instituted in the month of August 2016 could be within limitation. The issue as to whether the suit is barred by limitation since the plaintiff had knowledge of the existence of the Sale Deed much earlier, is a mixed question of law and facts, which can only be tested through a proper trial. Hence, the suit cannot be deemed to be barred by limitation, on the basis of the plaint averments. In view of the same, the decision relied upon by the learned Senior counsel for the petitioner reported in **2018 (6) SCC 422 [Chhotanben and another V. Kiritbhai Jalkrushnabhai Thakkar and others]** and **1995 (1) SCC 198 [Ramti Devi (smt) V. Union of India]** to substantiate the proposition that the suit is barred by limitation, will not be of any help to him.

16. At this juncture, it requires to be pointed out that the grounds raised by the petitioner herein that the plaint averments do not reveal a cause of action and is barred by limitation are grounds available under Order 7 Rule 11 of the Civil Procedure Code. The very ambit of Order 7 Rule 11 of CPC is to strike off the plaint on the ground which are mentioned therein. The learned Senior counsel had predominantly raised the grounds which are available

for rejection of a plaint under Rule 11(a) and Rule 11(d) and therefore, in view of such alternate remedy, the present Civil Revision Petition is also not maintainable on these grounds.

17. All observations and findings made in the order shall not be taken as a precedent by the trial Court and that the issues involved in the suit shall be dealt independently, without being influenced by this order.

18. For all the foregoing reasons, I am of the affirmed view that there are no merits in the present Civil Revision Petition. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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11.04.2019

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Order :Speaking

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To

The III Additional District Court,
Puducherry.



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M.S.RAMESH, J.

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Order made in

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