**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Reserved on : 23.04.2019**

**Pronounced on : 26.04.2019**
**CORAM :**

**THE HONOURABLE MR. JUSTICE M.S.RAMESH**

**C.R.P(PD) No.4550 of 2017**
**and**
**C.M.P.No.21471 of 2017**

N.Mohan ...Petitioner

V.

1.P.Govindasami

2.G.Namasivayam

3.R.Bharani Kumar

4.The Assistant Engineer,
TANGEDCO,
Sithalapakkam,
Chennai-126. ...Respondents



**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order made in I.A.No.75 of 2017 in O.S.No.503 of 2016 dated 31.08.2017 on the file of the learned Principal District Munsif, Alandur and to allow the Civil Revision Petition with exemplary costs.

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| For Petitioner | : Mr.V.Raghavachari for Mr.Ma.P.Thangavel |
| For Respondent Nos.1 & 2 | : Mr.G.Ilamurugu |

**O R D E R**

The order under challenge in the present Civil Revision Petition is rejection of the petitioner's application filed under Order 7 Rule 11 of the Civil Procedure Code, to reject the plaint in O.S.No.503 of 2016 on the file of the learned Principal District Munsif, Alandur, filed under Order 7 Rule 1 r/w. Section 6 of the Specific Relief Act, 1963.

2. Heard Mr.V.Raghavachari, learned counsel for the petitioner and Mr.G.Ilamurugu, learned counsel appearing on behalf of the respondents 1 and 2.

3. The petitioner herein is the first defendant in the suit filed by the respondents 1 and 2 herein, seeking for the reliefs of declaration to declare the Sale Deed dated 16.11.1998 executed in favour of the first defendant as null and void and consequently, declare the plaintiffs/respondents herein as absolute owners of the suit property. The plaintiffs had also sought for the relief of

mandatory injunction, to remove the alleged encroachment; to demolish the existing structure in the suit property; and to deliver vacant possession and also for consequential permanent injunction.

4. The petitioner herein had filed the application under Order 7 Rule 11 to reject the plaint predominantly on the grounds that the suit was under valued and barred by limitation. The trial Court had relied upon a decision of this Court made in ***CRP.(PD) No.955 of 2016 dated 20.04.2016 [K.Veeraraghavan V. T.Munusamy 2)C.Manohar 3) M.Pushpa]*** and held that though the plaintiffs had not properly valued the relief of declaration on the market value of the suit property, the Court had refused to reject the plaint but directed the plaintiffs to correct the valuation of the Court fees with respect to relief (c) in the plaint and ordered for payment of proper Court Fee.



5. Insofar as the ground of limitation is concerned, the trial Court was of the view that the issue is a mixed question of law and fact, which can be decided based on the evidences to be adduced on both sides and therefore, rejected such a plea. Challenging the same, the present Civil Revision Petition has been filed.

6. The learned counsel for the petitioner submitted that the suit is apparently barred by limitation since the plaintiffs has sought for declaration, to declare the Sale Deed dated 16.11.1998 as null and void in the year 2016, after about 18 years. It is the submission of the learned counsel for the petitioner that there are no averments with regard to the plaintiffs' date of knowledge of the Sale Deed in the plaint and therefore, the limitation to set aside the Sale Deed would deemed to be three years from the date of execution of the Sale Deed?

7. The averments in the plaint with regard to the plaintiffs' claim of being in possession of the property and the relief under Section 6 of the Specific Relief Act has been made, by way of a clever and astute drafting and when the plaint is read in whole, the suit would be liable to be dismissed as barred by limitation. It is also the submission of the learned counsel that the suit property has not been properly valued and the plaintiffs had failed to value the suit property on the basis of the market value as well as the value of the superstructure of the property. In support of his submissions, the learned counsel for the petitioner relied upon various decisions.

8. The learned counsel for the respondents 1 and 2, on the other hand submitted that, the application to reject the plaint is misconceived. According to him, the Sale Deed dated 16.11.1998 is sham and nominal and the plaintiffs were forcefully dispossessed from the property without their consent and hence, they sought for the relief, by invoking Section 6 of the Specific Relief Act. In view of the same, the suit is deemed to have been presented well within the time. The learned counsel submitted that even assuming without admitting that the ground of limitation has been established by the petitioner herein, the other reliefs sought for in the plaint have not been questioned and hence, the plaint cannot be rejected partially under Order 7 Rule 11 of CPC. With such a proposition, the learned counsel relied upon certain decisions of this Court as well as the Hon'ble Apex Court.



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

10. Before addressing the grounds raised by the respective counsels, the facts of the case, as revealed from the plaint

averments, are that the plaintiffs claimed to have purchased the suit property, which is a part and parcel of a larger property covered under a Registered Sale Deed dated 12.05.1982. The plaintiffs had entered into an arrangement with the second defendant to have their property sold by converting the same into a housing lay out, for which purpose, they had executed a Power of Attorney dated 22.09.1998, appointing the second defendant as their power agent to obtain necessary approval from the concerned authorities, for conversion of their property into a housing lay out. The specific agreement between the plaintiffs and the second defendant was that the second defendant has to obtain the necessary approval for conversion of the plaintiffs' property as a precondition for selling the sites. It is also stated that the possession was not handed over to the second defendant and that the plaintiffs continue to maintain their possession over the suit properties and were also cultivating the same. It is in this background that the second defendant seems to have deceptively executed the Sale Deed dated 16.11.1998, which according to the plaintiffs, is a sham and nominal document. The plaintiffs had thereafter, cancelled the Deed of General Power of Attorney. It is claimed that when the plaintiffs were in physical possession of the suit properties, they were forcefully dispossessed by the defendants and therefore, the present suit has been filed under Section 6 of the Specific Relief Act, within a period of 6 months from the date of alleged dispossession. Since the properties were agricultural properties when the plaintiffs were in possession and the defendants had thereafter put up construction after their dispossession, they have valued the property as agricultural property alone and did not claim right over the subsequent construction put up by the defendants.

11. The learned counsel for the petitioner had predominantly raised two grounds, questioning the maintainability of the plaint on the grounds of limitation and under valuation.

12. Insofar as the ground of limitation is concerned, it is the petitioner's case that the plaintiffs were very much aware of the execution of the Sale Deed dated 16.11.1998 and as such, the limitation to file a suit for declaration of the Sale Deed as null and void would be three years from the date of their original knowledge. Contrary to such submissions made, the plaint averments reveals that the suit has been filed under Section 6 of the Specific Relief Act on the ground that the plaintiffs were illegally dispossessed and

therefore the Sale Deed dated 16.11.1998 is a sham and nominal document. Since the plaintiffs were all along in possession and enjoyment of the suit property and thereafter forcefully dispossessed, the suit initiated within 6 months from the date of their alleged dispossession, is well within time.

13. The plaintiffs have not pleaded that they have filed the suit within three years from the date of their knowledge of the Sale Deed, rather their specific case, as revealed from the plaint averments, is that on 28.03.2016, the defendants had encroached the suit property by dispossessing the plaintiffs by illegal means. The suit has been filed within 6 months from the date of such dispossession. Section 6 of the Specific Relief Act provides that a suit for recovery of possession can be brought within a period of 6 months, from the date on which the person is unlawfully dispossessed, without his consent. When the plaint averments indicate that the plaintiffs were in possession and cultivation of the subject property and subsequently were forcefully dispossessed, the suit instituted under Section 6 of the Specific Relief Act could be maintainable.

14. When the provision of law is clear on this aspect, the issue as to whether the plaintiffs would be entitled for a relief under Section 6 of the Specific Relief Act, can be determined only after due consideration of the evidences, both oral and documentary, after a full fledged trial. The trial Court had also held that the ground of limitation raised for rejecting the plaint under the provision of Order 7 Rule 11 of CPC is a mixed question of facts and law and therefore, felt that, the issue could be decided on consideration of the evidences to be adduced on both sides. I do not find any infirmity in such a finding.

15. The law on the scope of Order 7 Rule 11 of CPC is well settled, to the effect that, when the plaint averments, read in its entirety, does not disclose a cause of action or the relief is under-valued or the plaint is returned on an insufficiently stamped paper or the suit appears to be barred by any law or where the plaintiff fails to comply with the provisions of Order 7 Rule 11 of CPC otherwise, the plaint can be rejected. The task that was before the trial Court while dealing with the application under Order 7 Rule 11 was very limited to fit the plaint averments into the limited scope of Order 7 Rule 11. When the plaint averments, in many words,

indicates that the plaintiffs claims to be in possession of the suit property in their capacity as owners and that the plaintiffs were subsequently dispossessed without their consent, the suit filed under Section 6 of the Specific Relief Act cannot be termed as "to have not made out a cause of action or is barred by the law of limitation".

16. The learned counsel for the petitioner relied upon various decisions of this Court as well as the Hon'ble Supreme Court to substantiate the ground that the suit is barred by limitation. As observed earlier, when the plaint averments itself discloses that the suit, initiated within 6 months from the date of the alleged dispossession of the plaintiffs, could be maintained under Section 6 of the Specific Relief Act and therefore, would be within the limit of 6 months prescribed therein, in a further reliance on the innumerable decisions cited by the learned counsel for the petitioner on the ratio that the suit initiated beyond the period of limitation is liable to be rejected as barred, would be a futile exercise.

17. In a recent decision of the Hon'ble Apex Court in ***Chhotanben and another V. Kiritbhai Jalkrushnabhai Thakkar***

***and others*** reported in ***2018 (4) CTC 206***, it was held that the ground of limitation would be a mixed question of law and fact, triable, which is an issue and therefore, the plaint cannot be rejected at threshold. The relevant portions of the decision reads as follows:

> *"12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or*

*defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.*

*13. The High Court on the other hand, has considered the matter on the basis of conjectures and surmises and not even bothered to analyse the averments in the plaint, although it has passed a speaking order running into 19 paragraphs. It has attempted to answer the issue in one paragraph which has been reproduced hitherto (in paragraph 7). The approach of the Trial Court, on the other hand, was consistent with the settled legal position expounded in Saleem Bhai and Others Vs. State of Maharashtra and Others [2003 (1) SCC 557], Mayar (H.K.) Ltd. and Others Vs. Owners & Parties, Vessel M.V. Fortune Express and Others [2006 (3) SCC 100] and also T. Arivandandam Vs. T.V. Satyapal and Another [1977 (4) SCC 467].*

*16. In the present case, we find that the appellants (plaintiffs) have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original defendant Nos.1 & 2 by keeping them in the dark about such execution and within two days from the refusal by the original defendant Nos.1 & 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the Trial Court that the issue* *regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11(d)."*

18. The learned counsel for the petitioner raised a ground stating that the plaint has been cleverly and astutely drafted for the purpose of bringing in a cause of action to over come the limitation. In support of such a submission, the learned counsel for the petitioner relied upon the Hon'ble Apex Court in ***Hardesh Ores (P) Ltd V. Head and Company*** reported in ***2007 (5) SCC 614*** and other decisions on the same ratio.

19. This proposition as well as the ratio laid down therein was a subject matter in a Civil Revision Petition in ***CRP.(PD) No.2564 of 2018 [Paul Marie Josephine V. Louise Victorine Esperance Lafontaine]*** and I had an occasion to deal with the same in my order dated 11.04.2019, in the following lines:-

*"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 illusionary, 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 illusionary. 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 illusionary 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 illusionary 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."*

The above discussions are self explanatory. By looking into the averments of the entire plaint and in view of my earlier observations that the plaint, when read as a whole, discloses a cause of action, it cannot be said that the averments therein have been made through clever and astute drafting. Hence, this ground raised by the learned counsel for the petitioner cannot be sustained.

20. Insofar the ground of under valuation is concerned, the trial Court was also of the view that the plaint was not properly valued and thereby directed the plaintiffs to pay the deficit Court fee. It is submitted that the plaintiffs had complied with such a direction and also paid the deficit Court fee.

21. Order 7 Rule 11(b) of CPC provides that where the relief claimed in the plaint is undervalued and when the plaintiff is required by the Court to correct the valuation within a time and when he fails to do the same, the plaint is liable to be rejected. As per the said provision, when such under valuation is detected and the trial Court directs the plaintiffs to pay the deficit Court fee within a prescribed time limit and when the plaintiffs fails to remit the deficit stamp duty within the specified time limitation, it is only in

these circumstances that the plaint can be rejected. In other words, under valuation of the plaint can be termed to be a 'curable defect'. Since the trial Court was of the view that the plaintiffs could be granted permission to pay the deficit stamp duty, which was also later complied by the plaintiffs, the plaint cannot be rejected on this ground raised by the petitioner.

22. The learned counsel for the respondents submitted that the grounds raised by the petitioner can be adopted, for only one or two reliefs sought for in the plaint and therefore, partial rejection of the plaint is not permissible. Such a proposition has been dealt by the Hon'ble Apex Court in ***D.Ramachandran V. R.V. Janakiraman and others*** reported in ***1999 (1) CTC 715*** and the relevant portion of the said decision reads as follows:

> *"10. On the other hand, Rule 11 of Order VII enjoins the Court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this rule. The application filed by the first respondent in O.A. No. 36/97 is on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action.*

*Laying stress upon the provisions of Order VII, Rule 11 (a), learned senior counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of O.VII R.11(a) C.P.C. can not therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under O.VII R.11 (a) C.P.C., the Court can not dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the rule, there can not be a partial rejection of the plaint or petition. See Roop Lal Sathi Versus Nachhattar Singh Gill (1982) 3 S.C.C. 487. We are satisfied that the election petition in this case could not have been rejected in limine without a trial.*

The observations made by the Hon'ble Apex Court in the above decision is self explanatory to the effect that, partial rejection of the plaint under Order 7 Rule 11 is not permissible. Such a proposition has also been adopted by this Court in the decisions viz., ***2000 (2) LW 720 [Dr.Ravichander V. Karunakaran and others]*** and ***2010 (3) MWN (Civil) 577 [P.Sekar Vs. V.K.Vaiyapuri and others]***.

23. In the light of the above observations, I do not find any infirmity in the findings of the trial Court. The plea of limitation as well as valuation has been sufficiently dealt with in the plaint, which cannot be termed to be a clever or astute drafting and if at all, the petitioner is of the view that the suit is liable to be rejected on these grounds, it is always open to him to establish the same after due trial.

24. For all the foregoing reasons, I do not find any reason to interfere with the well considered order of the trial Court. Hence, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.



26**.04.2019**

Index : Yes

Order :Speaking

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**M.S.RAMESH, J.**

DP

To

The Principal District Munsif Court,
Alandur.

Order made in

**C.R.P(PD) No.4550 of 2017**
**and**
**C.M.P.No.21471 of 2017**



**26.04.2019**