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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2020

DELIVERED ON : 12.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.R.P.No.531 of 2018

and

C.M.P.No.2789 of 2018

S.Ramanan (Deceased)

M/s.Auromira,
Partnership Firm,
Rep. by its Managing Parter Mr.Veerapaneni Ravikanth

(Petitioner M/s.Auromira brought
on record as LR of the deceased sole
petitioner viz., S.Ramanan vide Court
Order dated 14.11.2019 made in C.M.P.No.
8748 of 2019 in C.R.P.No.531 of 2018)

.. Petitioner/10th Defendent

Vs.

1. The Idol of Sri Patteswara Swamy,
Perur, Coimbatore District,
Rep. by its Executive Officer /
Assistant Commissioner

..1st Respondent/Plaintiff

2. N.Varadharajan

3. G.Sakunthala

4. G.Sathish

5. G.Meenakshi

6. D.Neelaveni

7. D.Thirugnanasambandham

8. D.Anuradha

9. D.Chandrasekar

10. N.Muralidharan



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11. M/s.Coimbatore Property India (Pvt) Ltd.,
rep. by its Director,
No.8, Rakavis Square, Rahuman Sait Colony,
Opp.Muthoot Finance,
Sowripalayam Road, Coimbatore - 45.

.. Respondents 2 to 11/
Defendents 1 to 9 and 11

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 15.11.2017, made in I.A.No.558 of 2017 in O.S.No.509 of 2016 on the file of the learned I Additional District Judge, Coimbatore.

For Petitioner : Mr.B.S.Gnanadesikan
Senior Advocate
Asst. by Mr.V.R.Kamalanathan
for Mr.K.Kannan

For Respondent 1 : Mr.S.R.Rajagopal,
AAG asst by
Mr.R.Bharanidharan

For Respondents : No appearance
2,3,4,5,10 & 11

For Respondents : Mr.S.Mukunth
6 to 9 for M/s.Sarvabhauman Assts.

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O R D E R

The revision has been filed against the order dismissing the petition filed under Order VII Rule 11(d) of the Code of Civil Procedure to reject the plaint.

2. For the sake of convenience, the parties are arrayed as per their rank in the suit.

3. The original revision petitioner viz., Mr.S.Ramanan was the 10th defendant in the suit. The first respondent temple filed the suit in O.S.No.509 of 2016, on the file of the learned I Additional District Judge, Coimbatore for the following reliefs:

"(a) declaring the plaintiff idol is the absolute owner of the suit property more fully described hereunder and as a consequential relief direct the Defendants to vacate and surrender vacant possession of the suit property to the plaintiff and,

(b) declaring the Partition Deed dated 14.09.1973 entered between deceased



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Gananadesikan and others is illegal and void and will not bind the Plaintiff Idol and,

(c) declaring the lease deed dated 25.05.1999 executed by deceased Gnanadesikan in favour of 10th Defendant is illegal and void and will not bind the Plaintiff Idol and,

(d) declaring the Court Auction Sale dated 12.03.2001 in favour of the 10th Defendant in E.P.No.79 of 2000 in O.S.No.650 of 1999 is void and will not bind the Plaintiff Idol and,

(e) grant a permanent injunction restraining the Defendants from altering the physical features of the suit property and,

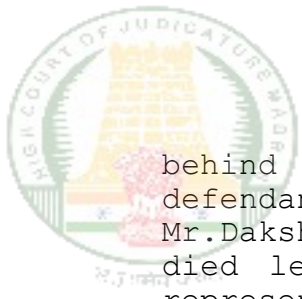
(f) directing the defendants to pay future profits from the date of plaint to till date of delivery of possession at such rate as may be fixed by the Hon'ble Court under Order 20 Rule 12 C.P.C. and,

(g) directing the defendants to pay plaintiff costs of suit and,

(h) Grant such other or further reliefs as this Hon'ble Court would deem fit and proper under the circumstances of the case and thus render justice."

4.1. The above suit has been filed on the ground that, the plaintiff idol is the absolute owner of the suit schedule property. Earlier, the suit schedule property belonged to one Mr.Subramania Thevar, and his mother Mrs.Solaiammal, and they dedicated the property absolutely in favour of the plaintiff idol by a Dharma Saasanam (Gift Deed) on 15.12.1927, for performing a kattalai in the plaintiff temple and for performing Karthigai Deepam Uthsavam during the Tamil month of Karthigai every year. By virtue of the said Dharma Saasanam, the executants divested the right and domain over the suit property and dedicated the same absolutely in favour of the plaintiff idol.

4.2. The original executants of the Gift Deed died leaving behind one Mr.Nataraja Thevar the brother of Mr.Subramania Thevar and son of Mrs.Solaiammal as their legal heir to succeed their Estate. Mr.Nataraja Thevar died leaving



behind his wife and his son one Mr.Varadharajan the first defendant and two other sons Mr.Gnanadesikan and Mr.Dakshinamurthy as his legal heirs. The said Mr.Gnanadesikan died leaving behind defendants 2 to 4 herein as his legal representatives. Mr.Dakshinamurthy also died and defendants 5 to 8 are his legal representatives.

4.3. Earlier, on 14.09.1973, the deceased Mr.Gnanadesikan and his family members in a family partition divided the suit property along with other joint family properties and the suit property was allotted in his favour. Thereafter, the deceased Gnanadesikan claiming the suit property as his personal property, leased out the same in favour of the 10th defendant for 30 years without getting any prior approval under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'HR & CE Act'). Thereafter, the 9th defendant filed a suit in O.S.No.650 of 1999, on the file of the learned Subordinate Judge, Coimbatore, against the deceased Gnanadesikan alleging that he has borrowed money from him and the deceased Gnanadesikan without contesting the suit allowed the suit to be decreed by consent. Thereafter, to execute the decree in the suit an Execution Petition has been filed bringing the suit property for Court auction sale. Even in the execution proceedings, the deceased Gnanadesikan has not raised any objections and the 10th defendant has taken the property in the Court auction and started claiming himself to be the owner of the suit property. Thus, according to the plaintiff, the deceased Gnanadesikan, the 9th defendant and the 10th defendant colluded together and played fraud upon the Court by suppressing the material fact that the plaintiff idol was the absolute owner of the suit property, and they have illegally alienated the suit property. It is pertinent to point out that in all the above proceedings, the plaintiff idol was not made as a party.

4.4. After coming to know about all these alienations, the plaintiff earlier filed a suit in O.S.No.1920 of 2006 on the file of the learned District Munsif, Coimbatore, for declaration of its title and also for recovery of possession and other consequential reliefs. Only the 10th defendant contested the said suit. Pending suit he has filed an application on 27.11.2006 before the Commissioner, HR & CE, seek leave to compromise the suit. Pending the above suit one Mr.S.Murali, brother of the 10th defendant claiming himself as a Partner of one M/s.Auromira, partnership firm sold a portion of the suit property in favour of one Mr.Renganathan on 21.09.2006. However, the sale was subsequently cancelled in the year 2010. Thereafter, the above said Mr.S.Murali sold another portion of the suit property in favour of one Mr.Saravanabavanandhan which was also subsequently cancelled in the year 2011.



4.5. Pending suit in O.S.No.1920 of 2006, the 10th defendant filed an application in I.A.No.4 of 2010, under Order VII Rule 11 of C.P.C. to reject the plaint and that application came to be dismissed by the trial Court by an order dated 28.09.2015. Challenging the above order, the 10th defendant filed a revision before this Court in C.R.P.No.4199 of 2015. That Revision came to be allowed by this Court and the plaint was rejected. In the meantime, the Joint Commissioner, HR & CE, Coimbatore, sent a recommendations to the Commissioner, HR & CE, seeking leave to compromise the issue between the parties by a proceedings dated 20.04.2012, at the instance of the 10th defendant.

4.6. According to the plaintiff, the earlier proceedings, between Mr.Gnanadesikan, the 9th and the 10th defendants, are not binding on the plaintiff, as it was not a party to the earlier proceedings and thus the decree and subsequent orders obtained in the earlier proceedings are not binding on the plaintiff as they are obtained by playing fraud on the Court.

4.7. According to the plaintiff the cause of action for the present suit is based on the earlier Dharma Saasanam executed by Mr.Subramania Thevar and Mrs.Solaiammal in the year 1927 and subsequent family partition made by the deceased Gnanadesikan and his family members. The leasing out of the property by the deceased Gnanadesikan in the year 1999 and the decree passed in O.S.No.650 of 1999, dated 30.09.1999, and the Court auction sale of the suit property in the year 2006 and subsequent alienation of the suit property. Filing of the earlier suit in O.S.No.1920 of 2006 and the recommendations made by the Joint Commissioner, HR & CE, Coimbatore dated 20.04.2014 and the order dated 28.09.2015, the order passed in C.R.P.No.4199 of 2015 and thereafter the final order passed by the Commissioner, HR & CE dated 10.11.2016, rejecting the recommendations made by the Joint Commissioner, HR&CE, Coimbatore.

5. Pending suit, the original 10th defendant Mr.S.Ramanan filed an application to reject the plaint under Order VII Rule 11(d) of C.P.C. on the ground that the said suit is not maintainable and it is hit by the provisions of Order II Rule 2 of C.P.C. According to the petitioner/10th defendant, when the earlier suit was filed by the plaintiff for the relief of declaration and possession, the other reliefs claimed in the present suit was very well available but the plaintiff has deliberately omitted to claim such reliefs. Hence, without the leave of the Court, the present suit in O.S.No.509 of 2016 is not maintainable. That apart, according to the petitioner/10th defendant, the suit is also barred by limitation as the suit property was sold in Court auction sale in the year 2001. Even

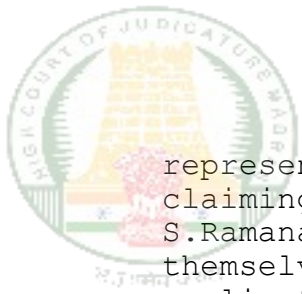


though the plaintiff was fully aware of the Court auction sale, after a gap of 15 years, in the year 2016, the plaintiff cannot file a suit to set aside the Court auction sale. Likewise, the earlier plaint in O.S.No.1920 of 2006 has been rejected by this Court in C.R.P.No.4199 of 2015 dated 08.08.2016, holding that the Civil Court has no jurisdiction to entertain the suit as there is a bar under Section 63 of the HR & CE Act. Hence, the present suit is also hit by the principles of Res Judicata, and also hopelessly barred by limitation. The fresh suit cannot be filed based on the order passed by the Commissioner, HR & CE. The petitioner/10th defendant is a bona fide purchaser in the Court auction sale and he is continuously in possession and enjoyment of the suit schedule property for more than 15 years. Therefore, now, it is not open to the plaintiff temple to file the present suit after the earlier suit has been rejected by this Court.

6. The above application has been contested by the plaintiff inter alia contending that the relief claimed in the present suit is not identical to that of the previous suit, and that the earlier suit was not rejected on merits, the present suit has been filed on a totally different cause of action. That apart, according to the plaintiff, as the earlier suit was not rejected on merits, the bar under the principle of Res Judicata also does not arise. As far as limitation is concerned, it is a mixed question of law and fact and it can be decided only in the trial. The question of limitation also cannot be decided in an application filed under Order VII Rule 11 of C.P.C. The earlier suit in O.S.No.650 of 1999 filed between the defendants are stage managed and the said suit has been filed only to grab the suit property with an evil design against the terms of the dedication made in favour of the plaintiff idol.

7. The Court below after considering the materials dismissed the application holding that, a meaningful reading of the plaint clearly disclose the cause of action and there is no bar under Section 63 of the HR & CE Act, as the suit is for declaring various deeds and decree passed by the Civil Court which cannot be adjudicated by the Commissioner or Deputy Commissioner, HR & CE under Section 63 of the HR & CE Act, and that the relief sought for in the present suit is totally different from that of the earlier suits. That apart, the bar under Section 108 of the HR & CE Act is also not applicable to the present suit. Earlier, the suit has been rejected by this Court, and under Section 14 of the Limitation Act, the period taken in the earlier proceedings has to be excluded for computing the limitation period. Now, challenging the same the present revision has been filed.

8. Pending revision petition, the original petitioner / 10th defendant, Mr.S.Ramanan died, and one M/s.Auromira,



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represented by its Managing Partner Mr.Veerapaneni Ravikanth, claiming that in the above partnership firm the deceased S.Ramanan was a partner, and hence sought to substitute themselves as petitioner in the revision petition and that application in C.M.P.No.8748 of 2019 in C.R.P.No.531 of 2018 has been allowed by this Court vide order dated 14.11.2019.

9. Mr.B.S.Gnanadesikan, learned senior counsel appearing for the petitioner would contend that, in the earlier suit the plaintiff has clearly mentioned about the Court auction purchase and also the various alienations made by the petitioner. However, the plaintiff has deliberately omitted to challenge the same in the earlier suit. In the above circumstances, the present suit is definitely barred under Order II Rule 2 of C.P.C. According to the learned senior counsel, the relief the plaintiff claims in the second suit was available to him in the previous suit, and the earlier suit has also been filed on the very same cause of action, but the plaintiff has deliberately omitted to claim the above reliefs which were sought for in the second suit. Hence, the plaintiff is prevented under Order II Rule 2 of C.P.C. from filing the second suit on the very same cause of action and for the reliefs he had omitted to seek.

10. The learned senior counsel further submitted that the earlier suit has been rejected by this Court on the ground that the suit is barred under Section 63 of the HR & CE Act, and that order is binding on the plaintiff, and the present suit is not at all maintainable. Hence, according to the learned senior counsel the plaint should be rejected at the threshold. That apart, there is a bar under Section 108 of the HR & CE Act restraining the Civil Court to entertain any suit in respect of the claim sought for in the present suit. However, the Court below simply dismissed the application holding that Section 108 of the HR & CE Act is not applicable to the present suit.

11. The learned senior counsel further contended that, to set aside the Court auction sale, under Article 99 of the Limitation Act, the plaintiff ought to have filed the suit within a period of one year. Even though the plaintiff is fully aware of the Court auction sale, long ago, now, it is not open to the plaintiff to challenge the same after more than a decade which is clearly barred by limitation. That apart, Section 14 of the Limitation Act is not applicable to the present case. However, the Court below erroneously came to the conclusion that under Section 14 of the Limitation Act, the period of limitation is saved.

12. Per contra, Mr.S.R.Rajagopal, learned senior counsel appearing for the first respondent temple/plaintiff would vehemently contend that, the Partnership firm which was



substituted as the revision petitioner in the present revision cannot maintain the revision petition and the present petitioner company cannot represent the deceased S.Ramanan, as it is not the successor-in-interest. After the death of Mr.S.Ramanan, the partnership firm was not reconstituted and registered. Hence, the petitioner being an unregistered partnership firm cannot maintain the revision petition. That apart, the deceased S.Ramanan never claimed that the suit property belongs to the above partnership firm. In the above circumstances, the present petitioner cannot maintain the revision petition.

13. That apart, the learned senior counsel further submitted that, the earlier suit was rejected by this Court on the ground that it was barred under Section 63 of the HR & CE Act, however directed the original revision petitioner viz., the deceased Mr.S.Ramanan, to work out his remedy in accordance with law. However, the petitioner did not approached the concerned authority seeking any relief. Hence, it is not open to them to contend that the present suit is barred under law. The petitioner himself in the written statement filed in the earlier suit clearly admitted that the suit property has been allocated for performing katallai by the family. Hence, it clearly shows that the property has been absolutely dedicated to the temple and now it is not open to them to claim that the suit property is the absolute property of the defendants.

14. The learned senior counsel further submitted that so far the bar under Order II Rule 2 of C.P.C. is concerned, that issue cannot be decided at this stage, and it can be decided on evidence and by considering the entire materials available on record. At this state, the averment made in the plaint alone is germane for considering an application filed under Order VII Rule 11 of C.P.C. That apart, the question of limitation is also a mixed question of law and fact and it can be decided only in a full-fledged trial.

15. The learned senior counsel further submitted that earlier this Court has directed the petitioner to work out his remedy pursuant to the recommendations made by the Joint Commissioner, HR & CE for settlement. However, that recommendation has been rejected by the Commissioner, HR & CE by an order dated 09.11.2016, holding that the suit property is a religious endowment and dedicated to the plaintiff idol, and the plaintiff idol is the owner of the property and also held that the transaction between the deceased Gnanadesikan and the original 10th defendant, and the decree obtained by them is not binding on the plaintiff temple. The learned senior counsel also referred to the cause of action in the plaint, and submitted that the order passed by the Commissioner dated 09.11.2016, is also a part of cause of



action for filing the fresh suit.

16. I have considered the rival submissions and also perused the records carefully.

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17. The primordial contention of the learned senior counsel appearing for the petitioner is that the suit is barred under the provisions of Order II Rule 2 of C.P.C. The said provision reads as follows:

"Order II Rule 2 : Suits to include the whole claim:

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.-- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs.-- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.-- For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

18. The earlier suit was filed for declaration of plaintiff's title and for possession, also for granting permanent injunction restraining the defendants from putting up any construction in the suit schedule property. However, the plaint has been rejected by this Court in the revision filed by the petitioner in C.R.P.No.4199 of 2015, under Order VII Rule 11 of C.P.C., only on the ground that the suit is barred under Section 63 of the HR & CE Act. The relevant portion of the order of this Court dated 08.08.2016, reads as follows:

"3. The petitioner/third defendant has



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moved I.A.No.4 of 2010 towards rejection of the plaint on the ground that Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act provided for determination of the issue raised in the suit.

4. Though Section 63 or Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 was not referred to in the application, this Court finds that the issue involved in the suit is covered by Section 63 of the H.R. & C.E. Act and the matter may be enquired by the Joint Commissioner/Deputy Commissioner of H.R. & C.E. and against the finding of such authority, an appeal is provided, under Section 69, to the Commissioner. Section 108 informs a bar to suit in respect of Administration or Management of a religious institution.

5. The Court below erroneously has dismissed I.A.No.4 of 2010 informing that Section 63 of the Act itself provided for the suit.

6. In view of the above, this revision shall stand allowed. It is brought to the notice of this Court that in proceedings of the Joint Commissioner, Hindu Religious and Charitable Endowment, in Na.ka.No.5989/2006/A1/dated 24.02.2012, the Joint Commissioner has recommended to the Commissioner of H.R. & C.E., as follows:

(omitted)

7. It is open to the petitioner to work out his rights including acting in keeping with the recommendation of the Joint Commissioner referred to above.

The Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed."

19. In the above order, this Court has referred to the recommendations made by the Joint Commissioner, HR & CE department, dated 24.02.2012, seeking permission from the Commissioner, HR & CE department for settlement with the petitioner herein, this Court also directed the petitioner therein to work out his remedies keeping with the



recommendations of the Joint Commissioner, HR & CE department.

20. Now the Commissioner, HR & CE department has rejected the recommendations of the Joint Commissioner, HR & CE department by an order dated 09.11.2016, holding that the suit property is the absolute property of the plaintiff temple, the property has been absolutely dedicated to the temple, and the claim of the petitioner to deposit a sum of Rs.50,00,000/- in favour of the temple to perform the kattalai was also not acceptable. Now, it is submitted that the said order dated 09.11.2016, passed by the Commissioner, HR & CE Department has been challenged by the petitioner herein before this Court in W.P.No.34439 of 2019 and the same is still pending.

21. To succeed, the petitioner has raised the plea of bar under Order II Rule 2 of C.P.C. and tries to establish that the second suit has been filed on the very same cause of action on which the previous suit has been instituted, and on that cause of action the plaintiff was entitled for reliefs now sought for and without obtaining the leave from the Court, the second suit has been filed for the relief omitted in the previous suit. All these issues raised by the petitioner can be established only by considering pleadings in both the suits and by other materials showing that the cause of action in both the suits are one and the same, and the plaintiff was entitled to sue for all the reliefs in the previous suit. The Constitutional Bench of the Hon'ble Supreme Court in Gurbux Singh Vs. Bhooralal reported in AIR 1964 SC 1810 has held as follows:

"6. In order that a plea of a bar under O.2. r.2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief, the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar. No doubt, a relief



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which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits....."

22. It is settled law that while considering an application under Order VII Rule 11 of C.P.C. the averments in the plaint alone are germane and the contention of the defendant or the materials produced by them cannot be considered and at this stage the Court has to presume that the averments made in the plaint are true.

23. Mr.B.S.Gnanadesikan, learned senior counsel appearing for the petitioner relied upon a Division Bench judgement of this Court in N.Ravindran Vs V.Ramachandran reported in 2011 (3) CTC 153, and contended that the Division Bench, after perusal of the plaint in the previous suit and the subsequent suit came to the conclusion that the cause of action for filing both the suit are one and the same and the plaintiff intentionally omitted to claim the relief which is sought for in the second suit, and the Division Bench held that the suit is barred under Order II Rule 2 of C.P.C. A perusal of the said judgement, it could be seen that the Division Bench on facts of that case has held that the subsequent suit is for specific performance whereas the earlier suit was for permanent injunction and the averments in both the plaint are verbatim same and that, the plaintiff has intentionally omitted the claim for specific performance, only in the above peculiar circumstances, the Division Bench has held that bar under Order II Rule 2 of C.P.C. would operate, and that judgement is not applicable to the instant case.

24. Whether the cause of action for both the suits are one and the same can be decided only after framing necessary issues, and considering the pleadings in both the suits, and by exhibiting evidence in support of the same, and also giving an opportunity to the plaintiff to demonstrate that the second suit is based on a different cause of action. At this stage, based on the contention of the defendant the issue cannot be decided.



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25. The Hon'ble Supreme Court in Alka Gupta Vs. Narender Kumar Gupta reported in (2010) 10 SCC 141 has held as follows:

"I. A suit cannot be dismissed as barred by Order 2 Rule 2 of the Code in the absence of a plea by the defendant to that effect and in the absence of an issue thereon.

12. We may extract Order 2 Rules 1 and 2 of the Code for ready reference:

"1. Frame of suit:

Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2. Suit to include the whole claim:

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim:

Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs:

A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."



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The object of Order 2 Rule 2 of the Code is two-fold. First is to ensure that no defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The effect of Order 2 Rule 2 of the Code is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action. It does not however bar a second suit based on a different and distinct cause of action.

13. This Court in *Gurbux Singh v. Bhoora Lal* [AIR 1964 SC 1810] held :

"6. In order that a plea of a bar under O. 2, R. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar."

Unless the defendant pleads the bar under Order 2 Rule 2 of the Code and an issue is framed focusing the parties on that bar to the suit, obviously the court can not examine or reject a suit on that ground. The pleadings in the earlier suit should be



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exhibited or marked by consent or at least admitted by both parties. The plaintiff should have an opportunity to explain or demonstrate that the second suit was based on a different cause of action.

14. In the instant case, the respondent did not contend that the suit was barred by Order 2 Rule 2 of the Code. No issue was framed as to whether the suit was barred by Order 2 Rule 2 of the Code. But the High Court (both the trial bench and appellate bench) have erroneously assumed that a plea of res judicata would include a plea of bar under Order 2 Rule 2 of the Code. Res judicata relates to the plaintiff's duty to put forth all the grounds of attack in support of his claim, whereas Order 2 Rule 2 of the Code requires the plaintiff to claim all reliefs flowing from the same cause of action in a single suit. The two pleas are different and one will not include the other. The dismissal of the suit by the High Court under Order 2 Rule 2 of the Code, in the absence of any plea by the defendant and in the absence of an issue in that behalf, is unsustainable."

In the above circumstances, it is for petitioner/defendant to establish that the identity of cause of action in both the suits in the trial, at this stage, based on the averments made in the written statement, and in the present application, the plaint cannot be rejected.

26. So far as the bar under Section 63 of the HR & CE Act r/w Section 108 of the HR & CE Act is concerned, now it is contended that the above issue has been decided by the Commissioner, HR & CE department under Section 63 of the Act, the Joint Commissioner or the Deputy Commissioner alone empowered to decide the dispute as to whether any property or money is a religious endowment or a specific endowment. Now, it is stated that the Commissioner, HR & CE, who is the Appellate Authority under the Act, has decided that the property is a religious endowment and it has been absolutely dedicated to the plaintiff deity, based on that order, the present suit has been filed. Hence, according to the learned senior counsel for the plaintiff temple, the bar under Section 63 of the HR & CE Act has been removed. I find some force in the said contention of the plaintiff temple. Now the issue has been decided by the Commissioner, HR & CE Department in favour of the plaintiff deity, and the order is in force, and the writ petition challenging the order is still pending. In the



above circumstances, at this stage, it cannot be contended by the defendant that Section 63 of the HR & CE Act is a bar for the plaintiff from approaching the Civil Court, and on that ground, the plaint cannot be rejected.

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27. The next contention with regard to the limitation is concerned, the question of limitation is a mixed question of law and fact. It is true that on a meaningful reading of the plaint, it discloses that the suit is barred by limitation, the plaint can be rejected. In the instant case, according to the plaintiff, the petitioner/10th defendant Mr.S.Ramanan (since deceased) has played fraud, the 9th and 10th defendant in collusion with the deceased Gnanadesikan has obtained a fraudulent and collusive decree without impleading the plaintiff temple as a party in the suit and hence the decree is void and it is not binding on the plaintiff temple. According to the learned counsel appearing for the respondents, as fraud vitiates all judicial acts and the decree obtained by them has to be treated as nonest in the eye of law and it is nullity, hence limitation does not apply to the present suit. Whether the defendants have committed a fraud or not and whether the suit is barred by limitation are all issues which has to be decided in the trial. Once the plaintiff is able to establish that the decree was obtained by fraud, then the decree is vitiated, and such decree and the subsequent Court auction sale cannot be held legal. Considering the above circumstances, the suit cannot be rejected as barred by limitation at this stage.

28. It is settled law that on a meaningful reading of the plaint, if the suit is found to be manifestly vexatious or does not disclose any right to sue, the suit can be rejected at the threshold, and by a clever drafting, an illusory cause of action has been created, even then, the plaint can be rejected. While, deciding an application under Order VII Rule 11 of C.P.C., the averments made in the plaint are only germane and the Court cannot look into either the written statement or any other materials produced by the defendant. The plaint should be read as a whole and there cannot be any compartmentalisation or segregation of various paragraphs in the plaint.

29. The Hon'ble Supreme Court in T.Arivandandam Vs. T.V.Satyapal and another reported in (1997) 4 SCC 467 has held as follows:

"5.....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, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that



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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....."

30. In *Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others* reported in (2004) 3 SCC 137 the Hon'ble Supreme Court has held as follows:

"10. In *Saleem Bhai and Ors. v. State of Maharashtra and Ors.* (2003 (1) SCC 557) it was held with reference to Order VII Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

11. In *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal and Ors.* (1998 (2) SCC 70) it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

12. The trial Court must remember that if on a meaningful and not 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 the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code. (See *T.Arivandandam v. T.V.Satyapal and Anr.* (1977 (4) SCC 467)"



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31. In Ram Prakash Gupta Vs. Rajiv Kumar Gupta and Others reported in (2007) 10 SCC 59, the Hon'ble Supreme Court held as follows:

"20. For our purpose, clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the Court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the Court to verify the entire plaint....."

32. That apart, now another serious issue of maintainability of revision has been raised by the learned counsel appearing for the respondent temple, as to whether the present petitioner can maintain and continue the revision and suit as successor-in/of-interest of the original 10th defendant and whether the present petitioner who is also impleaded as a party defendant in the suit can contest the suit on behalf of the original 10th defendant. It is also contended that the present petition is an unregistered firm and it cannot maintain the suit, these issues are also necessarily be decided in the suit. Considering all these circumstances, the plaint cannot be rejected at the threshold under Order VII Rule 11 of C.P.C.

33. So far as the judgement relied upon by the learned senior counsel appearing for the petitioner in Virgo Industries (Eng.) Private Limited Vs. Venturetech Solutions Private Limited reported in (2013) 1 SCC 625. The Hon'ble Supreme Court has held that, Order II Rule 2 (2) and (3) of the C.P.C. engrafts a laudable principle that discourages/prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. As I have already held that the issue as to whether the provision of Order II Rule 2 of C.P.C. is applicable to the present case or not can be decided only in the trial and therefore this judgement is also not applicable to the present case.

34. The other judgements relied upon by the learned senior counsel appearing for the petitioner with regard to Order II Rule 2 C.P.C. in Sornam Vs. A.Venugopal reported in (2010) (5) CTC 563 and Coffee Board Vs. Ramesh Exports Private Limited reported in (2014) 6 SCC 424 are also on the same principle, in view of my finding that the issue has to be decided in the suit, these judgements are also not applicable



to the facts of this case.

35. So far as the other judgements relied upon by the learned senior counsel appearing for the petitioner with regard to limitation in Commissioner, Madhya Pradesh Housing Board Vs. Mohanlal and Company reported in (2016) 14 SCC 199 and Suryachakra Power Corporation Limited Vs. Electricity Department, Port Blair reported in (2016) 16 SCC 152 regarding applicability of Section 14 of the Limitation Act is concerned, this Court has already held that the question of limitation is a mixed question of law and fact and it can be decided only during trial. That apart, as the plaintiff has also alleged fraud, the suit cannot be rejected on the question of limitation at this stage. Therefore, these judgements are also not factually applicable to the present case.

36. Considering all the above circumstances, I am of the view that the suit cannot be rejected at this stage. The trial Court considering the materials available on record rightly dismissed the application. I do not find any illegality or irregularity in the order passed by the trial Court. There is no merit in the revision and the same is liable to be dismissed.

37. In the result, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The I Additional District Judge,
Coimbatore.

C.R.P.No.531 of 2018 and
C.M.P.No.2789 of 2018

NRJK(CO)
CB(10/07/2020)