IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 11.12.2020]

[ORDERS PRONOUNCED ON : 30.12.2020]

CORAM:

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

**C.R.P.[PD] Nos.2171, 2166, 2169, 2172 & 2174 of 2020**
**and**
**C.M.P.Nos.13646, 13640, 13644, 13647 & 13649 of 2020**

**In C.R.P.[PD] Nos.2171, 2166, 2169, 2172 & 2174/2020 :-**

1. R.Sasikala
2. B.Sangeethkumar
3. P.Baskar
4. M/s. Sasi Road Finishers and and Engineering Contractors, Rep. by its Managing Partner R.Sasikala ... Petitioners in all C.R.Ps.

.. Vs ..

1. P. Annadurai .... 1st Respondent in all C.R.Ps.

2. Tamil Nadu mercantile Bank Ltd., Rep. by its Authorized Persons, Having Branch at Dharmapuri. .... 2nd Respondent in C.R.P.Nos.2166, 2169 & 2171 & 2174/2020

3. The Chief Secretary, Highways and Small Ports Department,

Secretariat,
St. George Fort, Chennai.

4. The Chief Engineer,
Highways Building and Maintenance,
Integrated Building for Chief Engineer Office,
H.R.S. Compound,
76, Sardar Patel Road,
Guindy, Chennai.

5. The Chief Engineer,
National Highways,
Integrated Building for Chief Engineer Office,
H.R.S. Compound,
76, Sardar Patel Road,
Guindy, Chennai.

6. The Superintending Engineer,
NABARD and Village Road Scheme,
Nattanmai Kazhaga Kattidam,
Salem - 7. ... Respondents 3 to 6 in C.R.P.Nos.2171 and 2174/2020

(Notice to R.2 to R.6 not necessary, hence, given up)

**Prayer in C.R.P.Nos.2171, 2166, 2169 & 2172/2020:-** Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the order dated 27.11.2020 made in I.A.Nos.2, 3, 4 and 5 of 2020 respectively in O.S.No.105 of 2020 on the file of the learned Principal District Judge, Dharmapuri.

**Prayer in C.R.P.No.2174/2020 :-** Civil Revision Petition filed under Article 227 of the Constitution of India, praying to strike off the plaint in O.S.No.105 of 2020 on the file of the learned Principal District Judge, Dharmapuri.

**In all C.R.Ps.**

For Petitioners : Mr.N.Manoharan
For R-1 : Mr.V.Raghavachari

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**COMMON ORDER**

**C.R.P.[PD] Nos.2171, 2166, 2169 and 2172/2020 :-**

The defendants are the revision petitioners herein.

2.For the sake of convenience, the parties are referred as per the ranking before the trial Court.

3. The above Civil Revision Petitions are filed under Article 227 of the Constitution of India, praying to set aside the order dated 27.11.2020 made in I.A.Nos.2, 3, 4 and 5 of 2020 respectively in O.S.No.105 of 2020 on the file of the learned Principal District Judge, Dharmapuri.



4. The first respondent herein has filed the above said suit in O.S.No.105 of 2020 on the file of the Learned Principal District Judge,

Dharmapuri, against the revision petitioners and 5 defendants for various reliefs. The first respondent herein/plaintiff has also filed interlocutory applications in I.A.Nos.1 to 6 of 2020 in O.S.No.105 of 2020 for various interim reliefs, and the learned trial Judge has granted ex-parte interim reliefs to all the interlocutory applications, by an order dated 27.11.2020. Feeling aggrieved against the orders passed by the learned trial Judge, the petitioners are before this Court, by filing the above Civil Revision Petitions under Article 227 of the Constitution of India.

5. Mr.N.Manoharan, learned counsel for the petitioners in all the four civil revision petitions would contend that the suit is outcome of the clever drafting so as to cover up of the time barred rights and the alleged rights if any, and the trial Court, without seeing the factum as disclosed in the plaint, does not constitute a cause of action of the relief sought for in the suit as barred by limitation, law of limitation and ought not to have numbered the suit and ought not to have granted ex-parte ad-interim mandatory injunction.

6. Mr.V.Raghavachari, learned counsel for the respondent-caveator has raised preliminary objection as to the maintainability of the civil revision petitions filed against the interim orders and the same is discussed infra.

7. The following Genealogical Tree would exemplify the relationship between the parties to the suit.

GENEALOGICAL TREE

Pachiappa Gounder + Muthupillai

2 Sons

4 Daughters

1.Annapoorani
2.Alamelu
3. Rukmani
4. Vennila

P.Annadurai
(PLAINTIFF)

P.Baskar+R.Sasikala
(D3) (D1)

Aranganathan

Sangeeth Kumar(D2)

8. The above named late Pachiappa Gounder and the 1st petitioner/D.1 started the 4th petitioner/D.9 Firm on 15.10.1997 at No.25-A, Kaliappa Gounder street, Madhigonpalayam, Dharmapuri District. The Firm was registered as Doc.No.48 of 1997. Subsequently, late Pachiappa Gounder died on 29.12.2006. (Plaint Document No.2)

9. The first respondent herein and the 3rd petitioner/D3 are the sons and Tmt.Annapoorani, Tmt.Alamelu, Tmt.Rukmani and Tmt.Vennila are the daughters of late Pachiappa Gounder. Soon after the death of Thiru Pachiappa Gounder, his wife Tmt.Muthu Pillai and their four daughters had executed a registered release deed dated 04.05.2007 (Plaint Document No.4) in favour of the 3rd petitioner and the first respondent, who are the sons of late Pachiappa Gounder in respect of some of the properties left behind late Pachiappa Gounder. Subsequently, all the legal heirs including the wife of, sons of and daughters of, late Pachiappa Gounder had entered into a family partition, under registered Partition Deed dated 14.03.2016 (Plaint Document No.5). Accordingly, the family properties of late Pachiappa Gounder got divided and the said issue had attained finality.

10. Nearly 14 years after the death of late Pachiappa Gounder (i.e.,29.12.2006), the first respondent has filed the above suit in O.S.No.105 of 2020 for the following prayers:

11. Declaring that the plaintiff is a Legal Partner entitled to continue as such a Partner of the D.9 Firm at Sasi Road Finishers and Engineering Contractors" at 25-A, KaliyappaGounder Street, Dharmapuri with the right of holding equal half share partnership.(emphasis supplied)

12. In Alternative, the plaintiff prays that he is a partner as such a legal heir of Pachiyappa Gounder of the proportionate investment of 67% of share in the Firm in which the plaintiff is entitled to equal share along with the 3rd defendant in respect of the goodwill inclusive of all asserts of the D.9 Firm. (emphasis supplied)



13. Appointing an advocate commissioner to take inventory of D.9 Firm along with every transactions of the same with the defendants 4 to 7 from 15.10.1997 to till this date until and completion of inventory.

14. Granting the relief of Permanent Injunction restraining the defendants 1 to 3 and their men, agent, attorney, staffs etc., from in any manner operating the suit schedule account particularly from withdrawing any money until the plaintiff is declared as partner and permitted him to proceed as such a partner of the 9th defendant.(emphasis supplied)

15. By means of Mandatory Injunction directing the defendants 5 to 8 not to pay the money or transfer any value in respect of the D.9 Firm. Except to item No.2 of suit schedule by way of bank transfers (RTGS/NEFT) till plaintiff is declared as partner and permitted him to proceed as such a partner of the 9th defendant.(emphasis supplied)

16. By means of the Mandatory Injunction directing the 4th defendant not to allow the defendants 1 to 3 or their men, agent, attorney, staffs etc., from in any manner withdrawing any amount from suit item 2 of the suit schedule until plaintiff is declared as partner and permitted him to proceed as such a partner of the 9th defendant. (emphasis supplied)

17. The first respondent/plaintiff has also filed six interlocutory applications in I.A.Nos.1 to 6 of 2020 praying for various interim reliefs, which are extracted hereunder:

(i) I.A.No.01 of 2020 - to dispense with the service of notice as provided under Sec.80 of CPC to respondents 5 to 8/defendants 5 to 8 and to order for the further proceeding orders against them.

(ii) I.A.No.02 of 2020 - To pass an order of ad-interim mandatory injunction against respondents 5 to 8 directing them to deposit any money payable in respect of contractual work carried on by the 9th respondent only to the suit item 2 Bank account and not to make any kind of payments either to the respondents 1 to 3 directly or any other individual or any Firm or company or government etc., till disposal of suit.(emphasis supplied)

(iii) I.A.No.03 of 2020 - To pass an order of ad-interim mandatory injunction against respondents 4/Defendant 4 directing them not to allow any withdrawal of any money either by the respondents 1 to 3 directly or on their documents to any other individual or any Firm or company or government etc., from the petition mentioned item of the Bank account of the Firm till the disposal of suit. (emphasis supplied)

(iv) I.A.No.04 of 2020 - To pass an order of ad-interim injunction against respondents 1 to 3/defendant 1 to 3 restraining them from in any manner withdrawing any amount from the petition mentioned item of the Bank account of the Firm till the disposal of the suit.(emphasis supplied)

(v) I.A.No.05 of 2020 - To pass an order to appoint an Advocate Commissioner to take Inventory and to take the accounts from the 4th respondent of the petition mentioned bank account. (emphasis supplied)

(vi) I.A.No.06 of 2020 - To pass an order to permit to reserve my right for the liberty to file a separate suit at a later stage against the respondents 1 to 3 in respect of the immovable properties.

18. Pending the above said suit in O.S.No.105 of 2020, the learned Principal District Judge at Dharmapuri, has chosen to issue interim orders in I.A.No.1 to 6 of 2020. I.A.No.1 of 2020 is to dispense with the notice under Section 80 (C) of CPC. I.A.No.6 of 2020 is a petition filed under Order II Rule 2 seeking leave to file another suit with same cause of action.

19. At the time of admission, Mr.V.Raghavachari, learned counsel appearing for the first respondent/plaintiff has raised an objection regarding maintainability of the civil revision petitions under Article 227 of the Constitution of India filed against interim orders.

20. The objection regarding the maintainability of the revision against interim orders is no longer res integra.

21. In ***2020 (5) MLJ 748 [T.P.Kathiresan (died) and Others Vs. R.Ramadass (died) and others,*** the learned Single Judge (RSMJ) has taken note of ***2019 (5) CTC 696 SC*** and proceeded to strike off the plaint on the ground that the plaint is an abuse of process of law. Therefore, the

powers of High Court under Article 227 of the Constitution are wide and can be used, to meet the ends of justice.

22. The power of the High Court under Article 227 of the Constitution is administrative as well as judicial and is capable of being invoked at the instance of any person aggrieved or even by exercised suo moto. The paramount consideration behind vesting such vide power of superindence is paving the part of justice and removing any obstacles. The power has to be exercised in cases occasioning grave justice or failure of justice, as in the instant cases. The error, if not corrected at this moment will become incapable of correction at a later stage, and refusal to intervene would result in travesty of justice and hence, in view of the above discussion, this Court comes to the conclusion that the view taken by brother Justice Mr.R.Subramaniam in the above cited decision ***2020 (5) MLJ 748*** whereby brother Justice has clarified the decision reported in ***2019 (5) CTC 696***, I am inclined to follow the same. Accordingly, this Court comes to the conclusion that C.R.P.Nos.2171, 2166, 2169 and 2172 of 2020 against interim orders in I.A.Nos.2, 3, 4 and 5 of 2020 respectively are held to be maintainable.

23. The main prayer in C.R.P.No.2174 of 2020 is to struck off the plaint in O.S.No.105 of 2020 on the ground that the cause of action is imaginary and the suit relief is barred by limitation. By a clever drafting, the plaint is made to suit the convenience so as to give a total bye pass to the suit under Partnership Act and to get over the limitation and created an imaginary cause of action for the institution of the suit. In short, the suit filed as such is not maintainable and hence, the defendants 1 to 3 and 9 appears to have filed the C.R.P.No.2174 of 2020.

24. The scope of enquiry for rejection of the plaint as mandated in Order VII Rule 1 (d) and (e) of CPC is kept in mind.



25. Heard Mr.N.Manoharan, learned counsel for the revision petitioners and Mr.V.Raghavachari, learned counsel appearing for the first respondent/plaintiff.

26. Perused the Document No.1 and as per Clause 11 and 12 of the Partnership Deed, it goes to show that partnership is a contract and there is a contract to the contrary by which the claim of the plaintiff as a legal heir of the deceased partnership appears to have been completely ousted.

27. Perused the plaint Document No.4 which is the registered Partition Deed dated 29.12.2006 said to have been executed by the sisters and subsequently, there was a partition deed entered between the widow of said Pachayappa Gounder and the widow, three sisters and two sons viz., the legal heirs of the said Pachayappa Gounder.

28. As per plaint averments, indisputably, the plaintiff admits the release deed dated 04.05.2007 and the partition deed dated 14.03.2016 were acted upon. Reading of the recitals therein would ipso facto indicate that the joint family has completely severed and the family had left no more properties to divide or to dispute the share in future. Except the blood relationship, the parties to the documents including the plaintiff, with wide open eye and volitionally had severed the

relationship. In fact, the said partition deed dated 14.03.2016 came into existence 10 years after the death of Pachiappa Gounder. But, the suit was filed beyond the period of 3 years, which is apparently barred by limitation and thus, I find that the plaintiff, in the plaint, has admitted, acknowledged that the registered lease deed dated 04.05.2007 is acted upon so also the registered partition deed document No.5 dated 04.03.2016 is also acted upon and hence, the suit is filed in the year 2020 assumes significance.

**C.R.Ps. against interim orders in I.A.Nos.2,3,4 and 5 of 2020:-**

29. Civil Revision Petition Nos.2171, 2166, 2169 & 2172 of 2020 are filed against the interim orders granted in the respective I.A.Nos.2, 3, 4 and 5 of 2020, pending disposal of O.S.No.105 of 2020.



30. The prayer in I.A.No.2 of 2020 is ad-interim injunction in the nature of mandatory injunction against the defendants 5 to 8 to deposit any money payable in respect of contractual work carried on by the 9th defendant Firm only to the Item No.2 bank account.

31. The prayer in I.A.No.03 of 2020 is for ad-interim injunction restraining the defendants 1 to 3 from in any manner withdrawing any amount from the bank.

32. The prayer in I.A.No.04 of 2020 is for ad-interim injunction in the nature of mandatory injunction against the defendants 5 to 8 for a direction to deposit the money payable in respect of contract work carried on by the 9th defendant only in the suit item bank.

33. The prayer in I.A.No.5 of 2020 is for appointment of Advocate Commissioner to take the inventory.

34. All the I.As. along with another two I.As. viz., I.A.1 of 2020 which was filed under Section 80 (2) of C.P.C. to dispense with the notice to the Government and liberty to file a fresh suit in I.A.6 of 2020. All these applications have been allowed. Hence, these Civil Revision Petitions.

35. Perused the impugned orders passed by the Principal District Judge, Dharmapuri. Admittedly, the learned trial Judge has not assigned any reason except production of the reproducing the prayer and the petitions. I find that there is no application of mind as to whether the plaintiff has made out any prima facie case, balance of convenience and the irreparable loss that could be caused in the absence of any interim order. On comparison of the main prayer in the main suit and also the interim prayer in these I.As. both are one and the same.

36. The trial Court, by granting an ex-parte ad-interim injunction which are in the nature of mandatory injunction, has granted the main relief at the interlocutory stage. As rightly pointed out, main reliefs claimed in Para No.XII (b) (c) (d) and (e) have been granted in I.A.Nos.5,4,2 and 3 of 2020 respectively.

37. In this regard, grant of interlocutory mandatory injunction under Order 39 Rule 1 and 2 has been dealt with by the Hon'ble Apex Court in the decision reported in ***(2018) 17 SCC 203 [Samir Narain Bhojwani Vs. Aurora Properties and Investments and another],***

wherein, the Hon'ble Supreme Court has held that under Order 39 Rule 1 and 2, the Interlocutory mandatory injunction and grant of principles summarised and such relief can be granted only in exceptional circumstances where requirements for grant thereof are clearly made out in Section 39 of the Specific Relief Act, 1963.

38. In the above referred ***Samir Narain Bhojwani's*** case, it is held that the relief of interlocutory mandatory injunctions are granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima casie that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

39. It is well established that an interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie material clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction.



40. As observed earlier, as per the plaint Document No.1, the Partnership Deed dated 15.10.1997, it is between a father-in-law and daughter-in-law which will not constitute a joint family business and in the said plaint document, clause 11 and 12 of the Partnership Deed

clearly shows that unless the existing partners give consent, no one can be added as a partner to the partnership Firm.

41. (A) As of pending suit, on perusal of the Document No.1 and Document No.2, the legal heir certificate, the plaintiff filed the suit to declare the plaintiff as a legal partner or in the alternate to declare him as a partner in the capacity as a legal heir of the late Pachayappa Gounder which appears to be runs contrary to the Clause 11 and 12 of the suit Document No.1.

(B) Furthermore, as per the plaint averment and para 6 the plaintiff alleged that he was supervising the affairs of the Firm. On the contrary, he averred in para 8 that he was recognized "as a partner in the D.9 Firm" and hence, I find that the right of the petitioner so claimed that he must be declared as a partner of the D.9 Firm on the death of the one out of the two partner.



(C) The said Pachayappa Gounder has died in the year 2006 also assumes significance and hence, I find that the respondent herein/plaintiff has not made out a prima facie case with regard to his right or alleged right in respect of the main suit claim and till his right is prima facie made out the plaintiff has to be treated as a stranger to the D.9 Firm.

(D) In such being the case, he cannot be allowed or permitted to meddle in the affairs of the Firm, unless the prima facie satisfies the Court with sufficient material that he is a partner. Since a stranger having no right whatsoever in the 9th defendant Firm cannot be permitted to throttle or gage order for throttling the financial breath of the 9th defendant which is carrying on business according to the plaint averment. D.9 has to maintain and he has to pay his employees and also pay the creditors and debtors to carry on his regular activities and business.

42. As stated supra, when ad-interim mandatory injunction is prayed for in the above said decision, it is categorically stated that grant of ad-interim mandatory injunction is to be only on a strong case, not on a prima facie case.

43. The very foundation of the claim of the respondent/plaintiff is that is one of the legal heirs of late Pachiappa Gounder, who died on 29.12.2006. But, the fact remains, he was never inducted as a partner of the 9th defendant Firm from the inception.

44. The first respondent has not produced even a piece of documents to prima facie show that he was and is a partner of the 9th defendant Firm. In the absence of any prima facie evidence to prove his legal status between 1997 and 2006 assumes significance and relevant.

45. The business of the 9th defendant Firm was not shown either in the Release Deed dated 04.05.2007 or in the Partition Deed dated 14.03.2016. Even otherwise, the respondent/plaintiff has neither challenged the partition nor made any claim well within the period prescribed assumes significance.

46. The ex-parte interim injunctions are in effect in the nature of interim mandatory injunctions, which cannot be granted in a suit of the

present nature. Admittedly, the plaintiff's right if any, has been denied as early as on 29.12.2006. He kept quiet for a period of 14 long years and suddenly filed a suit with a view to get the interim mandatory injunctions.

47. (a) The plaintiff has neither proved prima facie case nor balance of convenience or irreparable loss in the event of not granting the interim reliefs ex-parte.

(b). The learned trial Judge has nowhere discussed or even referred the existing legal rights and denial of such right to establish a prima facie case for granting the relief. It is manifestly clear that the prayers in I.A.Nos.2 to 4 of 2020 have been couched in such a way to get the interim mandatory injunctions to stall the business activities of the 9th defendant Firm.



(c). The ex-parte interim mandatory injunctions granted by the learned trial Judge has caused great injustice and irreparable harm to the petitioners since because the business of the 9th defendant Firm has been completely crippled.

(d). Furthermore, the prayer in the suit is totally misconceived. More so, the suit has not been framed in line with Order 30 C.P.C. Hence, mere astuteness or clever drafting of plaint will not create a cause of action to file a suit after lapse of time of 14 years.

48. As per the plaint averment, the 9th defendant is partnership Firm carrying on business in road laying contract and Government contract and in order to maintain the regular course of business and to make the payment to the employees and to make the get the balance of the amount from the Government defendants and to make the payment out.

49. Thus I find that the petitioner/plaintiff has not even made out a prima facie case much less strong case I find that in the absence of any documentary evidence or any other evidence to show the link between the plaintiff with the 9th defendant Firm (as stated in the plaint) the trial Court should not have passed such an order.

50. Since this order is glaring error on the face of the records, against the violations of all the Judicial pronouncement made by the Hon'ble Apex Court.

51. In this case, it appears that the learned Additional District Judge, Dharmapuri, has issued an ex-party ad-interim mandatory injunction restraining the official defendants, bank defendants and the contesting defendants from not to do certain act without even satisfying the essential criteria of prima facie case much less a strong case as ruled by the Apex Court and hence, in this view of the matter, I find that the order of the trial Court is unsustainable in law and it appears to have been filed with oblique motive to cause irreparable loss to the defendants. all the orders of ex-parte ad-interim mandatory injunction given in the above I.A.Nos.2, 3, 4 and 5 of 2020 in O.S.No.105 of 2020 are hereby liable to be vacated.



52. **For the above said reasons, C.R.P.Nos.2171, 2166, 2169 and 2172 against I.A.Nos.2, 3, 4 and 5 of 2020 are all allowed. Consequently, the respective interlocutory applications stands**

**dismissed. Consequently, the connected miscellaneous petitions are closed.**

**C.R.P.PD.No.2174/2020 (O.S.No.105 of 2020):-**

53. The above Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to strike off the plaint in O.S.No.105 of 2020 on the file of the learned Principal District Judge, Dharmapuri.

54. The Hon'ble Apex Court in ***2020 (16) SCC 601 [Raghwendra Sharan Singh Vs.Ram Prasanna Singh (Dead) by LRs*** wherein it is held that:-

6.6 In the case of Sopan Sukhdeo Sable (supra) in Paras 11 and 12, the Apex Court has observed as under:

> "11. In I.T.C Ltd. v.Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 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 of Order 7 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 7 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 10 of the Code. [see T.Arivandanadam v. T.V.Satyapal (supra)]

6.8. In the case of Ram Singh (supra), this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.

> ....As observed and held by Apex Court in the cases of Sham Lal alias Kuldip (supra); N.V.Srinivas Murthy (supra) as well as in the case of Ram Prakash Gupta (supra), considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) of the C.P.C.

**In, *(2020) 7 Supreme Court Cases 366 [Dahiben Vs.Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and others],*** wherein it is held that:-

(i) The remedy under Order 7 Rule 11 C.P.C is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. The underlying object of Order 7 Rule 11(a0 is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

(ii) the power conferred on the Court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to. Under Order 7 rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

(iii) Having regard to Order 7 rule 14 C.P.C, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint. In exercise of power under this provision, it should be treated as a part of the plaint. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

(iv) ....The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. It is not permissible to cull out a sentence of a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into.

(v) .....If, however, on a meaningful reading of the plaint, it is found that the suit does not disclose right to sue, cause of action or suit is barred by any law and the Court has no option but to reject the plaint and without any merit, Order 7 Rule 11 C.P.C.

(vi) The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has not option, but to reject the plaint.

(vii) ..."Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. While considering an application under Order 7 Rule 11 C.P.C what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory. What is required is that a clear right must be made out in the plaint. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the Court.

(viii) The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues. The use of the word "first" between the words "sue" and "accrued", requires the Court to examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" mean the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.

(ix) On a reading of the plaint, it is clear that the cause of action arose on the non-payment of the bulk of the sale consideration, which event occurred in the year 2009. The plea taken by the plaintiffs is to create an illusory cause of action, so as to overcome the period of limitation.

(x)...The present case is a classic case, where the plaintiffs by clever drafting of the plaint, attempted to make out an illusory cause of action, and bring the suit within the period of limitation.

(xi) In Raghwendra Sharan Singh, (2020) (6) SCC 601, the Supreme Court held that the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed.

The above legal preposition pronounced by the Hon'ble Supreme Court is kept in mind.

55. On perusal of the plaint averments, plaint prayer and plaint documents, the sum and substance of the plaint averments, as averred in the plaint goes to show the following factual matrix of the case.



(a) As per the plaint averments, D.9 is the partnership firm entered into by the father of the plaintiff Pachiappa Gounder and the sister-in-law viz., Sasikala. In other words, the partnership firm was registered partnership firm. As per the Partnership Deed marked as

Document No.1, father-in-law and daughter-in-law executed a lease deed on 15.10.1997 and the said Pachiappa Gounder died on 12.01.2007 as per the Document No.2 and legal heirs are mentioned in Document No.3 as per the Legal Representative Certificate.

(b) As per the Document No.1, the Partnership Deed was entered between the two persons and out of the two persons, one person by name Pachiappa Gounder died on 12.01.2007 and the legal representatives details are mentioned in the L.R. certificate (Document No.3.)

(c) Plaintiff claims for the proportionate investment of the share in the firm. In other words, he has specifically stated in the alternate relief that the plaintiff as such legal heir of the Pachiappa Gounder seeks the alternate relief of share as a legal heir of one of the deceased partner viz., Pachiappa Gounder.



56. The suit for accounts and share of profits by the heir of the deceased partner is governed by Section 106 of the Limitation Act, 1963

and the Limitation commences from the date of the death of the partner as held in the decision of this Court reported in ***1976 (Vol. 89 MLW 356).*** No doubt true that the representatives of the deceased partner is entitled, however, it remains to be stated that the suit is not filed under the provisions of the partnership Act nor under Order 30 CPC in respect of the claim under the partnership. In other words, this is not a suit for accounts by legal representatives of the deceased partner. The representatives of the deceased partner have a right in law to have the assets of the partnership, proportionate share of the deceased partnership.

57. Admittedly, this is not a suit filed either for accounts or for claiming the share and under Order 30 of CPC, a clever drafting is noticed in making the plaint.

58. As per the plaint averment, 9th defendant is a partnership firm. Father of the plaintiff was one out of two partners in the firm he died on 29.12.2006 a normal regular course is that, in a suit for dissolution of partnership, the Court has the power to pass a preliminary decree directing, *inter alia,* that accounts be taken. In law, a prayer for

"dissolution of partnership" is a compendious mode of asking a four fold relief, namely.-

(a) a declaration that the partnership stands dissolved from a certain date :

(b) a declaration as to who the partners are and what are their proportionate shares :

(c) a prayer that accounts be taken and the assets and liabilities of the partnership as on the date of dissolution be determined : and

(d) a final decree be passed.

59. A specific clause (b) is that a declaration as to who the partners are and what are their proportionate shares : [C.L. Gupta Law of Partnership].

60. As stated supra the alternate prayer is claiming proportionate share as L.R. of the deceased one partner. As per Article 106 of the Limitation Act, such a suit has to be filed without a period of 12 years from the date of death of the partner and the suit is filed after 14 years. Besides, the suit is not filed as a double decree suit viz., suit for

dissolution of partnership or for rendition of accounts. However, the present suit termed as such is a single decree suit seeking declaration that he is a partner in the firm and hence, I find that the plaint framed as such is not maintainable in law.

(a) The averment and assertion find in the plaint are only to make out the belief as if the suit is within the time in respect of the time barred right. In other words, on an meaningful reading of the plaint and the plaint relief and the plaint document, I find that by a clever drafting the plaintiff is camouflaging the time barred right as a prayer in the suit as a partner and

b) Hence, I find that the alternate relief sought for the petitioner/plaintiff is, on a bare perusal of the plaint coupled with Limitation Act (the point does not require any recording of evidence) is hopelessly barred.

(c) Hence, I find that the alternate prayer in the suit is nothing but the time barred right, the same cannot be enforced by way of declaration suit, besides, the suit is not filed as envisaged under the Special Law viz., Partnership Act for rendition of accounts nor dissolution of the partnership firm which also assumes significance and relevant. Besides, as stated supra, without requiring any recording of evidence as to the point of limitation, the suit itself is barred by limitation simplicitor under the Limitation Act.

61. As to the main relief, viz., to declare that the petitioner/plaintiff is the partner of the legal partner entitled to continue as a partner in the D.9 firm.

62. At the risk of repetition however for the sake of clarity, this is not a suit filed under the Partnership Act, wherein, the suit will result in preliminary decree and final decree. In short, a double decree suit. Furthermore, this is not a suit for rendition of accounts. The plaintiff has not filed the suit either for rendition of accounts or for dissolution of the firm since both the reliefs are barred by limitation ex facie and hence, the plaintiff has adopted a clever drafting method to over come the same by camouflaging and exercising his command over in English. However, when the legal point of legal right, enforcement of legal right, right to sue cause of action and the point of limitation, for the reasons best known, the plaintiff speaks language of silence and uses either to circumvent a

limitation point or bye pass the procedure contemplated under the Civil Procedure Code as noted supra. For the reasons recorded in the preceding paragraphs, the alternate relief is held to be not maintainable as the same is beyond the period of limitation simplicitor.

63. As per the plaint averment coupled with the main prayer, this Court finds that the plaintiff pleaded that he is working as a supervisor as he was supervising the activities of the D.9 partnership firm after the death of the father. Furthermore, as per the plaint averment, he was supervising the D.9 partnership firm. At this juncture, this Court finds the special statute viz., the Partnership Act, 1932. Section 6 deals with such a situation.

64. Section 6 of the Partnership Act, is for determining the mode of existence of the partnership and as such, going by the averment in the plaint and the plaint relief, I find that the plaintiff by his own averment has stated that he was supervising the partnership activities and the meaning of the same appears to be that he is working as a servant and getting remuneration and such a person cannot claims to be the partner

which by ex facie not a partner as could be clear from Explanation 2 (b) of Section 6 of Partnership Act the special enactment partnership deals with such a claim of a person, who is either working as a servant or agent as a remuneration. By his own averment, the plaintiff comes under sub clause 6 under explanation 2 in Section 6 of the Partnership Act, which clearly mandates that "does not itself make the receiver, the partner carrying on the business"

65. Thus, this Court finds that as per the plaint averment and the plaint documents, he having supervised the activities of the D.9 partnership firm by his own act having received some remuneration cannot be termed as a partner and hence, the main prayer is totally barred under Section 6 of the Partnership Act.



66. Thus, I find that neither the main prayer nor the alternate prayer supports the plaintiff's assertion to the plaint as to relief sought for in the plaint. In other words, both the prayers viz main and the alternate prayers are totally barred under the Special Law viz., Partnership Act, 1932 and the Limitation Act, 1963.

67. A Division Bench of this Court in ***A.S.No.708 of 2012 [Govindarajan Padayachi Vs. Premananda Vijayakumaran and others], dated 30.06.2016*** has held that "It is also a settled principle of law that the plea of limitation is nothing but a question of law and facts, but however, the Court can very well reject a legal proceeding, if it is apparent on the face of the record that the same is barred by limitation." In the said judgment, the Division Bench further held that "as per Order 7 Rule 11 of Civil Procedure Code, 1908, if a particular plaint does not disclose the cause of action, the same can be rejected".

68. Though the suit has been filed for declaration, he seeks the relief as stated in the special enactment called Indian Partnership Act. The plaintiff omitted to claim the relief on facts under the law covering the special enactment however claiming other reliefs, by going around or circumventing the limitation that are barred by limitation and the same is impermissible as held in the decision of the Hon'ble Supreme Court reported in ***(2005) 5 SCC 548 [N.V.Srinivasa Murthy and oters Vs. Mariyamma (Dead) by proposed L.Rs. and others].***

69. The Hon'ble Supreme Court in ***Civil Appeal No.2960 of 2019 [Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs.],*** has held that "if clever drafting has created t he illusion of a cause of action, as observed by this Court in a catena of decisions, the Court must nip it in the bud at the first hearing by examining the party searchingly under Order 10 of CPC. It is further submitted that, therefore, as observed by this Court in ***T.Arivanandam's*** case, an activist Judge is the answer to irresponsible law suit."

70. After considering the above decision"s, it was held that "as observed and held by Hon'ble Supreme Court in the cases of ***Sham Lal alias Kuldip*** *(supra):* **N.V.Srinivas Murthy** (Supra) as well as in the case of ***Ram Prakash Gupta*** (supra), considering the averments in the plaint, if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11 (d) of CPC."

71. Thus, this Court finds that the main prayer as well as the alternate prayer in the suit in O.S.No.105 of 2020 on the file of Principal District Judge, Dharmapuri, by a clever drafting, the plaintiff has created an illusion of cause of action as observed by the Hon'ble Apex Court in a catena of decision. In such a situation, this Court finds that this fit face to exercise of power under Article 227 of the Constitution of India, to prevent the abuse of process of Court.

72. After going through the factual matrix of the case as camouflaged, I find that the legal provisions made in the above citations are squarely applicable to the plaint averments made in the impugned plaint and hence, in view of the said provisions of law as pronounced by the Hon'ble Apex Court in the above decisions, I have no hesitation to come to the conclusion that the suit is nothing but an abuse of process of Court and the plaintiff has adopted the dubious method of clever drafting and made to camouflage the time barred claim of the plaintiff making it appear as if it is a different suit and the suit is for simple nature of declaration which is barred by the specific enactment as discussed supra.

73. In fine,

i) The suit plaint in O.S.No.105 of 2020 is nothing but an outcome of clear drafting by a man to legal knowledge in manufacturing suit on time barred - dead wood rights and mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for.

ii) The plaint prayer are reproduced, as it is, for proper appreciation of clear camouflaging as to how prayers are cleverly drafted to over come partnership rights and to claim time barred rights and claims in the subject enactment viz., Indian Partnership Act,1932 and to create illusory cause of action by imagining words of pleadings.

iii) In essence, the respondent/plaintiff seeking to declare that he is a partner in the D9 Partnership Firm after 14 years of the death of the one of the two partner in the D9 Partnership Firm. On the ground that he is the one of the legal heir of the deceased partner who died in the year 2006. However special enactment has fixed the time viz., period of 3 years / 12 years, subject to the plea that has been taken by the plaintiff. Admittedly in this case 14 years have lapsed and hence, by device of clear drafting of the plaint, the respondent/plaintiff has filed a fictitious suit on the basis of a illusory cause of action and the suit of the present nature is nothing but a camouflage to get over the provisions of the Limitation Act and this present suit for declaration of his title as a partner is nothing but re-opening of the rights of the deceased partner whose rights, per se, hopelessly dead under the provisions of the Limitation Act since the same is time barred right.

(iv) The suit as such framed and filed ought not to have taken on file and numbered it. as the same is nothing but 'pure' abuse of process of Court as held in Dahiben case reported in 2020 (7) SCC 366 and Raghwendra Sharan Singh case - 2020 (16) SCC 601.

(v) Normally, this Court will exercise "judicial restrain" to exercise the powers conferred under Article 227 of the Constitution of India, to reject the plaint pending before the trial Court. However, on the facts and circumstances of the case, the contination of the trial of the suit, shocks the 'Judicial Consciences' of this Court, as in the present one, I am of the view that the same is to be nipped in the bud and it amounts to "abuse of process of Court", as held by the Hon'ble Supreme Court in *2017 (13) SCC 174 [Madanuri Sri Ramachandra Murthy V.Syed Jalal]*

74. **In the result,**

(i). C.R.P.Nos.2176, 2166, 2169 and 2172 are all allowed. Consequently, I.A. in 2,3,4 and 5 of 2020 respectively in O.S.No.105 of 2020 on the file of the learned Principal District Judge, Dharmapuri is hereby stands dismissed.

(ii). C.R.P.No.2174 of 2020 is allowed. The plaint in O.S.No.105 of 2020 on the file of the learned Principal District and Sessions Judge, Dharmapuri is hereby stands rejected and consequently, the suit is dismissed. Connected C.M.Ps are also closed.

(iii). On facts and circumstances, with costs throughout.

**30.12.2020**

Index : Yes
JRL



To

The Principal District Judge,
Dharmapuri.

**RMT.TEEKAA RAMAN, J.**
JRL

**Order made in**
**C.R.P.[PD] Nos.2171, 2166, 2169, 2172 & 2174 of 2020 and**
**C.M.P.Nos.13646, 13640, 13644, 13647 & 13649 of 2020**



**30.12.2020**