

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.2167, 2170 and 2168 of 2020
and
& C.M.P.Nos.13643, 13645, 13642 of 2020

In C.R.P.[PD] Nos.2167, 2170 and 2168 of 2020 :-

1. P.Baskar
2. R.Sasikala
3. B.Aranganathan
4. B.Sangeethkumar ... Petitioners 1 to 4 in all C.R.Ps.
5. M/s. Sasi Road Finishers and
and Engineering Contractors,
Rep. by its Managing Partner
R.Sasikala
6. Pachamuthu Educational Trust,
Rep. by its Chairman,
having office at :
12, Kaliappa Gounder Street,
Madikonpalayam,
Dharmapuri Taluk,
Dharmapuri District.

.... Petitioners 5 & 6 in
C.R.P.No.2168/2020

.. Vs ..

1. P. Annadurai
2. Muthu Pillai
3. Annapoorani
4. Alamelu
5. Rukkumani
6. Vennila

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

.... Respondents 2 to 6 in
C.R.P.No.2168/2020

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

Prayer in C.R.P.Nos.2167 & 2170/2020:- Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the order dated 01.12.2020 made in I.A.Nos.1 and 2 of 2020 respectively in O.S.No.110 of 2020 on the file of the learned Principal District Judge, Dharmapuri.

Prayer in C.R.P.No.2168/2020 :- Civil Revision Petition filed under Article 227 of the Constitution of India, praying to strike off the plaint in O.S.No.110 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

COMMON ORDER

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

The defendants 1&2 are the revision petitioners herein.

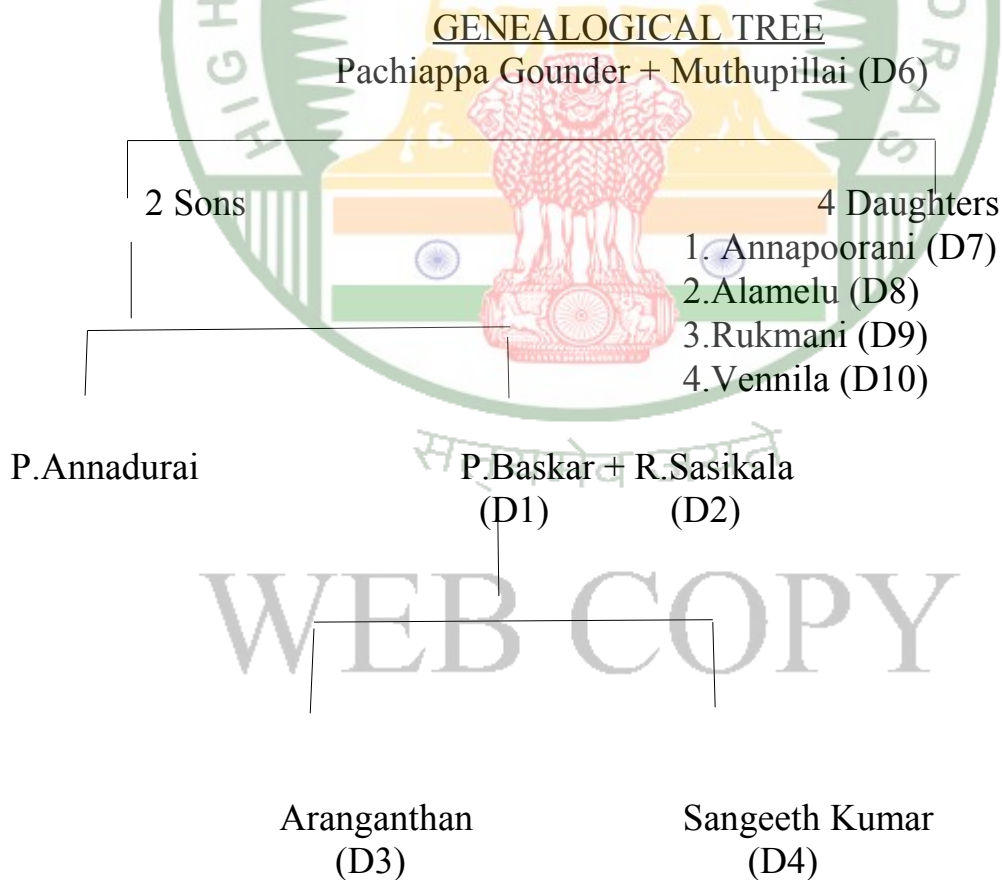
2.For the sake of convenience, the parties are referred as per the ranking before the trial Court.

3. The respondent/plaintiff has filed a suit to declare his title over the suit property in pursuant to alleged agreement of defendants 1&2 in the oral partition and for consequential Mandatory Injunction to direct the defendants 1&2 to execute appropriate deed of conveyance in faovur of the plaintiff.

i) The respondent herein filed O.S.No.110 of 2020 on the file of the learned Principal District Judge, Dharmapuri against the petitioners and others for various reliefs. The respondent has also filed I.A.Nos.1 and 2 of 2020 in O.S.No.110 of 2020 for various interim reliefs, and the learned trial Judge was pleased to grant exparte interim reliefs in all the

interlocutory applications, by order dated 01.12.2020. Feeling aggrieved against the impugned plaint in O.S.No.110 of 2020 pending on the file of the learned trial Judge, the petitioners are before this Court, by filing the above Civil Revision Petition under Article 227 of the Constitution of India to strike off the plaint.

The summary of the plaint averments and the plaint documents has summarized as under and the following Genealogical Tree would exemplify the relationship between the parties to the suit.



ii). The above named late Pachiappa gounder and the 6th defendant Muthu Pillai are the parents of the defendants 1, 7 to 10 and the plaintiff. The 2nd petitioner /D2 and late Pachiappa gounder started the 5th petitioner/D5 firm on 15.10.1997 at No.25-A, Kaliappa gounder street, Madhigonpalayam, Dharmapuri District. The firm was registered in Document No.48 of 1997 (plaint Document No.1)

iii). The respondent herein and the 1st petitioner/D1 are the sons of, and the daughters 7 to 10 are the daughters of late Pachiappa gounder and Muthu Pillai / D6. Soon after the death of Thiru.Pachipappa 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 1st petitioner herein and the respondents, 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 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.

iv) Nearly 14 years after the death of late Pachiappa gounder (i.e., 29.12.2006) (Plaint Document No.2), the respondent herein has filed the above suit in O.S.No.110 of 2020 for the following prayers:- (The plaint prayers are reproduced, as it is, for proper appreciation of drafting of plaint, as discussed infra)

a) Declaring that the plaintiff is entitled for the title of suit properties in pursuance of the agreement of the 1st and 2nd defendants in the oral partition held between the plaintiff and 1st and 2nd defendants above. (emphasis supplied)

By that granting consequential mandatory injunction in favour of the plaintiff and against the 1st and 2nd defendant to execute the appropriate deed of conveyance in favour of the plaintiff in respect of the 1st item of suit property apart from that in respect of all other items the 1st defendant has to be directed to execute the appropriate deed of conveyance in respect of item 2 to 4 at the costs of the plaintiff free from any encumbrances of the said items. (emphasis supplied)

b) Declaring that the lease deed executed in favour of 11th defendant by said Pachiappa gounder and others is Sham, Nominal, not acted upon and not binding on the plaintiff and his share in suit 1st item.
(emphasis supplied)

c) Granting permanent injunction restraining the defendants herein 1 to 4 directly or through their men, attorney, Agent, Executant, etc., from in any manner encumbering or alienating suit schedule properties, except to execute necessary deed of conveyance in respect of suit schedule and other properties.

d) Granting permanent injunction restraining the defendants herein 1 to 4 and their men, from in any manner interfering with the peaceful possession and enjoyment of the suit schedule either by altering the physical features or disposing.

e) Providing in the decree to be passed in the above suit to be registered in the concerned SRO at the costs of the plaintiff as provided under Rule 89 of C.R.P."

v) The respondent has also filed two Interlocutory Applications in I.A.Nos.1 and 2 of 2020 praying for various interim reliefs, which are extracted hereunder:

vi) "I.A.No.01 of 2020 - to grant an order of interim injunction against the respondents/defendants herein restraining them from in any manner encumbering or alienating the suit schedule properties till the disposal of the suit.

vii) I.A.No.02 of 2020 - to grant an order of ad interim injunction against the respondents/defendants herein by restraining them in any manner interfering with the peaceful possession and enjoyment of the suit properties.

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

5. The learned counsel for the Caveator could contend that the C.R.P against the interim order is not maintainable. 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.

6. The objection regarding the maintainability of the revision to strike off the plaint is no longer res integra.

7. 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.

8. 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 wide power of superintendence 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.

9. Mr.N.Manoharan, learned counsel for the petitioners could contend that the suit is laid on a illusory cause of action and fictitious

claim is to be rejected at the threshold and the prayer in the suit is a nothing but abuse of process of law. The pleadings in the plaint are vague and lack of particulars. In order to get over the provisions of the Limitation Act, the plaint is coughed and sketched in the appropriate manner and the suit is barred by law, ex facie.

10. The learned counsel for the petitioners has relied on the following decision:-

1. *1998 (3) SCC 573 - Para Nos.44 to 46 [K.K.Modi Vs.K.N.Modi & others]*

2. *1999 (1) CTC 600 - Para Nos.17 and 18 [Ramiah Asari Vs.Tmt.Kurshad Begaum and another]*

3. *2000 (3) CTC 74 - Para No.6 [Seeni alias Sndarammal Vs.Ramasamy Poosari & 2 others]*

4. *2009 (2) CTC 57 - Para Nos.12 to 17, 21 to 23 [Dindigul Pettai Sathangudi Shatriya Nadar Uravinmurai, through its Secretary and another Vs.Selvaraj Sundar & another]*

5. *2009 (5) CTC 710 - Para Nos.49 to 54, 60 and 61[Tamil Nadu Handloom Weaver's Co-op.Society Vs.S.R.Ejaz]*

6. 2013 (6) CTC 809 - Para Nos.26 to 28, 48 to 52

[N.A.Chinnasamy and another Vs.S.Vellingirinathan]

7. 2018 (4) CTC 483 - Para Nos.44 to 46 [Vijayalakshmi

v.R.Balasubramanian]

8. 2004 (3) SCC 137 - Para Nos.14 to 25 [Sopan Sukhdeo

Sable V. Asstt.Charity Commissioner & others]

9. 2009 (12) SCC 454 [Sham Lal alias Kuldip Vs.Sanjee

Kumar]

10. AIR 2005 SC 2897 [N.V.Srinivasa Murthy V.Mariyamma]

11. 2007 (10) SCC 59 [Ram Prakash Gupta V.Rajiv Kumar

Gupta]

12. 2020 (16) SCC 601 [Raghwendra Sharan Singh V.Ram

Prasanna Singh

13. 2020 (7) SCC 366 [Dahiben Vs.Arvinbhai Kalyanji

Bhanusali by L.Rs]

14. 1977 (4) SCC 467 [T.Arivandandam Vs.T.V.Satyapal]

C.R.P.PD.No.2168/2020 (O.S.No.110 of 2020)

11. After hearing the rival submissions and the law laid down on the rejection of the plaint by the Hon'ble Apex Court and on the factual matrix of this case, I find that the trial Court is committed an error in granting the interim injunction for possession also, as discussed, infra.

12. 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(a) 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 no 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.

13. The facts as stated in the plaint:-

Admittedly, 'A' schedule property is stated to be the property allotted to the first defendant by virtue of the registered Partition Deed which is of the year 2016 (Plaint Document No.5) and sisters are already released their share on 04.05.2007 (Plaint Document No.4) and it is further case of the plaintiff, in the plaint that he has admitted the release deed and also the final partition between the parties and also averred that both deeds are acted upon and thereafter the plaint proceeds on the basis that there was a meeting between the defendant and the plaintiff along

with the persons named in the plaint in which the first defendant have given a word of mouth that he will convey the property 'A' schedule property (one item immovable property) 'B' schedule property (consisting of three immovable property) and a hand chit was not produced. (This alleged chit is not filed along with plaint nor produced during the hearing before the trial Court), as discussed infra.

14. On going through the plaint averment, there is no whisper as to the nature and character, on which basis the first defendant is holding the property. No particulars mode of acquisition of the property viz., whether it is a family property or the individual property or the self-acquired property of the defendant which is conspicuously absent.

15. The plaint averment does not disclose when and where and in and on, what date the defendant has agreed to convey the suit property and whether for any consideration if any, is neither spoken to nor whispered. Thus, I find that in the matter of material particulars to raise a right to sue there is totally a vague pleadings is present and hence, the present suit is only on the basis of an alleged undisclosed oral partition

and another alleged undated oral agreement and unfilled hand chit said to have been made by the first defendant in the absence of the 5 persons.

16. On perusal of the affidavit of said persons, to dismay, even in the said affidavits by 3 out of 5 named persons, who in their supporting affidavit, does not choose to speak about any date, month, year or place of alleged oral partition as well as oral agreement to convey the suit property to the plaintiff also assumes significance. Hence, I find that the alleged averment, assertion of statement made by the plaintiff in the form of the supporting affidavit appears to be only intend to camouflage the pleadings to make it, as if, the suit is filed within the period of limitation.

17. At the risk of repetition however for the sake of clarity the admitted final partition is dated 14.03.2016 and admitted the registered release deed is dated 04.05.2007 and suit is filed in the year 2020 clearly after 3 years. Thus, I find all this assertion by the plaintiff appears to be a to create illusory cause of action.

18. Plaint averment and plaint prayer "A":-

Hence, I find that the alleged undisclosed oral partition, the alleged undated oral agreement without any details or bereft of details is nothing but an assertion to create an illusory cause of action as if the suit is within the time.

(i) Even assuming and there was a oral agreement to convey the property to him whether it is for consideration or it is for some other thing is not known and hence I find that the prayer in the plaint to declare his entitlement to title over the suit property based upon an oral agreement to convey the property does not create any legal right to sue a suit because it is settled preposition of law that by an agreement, oral or by document does not create any right or title over the suit property or the property said to have been conveyed.

(ii) The plaintiff has not given any date, month and year of the alleged oral partition as well as the oral agreement to convey the suit properties to the plaintiff.

(iii) The suit for declaration of title 'in pursuance of the agreement of the defendants 1 and 2 in the oral partition' is unknown to law. No agreement will create a right or title over the property. Further, no consensus ad idam or contractual terms projected to sustain the relief in the suit.

(iv) Thus, based on the above discussion, this Court finds that admittedly there was a final partition under the partition deed dated 14.03.2016, (suit document No.5). Similarly, the defendants 7 to 10 had also executed a registered release deed dated 04.05.2007 plaint Document No.4. Both the documents are admitted to have been acted on by all parties to the documents. Hence, the suit prayer "A" on the basis of an undisclosed oral partition and another undated oral agreement and unfilled hand chit is not maintainable.

19. a) Nowhere the plaintiff has stated as to when the agreement of conveyance was orally agreed and he has not disclosed any contractual terms.

b) The plaint prayer (b) as stated supra, verbatim, is the to declare the lease deed in favour of the 11th defendant executed by

Pachiappa Gounder, as sham and nominal is dated 27.02.2006 (suit Document No. 11), which cannot be challenged after 14 years in view of the bar under Article 59 of the Limitation Act, 1963.

(c) On an meaningful reading of the suit prayer, I find that the suit relief in effect a suit for repartition in nature of specific performance under guise of declaration suit, on the basis of an undisclosed agreement or oral partition.

(d) There is no reason or grounds of exemption of limitation has not been pleaded under Order 7 Rule 6 C.P.C. Hence, meaningful reading of the plaint would prima facie show that the suit has been filed for some other oblique motive, by misusing the process of the Court of law. Such suits are liable to be nipped at the bud as held in 1977 (4) SCC 467 [T.Arivandandam Vs.T.V.Satyapal & Another] and 1998 (3) SCC 573 [K.K.Modi Vs.K.N.Modi & others]

(e) The dexterity of the draftsman whereby the real cause of action is camouflaged in a plaint clearly drafted cannot defeat the right of

the defendant to get the suit dismissed on the ground of limitation on the facts so stated in the plaint. The said position of law has been well laid in 2007 (5) SCC 614 [Hardesh ores (P) Ltd. Vs.Hede & Company]

20. [A] In earlier paragraphs I find that the entire suit itself is full of camouflaged and an outcome of austerer pleadings. The language adopted by the legal man behind this plaint appears to be sound and the plaint was so cleverly drafter to get over the limitation point, cause of action and the various provisions of law.

[B] However whenever the plaint goes near the material point "the plaint speaks language of silence which exposes the plaintiff idea of vague plaint and hence in view of the decision reported supra I find that on the factual matrix of this case, the preposition of law as extracted supra in the above said decisions are clearly applicable to the facts and circumstances case.

C.R.P.Nos.2167 and 2170 of 2020 [Against interlocutory application

Nos.1 and 2 of 2020 in O.S.No.110/2020] :-

21. The respondents/plaintiffs have filed two documents before the trial Court to seek the interim relief to protect his alleged possession and injunction against any alienation, against the petitioner/defendant.

22. On perusal of those two documents (Suit Document Nos.15 and 16), I find that the alleged lease deed executed by the respondent/plaintiff in favour of the third party, is for a period of 5 years.

23. As a General Rule, that possession follows title. As admitted in the plaint, all the schedule property are standing in the name of the petitioners/defendants for many long years. Curiously, respondent/plaintiff has chosen to be silence "as to the nature and character of property held by the petitioner/defendant, no details of any sort was averred in the plaint. When such being the case, the trial ought to have looked for prima facie, some document in support of respondent/plaintiff alleged possession.

24. Yet another point is that, when the lease period is for the period of 5 years it is a compulsory registrable document. Furthermore when the lease period is more than 11 months namely one year it is a compulsory registrable and for the want of registration, the same cannot be looked into in view of the bar under 49 of the Registration Act. This factual position does not appears to have been taken note of by the trial Court regarding alleged possession of the defendant.

25. In view of the discussion, the presiding paragraphs and also taking note of the fact that neither in the plaint nor in the affidavit filed in support of the Interlocutory Application, I find that there is no whisper regarding handing over possession of the property.

26. It remains to be stated that no revenue documents has been appears to have been filed to show the alleged possession also assumes significance. Pursuant to the partition deed dated 14.03.2016 (plaint Doc.No.5) The revision petitioner/defendant is in possession of the property. The plaintiff has not filed any legally acceptable document to show that he is in possession of the property.

27. When such being the case, the trial Court without looking into the document filed has simply presumed that those documents can be received in evidence and granted interim injunction and hence, the order passed by the learned trial Judge suffers from illegality also. Furthermore it is to be stated that when the partition deed dated 14.03.2016 is accepted by the plaintiff unless he makes out a case that he has put in possession of the property pursuant to the alleged oral agreement there cannot be any ad interim injunction against the true owner. Furthermore in the absence of any document in support of the plaintiff to show that he is in possession and the factum of admission of the registered partition deed in favour of the revision petitioners/defendants and hence, there cannot be any injunction against the true owner.

28. Moreover, when he has admitted that revision petitioner/the first defendant and had already executed the release deed in favour of the second respondent/second defendant and when that being the case when they are the true owners of the property unless the plaintiff proves his prima facie case, his prayer grant of injunction against alienation or

encumbrance, cannot be granted against the true owner of the property, which is admittedly, the first defendant and the second defendant and hence, the order passed in I.A.No.2 injunction restraining the defendants 1&2 from encumbering the property, pending suit, is also erroneous and both the Interlocutory Applications are set aside and stands dismissed and C.R.P.Nos.2167 and 2170 of 2020 are allowed.

29. In fine,

[1] The suit plaint in O.S.No.110 of 2020 is nothing but an outcome of clever drafting by a man of 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.

[2] The plaint prayer are reproduced, as it is, for proper appreciation of clever camouflaging as to how prayers are cleverly drafted to over come partition suit for specific performance and to claim time barred claims and to create illusory cause of action by imagining words of pleadings.

[3] In essence, the respondent/plaintiff seeking to declare his entitlement to title to the suit to an oral agreement for oral partition after four years registered partition, on the basis of an unfilled and undisclosed agreement. In law, an agreement will not confer or create title over the property as per Section 54 of Transfer of Property Act. By device of clever drafting of the plaint, the respondent/plaintiff is attempting to file a fictitious suit on the basis of an illusory cause of action and suit of the present nature is nothing but camouflage to get over the bar of limitation and the present suit for re-opening the partition after final partition viz., time barred relief, as per Limitation Act.

[4] The suit, as such framed and filed ought not to have taken on file and number 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 reported in 2020 (6) SCC 601.

[5] 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 lower Courts. However, on facts and circumstances of the case, continuation of trial of suit shocks the 'Judicial Consciences' of this Court, as in the present one, I am of the view that, it amounts to "abuse of process of Court" and the same is to be "nipped in the bud, as held by the Hon'ble Supreme Court, 2017 (13) SCC 174 [*Madanuri Sri Ramachandra Murthy V.Syed Jalal*]

30. In the result,

[1] C.R.P.Nos.2167 and 2170 of 2020 are allowed and suit in O.S.No.110 of 2020 on the file of the learned Principal District Judge, Dharmapuri, is dismissed.

[2] C.R.P. No. 2168 of 2020 is allowed. I.A.Nos.1 and 2 of 2020 stands dismissed.

[3] On facts and circumstances, with costs throughout. Consequently, connected C.M.Ps are closed.

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Index : Yes
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To

The Principal District Judge,
Dharmapuri.



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RMT.TEEKAA RAMAN, J.
JRL



Order made in

**C.R.P.[PD] Nos.2167, 2170 and 2168 of 2020 and
& C.M.P.Nos.13643, 13645, 13642 of 2020**

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