APPLICATION NO.2164 OF 2017
IN C.S.NO.211 OF 2016

This application is filed for rejection of plaint in C.S.No.211 of 2016 under Order XIV Rule 8 of the Original Sides Rules read with Order VII Rule 11 (a) and (d) of Civil Procedure Code.

2.According to the respondent / plaintiff, the applicants / first and third defendants approached him on the pretext that they are joint owners of the property measuring an extent of 1.07 acres comprised in S.No.31, Puzhal Village, Ambattur Taluk, Tiruvallur District. Accordingly, they have entered into a sale agreement dated 06.03.2006 for selling their property for a total sale consideration of Rs.20,00,000/- (Rupees Twenty Lakhs Only). The first defendant has signed in the agreement for himself and on behalf of the second defendant and received a sum of Rs.1,00,000/- towards advance and acknowledged receipt in the sale agreement itself. Thereafter, between 06.03.2006 and 20.03.2010, the first defendant has received payments by way of cash and cheque to the tune of Rs.17,10,000/- and thus, received a total sum of Rs.18,10,000/- out of the sale consideration of Rs.20,00,000/-. Since the defendants were evading execution of sale deed, the plaintiff issued a legal notice dated 08.03.2013 to all the defendants. On verification of the revenue records, to the shock and surprise of the plaintiff, the property stood transferred in the name of the second defendant and the defendants 1 and 3 are no way connected with the said property. When he contacted the first defendant, he was informed that property belongs to the second defendant alone and the first and third defendants have stated that they would request the second defendant and get the sale deed registered. Further, despite oral promises, sale deed was not executed. The first and third defendants promised the plaintiff that they will return a sum of Rs.18,10,000/- with interest at the rate of 14% per annum from the date of each payment till the date of repayment. Instead of settling the amount, the defendants 1 and 3 caused a legal notice dated 01.05.2014 to the mother of the plaintiff in respect of some other property which was sold to his mother. The mother of the plaintiff sent a reply on 08.05.2014 and once again requested the defendants to execute the sale deed as per the sale agreement dated 06.03.2006. Despite acknowledging receipt of payments in the sale agreement itself, the second defendant was also very much aware of the sale agreement and a party to the sale agreement. Therefore, they are liable to refund the amount received by them to the plaintiff with interest @ 14% per annum. Therefore, the plaintiff is entitled to file a suit for recovery of money with interest against the defendants. The plaint was valued under Section 22 of the Tamil Nadu Court Fees and Suits Valuation , 1955 and the suit was filed for recovery of a sum of Rs.40,61,783/- with further interest @ 14% per annum.

3. According to the applicants, the suit for recovery of money shall be filed within a period of three years. The last payment was

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allegedly made on 20.03.2010 and as such, the suit should have been filed on or before 20.03.2013. But it has been inadvertently filed on 03.03.2016. Therefore, the suit is hopelessly barred by limitation. Secondly, the second defendant is the absolute owner of the property measuring an extent of 1.07 acres comprised in S.No.31, Puzhal Village, Ambattur Taluk, Tiruvallur District, by virtue of sale deed dated 22.09.1986. He has not entered into any sale agreement much less the suit document dated 06.03.2006 with the plaintiff to sell the property. The suit document dated 06.03.2006 is a fabricated document. Admittedly, there is no signature of the second defendant in the sale agreement as it was said to have been signed by the first defendant himself on behalf of the second defendant. When the second defendant was not a signatory to the suit document dated 06.03.2006, it cannot be considered as an agreement to sell. The document is fabricated by the plaintiff and in the absence of any privity of contract between the owner and the purchaser, there will not be any cause of action for filing the suit on the basis of the alleged sale agreement. The exchange of notices will not create any cause of action. Therefore, the plaint has been filed by creating an illusory cause of action and as such, the suit is liable to be rejected for not disclosing any cause of action or without cause of action. Therefore, the plaint is liable to be rejected under Order VII Rule 11(a) and (d) of Civil Procedure Code for no cause of action and barred by law.

4. In support of his submission, the learned counsel appearing for the applicants / defendants 1 and 3, relied on the following judgments:

a) Judgment of this Court in ***A.M.KOTHANDARAMASAMY KOIL THIRUPUVANAM VS. VAIRAM AND OTHERS [2012 (1) CTC 542]***

b) Judgment of this Court in ***DR.L.RAMACHANDRAN VS. K.RAMESH AND OTHERS [2015 (5) CTC 629]***

c) Judgment of the Hon'ble Supreme Court in ***BHARGAVI CONSTRUCTIONS AND ANOTHER VS. KOTHAKAPU MUTHYAM REDDY AND OTHERS [2017 (5) CTC 775]***

d) Judgment of this Court in ***S.K.RAMASAMY AND ANOTHER VS. S.S.CHELLAKUTTI [2016 (2) MWN (CIVIL) 61]***

e) Judgment of this Court in ***K.SAVITHIRI AND ANOTHER VS. L.RAMASAMY AND OTHERS [2017 (2) LW 994]***

(f) Judgment of the Hon'ble Supreme Court in ***FATEHJI AND COMPANY AND ANOTHER VS. L.M.NAGPAL AND OTHERS [2015 (8) SCC 390]***

5. Per contra, the learned counsel appearing for the respondent/ plaintiff would contend that the suit is within limitation. As contended by the applicants / defendants 1 and 3, Article 23 of the Limitation Act, 1963, will not be applicable, but Article 62 of the Limitation Act, 1963, would be attracted for the transactions. Once there is

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a sale agreement and money was received towards the sale of property, statutory charge would be created under Section 55(6)(b) of the Transfer of Property Act, 1882. In that case, refund of advance amount is covered under Article 62 of the Limitation Act, 1963 and therefore, limitation period is 12 years and the suit is well within limitation. The question of limitation being an issue of fact and law, it has to be tried and decision shall be taken only after trial. Therefore, the plaint is not liable to be rejected. Further, he would contend that legal notice was issued by him to the applicants as well as to the second defendant in the suit on 08.03.2013. However, in spite of receipt of the same, they have not chosen to reply. Therefore, to enforce payment of money secured, the suit for recovery of money is filed. Therefore, the averment that there is no cause of action for filing the suit, cannot be sustained.

6. In support of his contention, the learned counsel for the respondent / plaintiff relied on the following judgments:

(a) Judgment of this Court in ***K.SHANMUGAM AND ANOTHER VS. C.SAMIAPPAN AND OTHERS [2013 (6) CTC 28]***

(b) Judgment of this Court in ***P.MUTHUSAMY VS. K.ARUMUGAM AND OTHERS [2016 (6) CTC 740]***

(c) Judgment of the Hon'ble Supreme Court in ***DELHI DEVELOPMENT AUTHORITY VS. SKIPPER CONSTRUCTION CO. (P) LTD., AND OTHERS [2000 (1) CTC 507]***

(d) Judgment of the Hon'ble Supreme Court in ***CHOTANBEN AND ANOTHER VS. KIRITBHAI JALKRUSHNABHAI THAKKAR AND OTHERS [2018 (5) MLJ 588 (SC)]***

(e) Judgment of this Court in ***ELECTRONIC MACHINE TOOLS LIMITED VS. POWER ENGINEERS, RAMANATHAPURAM AND ANOTHER [2011 (6) MLJ 929]***

7. I have heard the submissions made on either side and perused the materials available on record.

8. From a perusal of the plaint, it is seen that the plaint has been preferred under Section 22 of the Tamil Nadu Court Fees and Suits Valuation Act 1955 for recovery of money for a sum of Rs.40,61,783/- on the principal amount of Rs.18,10,000/- along with interest @ 14% per annum. On the face of it, the suit was not filed for refund of advance amount, but a mere suit for recovery of money. The cause of action for the suit filed, as stated in the plaint, reads as follows:

> *"11.The cause of action arose at Vyasarpadi, Chennai on 6.3.2006 when the defendants entered into a Sale agreement with the plaintiff at his residence stated in the plaint and defendants also residing in Chennai as stated in the plaint & received a sum of Rs.1,00,000/- and subsequently received a sum of Rs.17,10,000/- on various dates, in all Rs.18,10,000/- from 8.3.2006 to 20.3.2010 and on 8.3.2013 when the plaintiff issued legal notice to the defendants and on 1.5.2014 when the defendants issued notice to the plaintiff's mother and on 8.5.2014 when the plaintiff's mother sent a reply to the said notice and requested the defendants to execute the*

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sale deed and subsequently all within the jurisdiction of this Hon'ble Court."

The cause of action also does not state that the suit was filed for refund of advance amount paid towards sale consideration.

9. It is important to note that the plaintiff, admittedly entered into a sale agreement with the first defendant. It is also admitted by the plaintiff that the second defendant is the absolute owner of the property. In that event, any agreement entered with a stranger cannot be considered as a sale agreement and as such, Section 55(6)(b) of the Transfer of Property Act will not be attracted. Therefore, it cannot be said that the charge was created on the property belonging to a stranger. The plaint also does not describe the schedule of the property on which the charge was created. Therefore, the contention that the cause of action arose on the basis of the sale agreement entered with the stranger, without the signature of the title holder is not sustainable. A further perusal of the plaint document nos.4 and 5 leads us to an impression that the plaintiff has attempted to create an

illusory cause of action for the legal notice issued by the defendants. The Hon'ble Supreme Court in ***T.ARIVANANDHAM VS. T.V.SATYAPAL [1977 SC 295]*** has held as under:-

> *"......We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. 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, be should exercise his power under Or. VII r. 1 1 C.P.C. taking care to see that 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. An activist Judge is the answer to irresponsible law suits."*

A perusal of the plaint document no.3 reveals that defendants 1 and 2 have entered into a sale agreement of the property situated in S.No.31, Puzhal Village, Ambattur Taluk, Tiruvallur District, measuring an extent of 1.07 acres on 06.03.2006, which caused upon the defendants to execute the sale deed within a period of seven days. The said notice was issued on 08.03.2013. However, the plaint was submitted only on 03.03.2016. As per plaint document no.3, last payment was made on 20.03.2010. As per Article 23 of the Limitation Act, limitation is three years from the date on which the money was paid. Even assuming that legal notice gives rise to cause of action, the plaint should have been filed within three years. Therefore, the suit for recovery of money, as such, is barred by limitation.

10. A Division Bench of this Court in ***DR.L.RAMACHANDRAN VS. K.RAMESH AND OTHERS [2015 (5) CTC 629]*** had held that the plaint can be rejected, if it is *exfacie* barred by limitation.

11. Further, plaint document no.3 mentions the name of the second defendant as "K.V.Dhuruvasala", whereas in the plaint, the name of the second defendant is mentioned as "K.V.Thiruvasagar". Plaint document no.4 issued on behalf of the second defendant also mentioned his name as "K.V.Dhuruvasala". In the reply notice dated 08.05.2014, plaint document no.5, the name of the second defendant was mentioned as "K.V.Dhuruvasala". Despite the same, the plaintiff has chosen to sue in the name of "K.V.Thiruvasagar" who has no connection to the sale agreement. Further, plaint document no.4 deals with the sale of property that had taken place between the plaintiff and the first defendant, for the property comprised in Old S.No.584, Patta No.2245, New S.No.584/2, measuring an extent of 1.68 acres of land in Madhavaram Village, Ambattur Taluk, Thiruvallur District. However, in the present case on hand, the plaintiff has dealt with the property comprised in S.No.31, Puzhal Village, Ambattur Taluk, Tiruvallur District, measuring an extent of 1.07 acres. The reply

notice vide plaint document no.5 creates a doubt in the minds of the Court that it has been issued with an intention to create illusory cause of action, which cannot be ruled out. Therefore, it shall be construed that the plaint does not disclose valid cause of action.

12. This Court has considered only the plaint averments, which admittedly does not give rise to any cause of action. In the judgment relied on by the learned counsel for the applicants / defendants 1 and 3 in ***A.M.KOTHANDARAMASAMY KOIL THIRUPUVANAM VS. VAIRAM AND OTHERS [2012 (1) CTC 542]*** it has been held as follows:

> *"12..... A mere glance of the description of suit properties mentioned in the plaint would go to show that in the property description three survey numbers admeasuring 5 acre 64 cents have been shown as suit properties. No where in the plaint it has been specifically*

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stated about the breadth and length of alleged construction and also about survey numbers, in which the alleged construction is in existence. Therefore, it is quite clear that except survey numbers and its extent, no proper description has been given with regard to identity of the construction alleged to have been put up by the defendants 1 to 4.

....

18. As per order 7 Rule 3 of the Code of Civil Procedure, 1908 if a suit has been instituted in respect of an immovable property the concerned plaint should contain necessary description so as to identify the same and further as per section 39 of the Specific Relief Act, 1963 a decree of mandatory injunction should be granted only when the same is capable of being executed. In the instant case, as stated in many places, no proper description has been given with regard to the alleged construction. To put it in short, in the present case only the alleged construction is the suit property. But in the plaint, it has been simply mentioned three survey numbers and its total extent, without mentioning the construction alleged to have been put up by the defendants 1 to 4. Therefore, it is easily discernible that

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> *the plaint filed in Original Suit No.4 of 2004 does not contain proper description of suit property as contemplated under Order 7 Rule 3 of the Code of Civil Procedure, 1908. By way of eschewing the defects which are in existence in the plaint, even if a decree of mandatory injunction is granted in favour of the appellant/plaintiff, the same cannot be executed nor enforced as contemplated under section 39 of the Specific Relief Act, 1963. Therefore, it is quite clear that the plaint filed in Original Suit No.4 of 2004 is defective."*

13. Likewise, in the judgment relied on by the learned counsel for the applicants / defendants 1 and 3 in ***DR.L.RAMACHANDRAN VS. K.RAMESH AND OTHERS [2015 (5) CTC 629]*** it has been held as under:

> *"26.In terms of Order 7 Rule 11 (d) CPC, the Plaint shall be rejected where the suit appears from the statement in the Plaint to be barred by any law. The scope of Rule 11 of Order 7 CPC has been explained in various decisions and the legal principle deducible are that, if the Plaint does not disclose the cause of action or is bared by law; can be*

> *rejected where the litigation was utterly vexatious and abuse of process of Court ; if any one of the conditions mentioned under the Rule were found to exist, thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation and where the suit was instituted without proper authority. Thus, the provision of Order 7 Rule 11 PC being procedural is designed and aimed to prevent vexatious and frivolous litigation. The plaint is liable to be rejected on the ground of limitation only where the suit appears from the statements in the plaint to be barred by any law and the law within the meaning of clause (d) of Order 7 Rule 11 CPC, shall include law of limitation as well.*
>
> *27.Thus, considering the averments in the instant case and by considering as to whether the Plaint is liable to be rejected under clause (d) of Order 7 Rule 11, the only conclusion that could be arrived at is that the plaint was barred by limitation......"*

14. In the judgment of the Hon'ble Supreme Court in ***BHARGAVI CONSTRUCTIONS AND ANOTHER VS. KOTHAKAPU MUTHYAM REDDY AND OTHERS [2017 (5) CTC 775]*** relied on by

the learned counsel for the applicants / defendants 1 and 3, it is observed as under:

> *"21) In other words, his submission was that the expression "law" occurring in clause(d) of Rule 11 of Order 7 should be construed liberally so as to include therein not only any "Act" which is admittedly a "law" made by the legislature but also include therein a "a decision of Supreme Court ".*
>
> *30.We also do not agree with the submissions of Mr. Adinarayana Rao, learned senior counsel for the respondents when he urged that firstly, the expression "law" occurring in clause(d) of Rule 11 Order 7 does not include the "judicial decisions" and clause (d) applies only to bar which is contained 13 in "the Act" enacted by the Legislature; and Secondly, even if it is held to include the "judicial decisions", yet the law laid down in the case of State of Punjab (supra) cannot be read to hold that the suit is barred. Both these submissions, in our view, have no merit.*
>
> *31) Black's Law Dictionary (Ninth Edition) defines the expression "law". It says that "Law" includes*

the "judicial precedents" (see at page 962). Similarly, the expression "law" defined in Jowett's Dictionary of English Law (Third Edition Volume-2, (pages 1304/1305) says that "law is derived from judicial precedents, legislation or from custom. When derived from judicial precedents, it is called common law, equity, or admiralty, probate or ecclesiastical law according to the nature of the Courts by which it was originally enforced".

32) The question as to whether the expression "law" occurring in clause(d) of Rule 11 of Order 7 of the Code includes "judicial decisions of the Apex 14 Court" came up for consideration before the Division Bench of the Allahabad High Court in Virender Kumar Dixit vs. State of U.P., 2014(9) ADJ 1506. The Division Bench dealt with the issue in detail in the context of several decisions on the subject and held in para 15 as under:

"15. Law includes not only legislative enactments but also judicial precedents. An authoritative judgment of the Courts including higher judiciary is also law."

33) This very issue was again considered by the Gujarat High Court (Single Bench) in the case of Hermes Marines Limited vs. Capeshore Maritime Partners

F.Z.C. & Anr. (unreported decision in Civil Application (OJ) No.144 of 2016 in Admiralty Suit No.10 of 2016 decided on 22.04.2016). The learned Single Judge examined the issue and relying upon the decision of the Allahabad High Court quoted supra held in Para 53 as under:

"53. In the light of the above discussion, in the considered view of this Court, it cannot be said that the term "barred by any law" occurring in clause(d) of Rule 11 of Order 7 of 15 the Code, ought to be read to mean only the law codified in a legislative enactment and not the law laid down by the Courts in judicial precedents. The judicial precedent of the Supreme Court in Liverpool & London Steamship Protection and Indemnity Association vs. M.V. Sea Success, 2004(9) SCC 512 has been followed by the decision of the Division Bench in Croft Sales & Distribution Ltd. vs. M.V. Basil, 2011(2) GLR 1027. It is, therefore, the law as of today, which is that the Geneva Convention of 1999 cannot be made applicable to a contract that does not involve public law character. Such a contract would not give rise to a maritime claim. As discussed earlier, the word 'law' as occurring in Order 7 Rule 11(d) would also mean judicial

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precedent. If the judicial precedent bars any action that would be the law."

34) Similarly, this very issue was again examined by the Bombay High Court (Single Judge) in Shahid s. Sarkar & Ors. Vs. Usha Ramrao Bhojane, 2017 SCC OnLine Bom 3440. The learned Judge placed reliance on the decisions of the Allahabad High Court in Virender Kumar Dixit vs. State of U.P. (Supra) and the Gujarat High Court in Hermes Marines Limited (supra) and held as under:

"18……………The law laid down by the highest court of a State as well as the Supreme Court, is the law. In fact, Article 141 of the Constitution of India categorically states that the law declared by the Supreme Court shall be binding on all Courts within the territories of India. There is nothing even in the C.P.C. to restrict the meaning of the words "barred by any law" to mean only codified law or statute law as sought to be contended by Mr. Patil. In the view that I have taken, I am supported by a decision of the Gujarat High Court in the case of Hermes Marines Ltd.……… ……………………."

"19. One must also not lose sight of the purpose and intention behind Order VII Rule 11(d). The intention appears to be that when the suit appears from the statement in the plaint to be barred by any law, the Courts will not unnecessarily protract the litigation and proceed with the hearing of the suit. The purpose clearly appears to be to ensure that where a Defendant is able to establish that the Plaint ought to be rejected on any of the grounds set out in the said Rule, the Court would be duty bound to do so, so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation, which in the opinion of the court, is doomed to fail would not further be allowed to be used as a device to harass a Defendant……………………."

35) Similarly, issue was again examined by the High Court of Jharkhand(Single Judge) in Mira Sinha & Ors. Vs. State of Jharkhand & Ors., 2015 SCC OnLine Jhar.4377. The learned Judge, in paragraph 7 held as under:

"7. In the background of the law laid down by the Hon'ble Supreme Court, it is apparent that Order VII Rule 11(d) C.P.C. application is maintainable only when

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the suit is barred by any law. The expression "law" included in Rule 11(d) includes Law of Limitation and, it would also include the law declared by the Hon'ble Supreme Court........."

15. In the judgment relied on by the learned counsel for the applicants / defendants 1 and 3 in ***S.K.RAMASAMY AND ANOTHER VS. S.S.CHELLAKUTTI [2016 (2) MWN (CIVIL) 61]*** it is observed as follows:

"39. In this Deed, the plaintiff himself had admitted that the amount of Rs.88,000/- was advanced as a loan to the defendants and two years time was given for the repayment of this amount. The plaintiff had also stated that he was under the obligation to cancel the sale agreement provided the loan amount was paid with the above said two years time. Therefore, it is clear that it is an independent and personal loan and it is also palpable that this amount of Rs.88,000/- is not charged upon the immovable property belonging to the defendants. When such being the case, the question of

application of Section 62 of the Limitation Act does not arise in this case. If the amount was charged upon the property, the respondent/plaintiff would not have asked for the alternative relief of creation of charge over the property.

40. Mr.N.Manokaran, learned counsel appearing for the appellants, has placed reliance on the decision of the Apex Court made in Voltas Ltd Vs. Rolta India Ltd., [(2014) 4 Supreme Court Cases516]. In Paragraph 28 of the above said decision, while speaking on behalf of the Division Bench of the Apex Court, Hon'ble Mr.Justice Dipak Misra has observed as under:-

"28. ... In fact, It would be contrary to the law laid down not only in the said case (State of Goa Vs. Praveen Enterprises [(2012) 12 Supreme Court Cases 581], but also to the basic principle that a time barred claim cannot be asserted after the prescribed period of limitation.

41. In Paragraphs 29 and 30, His Lordship has also observed as under:-

"29. Mr.Nariman, learned Senior Counsel, has also contended that the counter-claims filed before the learned arbitrator is an elaboration of the amount stated

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in the notice and, in fact, it is an amendment of the claim of the respondent which deserved to be dealt with by the learned arbitrator. In this context, we may refer with profit to the ruling in K.Raheja Constructions Ltd., v. Alliance Ministries [1995 Supp (3) SCC 17] wherein the plaintiff had filed a suit for permanent injunction and sought an amendment for grant of relief of specific performance. The said prayer was rejected by the learned Trial Court. A contention was canvassed that the appellant had not come forward with new plea and, in fact, there were material allegations in the plaint to sustain the amendment of the plaint. The Court observed that having allowed the period of seven years to elapse from the date of filing the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963 any amendment on the grounds set out, would defeat the valuable right of limitation accruing to the respondent. The said principle has been reiterated in South Konkan Distilleries v. Prabhakar Gajnan Naik [(2008) 14 SCC 632] and Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit v. Ramesh Chander [(2010) 14 SCC 596].

30. In Revajeetu Builders and Developers v. Narayanaswamy and Sons [(2009) 10 SCC 84] while *laying down some basic principles for considering the amendment, the Court has stated that as a general rule the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

42. Article 23 of the Limitation Act 1963 contemplates that for money payable to the plaintiff, for money paid for the defendants, the period of limitation is 3 years and the time from which the period begins to run is when money is paid.

43. Therefore, as discussed in Paragraph 33, since the amount advanced to the defendants is to be recovered personally from them and since the money is not charged upon the immovable property and the plaintiff himself has admitted the execution of Varthamanam Deed saying that he had advanced the amount of Rs.88,000/- as a nloan to the defendants, the period of limitation of 3 years is applicable. Therefore, the claim of the plaintiff is definitely barred by limitation. The Substantial questions of law (i) and (ii) are answered against the respondent/plaintiff.

44. Secondly, when the main relief of specific performance of contract was rejected, the alternative

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relief of refund of advance amount cannot have legs to stand because the Trial Court itself has found in Paragraph 13 of its Judgment that the plaintiff had failed to substantiate his claim as contemplated under Section 101 of the Indian Evidence Act. On the other hand, the defendants have substantiated their case as envisaged under Sections 102 and 103 of the Indian Evidence Act. Therefore, the alternative relief cannot be maintained and in this regard, this Court is of the considered view that the Judgment and Decree of the First Appellate Court with reference to the granting of alternative relief is not sustainable in law and therefore, liable to be set aside. Accordingly, the Substantial Question of law No.(iii) is also answered against the respondent/plaintiff. "

16. In the judgment of this Court in ***K.SAVITHIRI AND ANOTHER VS. L.RAMASAMY AND OTHERS [2017 (2) LW 994]*** relied on by the learned counsel for the applicants / defendants 1 and 3, it is observed as under:

> *"23.Similarly, in Delhi Development Authority v. Skipper Construction Co.(P) Ltd., and others (cited supra), the Hon'ble Supreme Court has held that in the absence of a contract to the contrary, the buyer will have a charge on seller's interest in the property, which is the subject matter of the sale agreement insofar as the purchase money and interest on such amount are concerned, unless the buyer has improperly declined to accept delivery. It has bee further held that charge under Section 55(6)(b) is a statutory charge and differs from a contractual charge."*

17. In the judgment of the Hon'ble Supreme Court in ***FATEHJI AND COMPANY AND ANOTHER VS. L.M.NAGPAL AND OTHERS [2015 (8) SCC 390]*** relied on by the learned counsel for the applicants / defendants 1 and 3, it is observed as under:

> *"8.The plaintiffs averred in the plaint that the last and final cause of action accrued and arose to them*

> *after August 1991 when the defendants succeeded in hiding themselves and started avoiding the plaintiffs and the cause of action being recurring and continuous one, they filed the suit on 29.4.1994. As already seen the original cause of action became available to the plaintiffs on 2.12.1973, the date fixed for the performance of the contract and thereafter the same stood extended till 1.2.1977 as requested by the defendants. Though the plaintiffs claimed that oral extension of time was given, no particulars as to when and how long, were not mentioned in the plaint. On the other hand even after knowing the dishonest intention of the sons of the second defendant with regard to the suit property in the year1985, the plaintiffs did not file the suit immediately. The suit having been filed in the year 1994 is barred by limitation under Article 54 of the Limitation Act. "*

18. The judgments relied on by the respondent/plaintiff to the effect that the averments in the plaint are sufficient to decide as to whether the cause of action has been mentioned in the plaint or not and there is no need to decide as to whether the cause of action arose in the plaint is true

and correct, will not apply to this case. The sale agreement, for which the suit is filed, is between a stranger. On the face of it, it does not constitute a valid agreement to the title holder. As such, no charge could be created on the suit property. Since the agreement was not entered into between the real owner, it will not give rise to any cause of action. It is not the case whether the cause of action is true or not. But it is a case whether there is cause of action or no cause of action. In the present case, there is no cause of action on the basis of the suit document. Therefore, the said judgment is not applicable.

18. The Hon'ble Supreme Court in ***T.ARIVANANDHAM VS. T.V.SATYAPAL [1977 SC 295]*** has held as under:-

> *"......We have not the slightest hesitation in condemning the petitioner for the gross abuse of the*

process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. 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, be should exercise his power under Or. VII r. 1 1 C.P.C. taking care to see that 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. An activist Judge is the answer to irresponsible law suits."

19.The judgments relied on by the respondent / plaintiff to the effect that the averments in the plaint are sufficient to decide as to whether the cause of action has been mentioned in the plaint or not and there is no need to decide as to whether the cause of action arose in the plaint is true and correct, will not apply to this case. The sale agreement, for which the suit is filed, is between a stranger. On the face of it, it does not constitute a valid agreement to the title holder. As such, no charge could be created on the suit property. Since the agreement was not entered into between the real owner, it will not give rise to any cause of action. It is not the case whether the cause of action is true or not. But it is a case whether there is cause of action or no cause of action. In the present case, there is no cause of action on the basis of the suit document. Therefore, the said judgment is not applicable.

20.In view of the above finding, the judgment of this Court in ***K.SHANMUGAM VS. C.SAMIAPPAN [2013 (6) CTC 28]*** relied on by the learned counsel for the respondent / plaintiff will not apply to the present case on hand.

21. The suit in the present case is not for refund of advance amount given to the lawful owner to attract Article 62 of the Limitation Act, 1963. But it is a suit for recovery of money from the third party. Therefore, the period of limitation cannot be construed as 12 years. The same ratio has been followed in the judgment of this Court relied on by the learned counsel for the respondent / plaintiff in ***P.MUTHUSAMY AND K.ARUMUGAM AND OTHERS [2016 (6) CTC 740]***. Hence, this judgment is also not applicable to the case on hand.

22. The judgment of the Hon'ble Supreme Court in ***DELHI DEVELOPMENT AUTHORITY VS. SKIPPER CONSTRUCTION CO.(P) LTD., AND OTHERS [2000 (1) CTC 507]*** relied on by the learned counsel for the respondent / plaintiff is also on the basis of a valid sale agreement, wherein statutory charge was created under Section 55 (6)(b) of the Transfer of Property Act, 1882. Whereas, in the present case

on hand, the suit document does not constitute a valid sale agreement and no charge could be created and as such, the limitation period cannot be calculated under Article 62 of the Limitation Act. Therefore, this judgment is also not applicable to the case on hand.

23 Likewise, the judgment of the Hon'ble Supreme Court relied on by the learned counsel for the respondent / plaintiff in ***CHOTANBEN AND ANOTHER VS. KIRITBHAI JALKRUSHNABHAI THAKKAR AND OTHERS [2018 (5) MLJ 588 (SC)]*** for the proposition that the plaint shall be read as a whole for deciding Order VII Rule 11(d) of Civil Procedure Code for rejection of plaint and the plea taken in the written statement or in the application cannot be a basis to reject the plaint.

24. In fact, the plaint is considered in its entirety. The averments made in the plaint by itself unequivocally disclose that the plaintiff knowing well that the second defendant is the owner, entered into

an agreement with the first defendant, who is a stranger. The very basis on which the cause of action said to have arisen is the sale agreement, which on the admission of the plaintiff in the plaint averments *exfacie* invalid and unenforceable. The suit is valued under Section 22 of the Tamil Nadu Court Fees and Suits Valuation Act for recovery of money. The relief sought for also is only recovery of money. The cause of action said to be for recovery of money. As per the averments of the plaint, the suit is filed far beyond the period of limitation. It is a purest question of law and does not involve any question of fact to put it to trial. The case on hand is squarely covered by the judgment of this Court in ***DR.L.RAMACHANDRAN's case (cited supra).*** Therefore, it is unnecessary to force the defendants to undergo the ordeal of trial and put them to mental torture for the above futile claims.

25. Therefore, viewing from any angle, the suit is hopelessly barred by limitation and accordingly, the plaint in C.S.No.211 of 2016 stands rejected and the application is allowed.

20 / 08 / 2020

TK

M.GOVINDARAJ, J.

TK

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