

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 22ND DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

C.S.No. 138 of 2019

and

O.A.No. 156 of 2019

and

A.No.6433 of 2019

The Chettinad Charitable Trust

represented by its Trustee Dr.A.C.Muthiah, (aged 76 years),

Chettinad House, Raja Annamalai Puram,

Chennai – 600 028.

... Plaintiff/Applicant

-Versus-

1. M.A.M.R.Muthiah (aged 48 years)

Having office at

Rani Seethai Hall Building,

5th Floor, No.603, Annasalai,

Chennai – 600 006.

2. Mrs.Geetha Muthiah (aged 44 years)

W/o M.A.M.R.Muthiah

Having office at

Rani Seethai Hall Building,

5th Floor, No.603, Annasalai, Chennai – 600 006.

3. M.Ramanathan, (aged 55 years)

S/o AR.Murugappan

Having office at

Rani Seethai Hall Building,

5th Floor, No.603, Annasalai,

Chennai – 600 006.

... Respondent/Defendant

C.S.No. 138 of 2019

Civil Suit praying that this Hon'ble Court be pleased to pass a

Judgement and Decree:

1. Declare that the 1st defendant is not a lawfully inducted trustee of the plaintiff trust.

(1A) declare that the Co-option of the 2nd defendant by 1st defendant as a trustee of the plaintiff Trust on 07.12.2015 is not true, valid and is void and unlawful and that she is therefore not a trustee of the plaintiff trust.

(1B) Permanent injunction restraining the defendants 1 and 2 from in any manner interfering with the administration or functioning of the plaintiff trust;

(2) Declare that the lease deed dated 15.04.2016 executed by the 3rd defendant representing the Plaintiff Trust in favour of the 1st defendant is unlawful, illegal, invalid, void and not binding on the Plaintiff Trust;

(2A) Directing the defendant No.1 to handover peaceful and vacant possession of the suit property to the plaintiff trust.

O.A.No. 156 of 2019:

Original Application praying that this Hon'ble Court be pleased to pass an order of ad-interim injunction restraining the respondents/defendants men, agents, servants, and any one claiming under or through them from in any manner demolishing or altering any portion of the suit property morefully described in the schedule mentioned property pending disposal of this suit.

A.No.6433 of 2019

Application praying that this Hon'ble Court be pleased to reject the plaint in C.S.No. 138 of 2019 filed by the plaintiff's as a clear abuse of process and does not disclose any cause of action

This Civil Suit along with these applications having been heard on 06/08/2021 in the presence of Mr.R. Srinivas for Mr.S. Sithirai Anandam, Advocates for the plaintiff in C.S.No.138 of 2019 and for the applicant in O.A. No. 156 of 2019 and for the 1st respondent in A.No. 6433 of 2019 and Mr.M.S. Krishnan, Senior Counsel for Mr.T.Balaji, Advocates for the 1st defendant in C.S.NO. 138 of 2019 and for the 1st respondent in O.A.No. 156 of 2019 and for the applicant in A.No. 6433 of 2019 and Mr.R. Ramesh, advocate for the 2nd defendant in C.S. No. 138 of 2019 and for the 2nd respondent in O.A.No. 156 of 2019 and A.No. 6433 of 2019 and upon reading the plaint filed in C.S.NO. 138 of 2019 and the Judges Summon and the affidavit of Dr.A.C.Muthiah filed in O.A. No. 156 of 2019 and the Judges Summon and the affidavit of M.A.M.R. Muthiah filed in A.No. 6433 of 2019 and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto and this court having observed that there are two aspects to be seen in the present suit being filed by Dr.A.C.Muthiah, one, as on date, he may not have any locus standi to file a suit as contended by the learned

Senior Counsel on behalf of the applicant herein. Two, by filing the present suit, he is indirectly trying to achieve what he could not achieve before the pending suit in O.S.No.6604/2014, in fact, by being a plaintiff in the present suit, he is seeking to legitimatise his position as if he was a lawfully inducted trustee representing the Trust before this Court, in the said circumstances, it is a combination of abuse of process of Court and a mischievous attempt to overshadow the lack of locus standi in maintaining the suit, on both counts, the suit is to be held as not maintainable and liable to be dismissed, **it is ordered as follows:-**

That the Plaint filed in C.S.No. 138 of 2019 be and is hereby rejected and the suit be and is hereby dismissed

2. That the O.A.No. 156 of 2019 do stand closed.

3) That there shall be no costs of this suit.

WITNESS, THE HON'BLE MR.JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT OF MADRAS AFORESAID, THIS THE
22ND DAY OF SEPTEMBER 2021

sd/-

ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

NS
18.11.2021

C.S.No. 138 of 2019

and

O.A.No. 156 of 2019

and

A.No.6433 of 2019

DECREE

DATED 22/09/2021

THE HON'BLE MR.JUSTICE

V. PARTHIBAN

FOR APPROVAL: 29/12/2021

APPROVED ON: 04/01/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 06.08.2021

Order delivered on 22.09.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

A.No.6433 of 2019, O.A.No.156 of 2019

and

C.S.No.138 of 2019

A.No.6433 of 2019

M.A.M.R.Muthiah (aged 48 years)

Having office at

Rani Seethai Hall Building,

5th Floor, No.603, Annasalai,

Chennai – 600 006.

..Applicant

vs.

1. The Chettinad Charitable Trust
represented by its Trustee Dr.A.C.Muthiah,
(aged 76 years),
Chettinad House,
Raja Annamalai Puram,
Chennai – 600 028

2. Mrs.Geetha Muthiah (aged 44 years)
W/o M.A.M.R.Muthiah
Having office at
Rani Seethai Hall Building,
5th Floor, No.603, Annasalai, Chennai – 600 006.

3. M.Ramanathan,
(aged 55 years)
S/o AR.Murugappan
Having office at
Rani Seethai Hall Building,

5th Floor, No.603, Annasalai,
Chennai – 600 006.

..Respondents

Prayer in A.No.6433/2019: To reject the plaint in C.S.No.138 of 2019 filed by the plaintiffs as a clear abuse of process and does not disclose any cause of action.

For Applicant : Mr.M.S.Krishnan,
Senior Counsel
for Mr.T.Balaji

For Respondents : Mr.R.Srinivas
for Mr.S.Sithirai Anandam for R1
Mr.R.Ramesh for R2

C.S.No.138 of 2019

The Chettinad Charitable Trusteeship
represented by its Trustee Dr.A.C.Muthiah,
aged 76 years,
Chettinad House,Raja Annamalai Puram,
Chennai – 600 028

..Plaintiff

-vs-

1. M.A.M.R.Muthiah (aged 48 years)
2. Mrs.Geetha Muthiah (aged 44 years)
W/o M.A.M.R.Muthiah

Defendants 1 & 2 are having office
at Rani Seethai Hall Building,
5th Floor, No.603, Annasalai,
Chennai – 600 006.

3. M.Ramanathan,
(aged 55 years)
S/o AR.Murugappan
Having office at

Rani Seethai Hall Building,
5th Floor, No.603, Annasalai,
Chennai – 600 006.

..Defendants

Prayer in C.S.No.138 of 2019:

(1) Declare that the 1st defendant is not a lawfully inducted trustee of the plaintiff trust. (1A) declare the the Co-option of the 2nd defendant by 1st defendant as a trustee of the plaintiff Trust on 07.12.2015 is not true, valid and is void and unlawful and that she is therefore not a trustee of the plaintiff trust. (1B) Permanent injunction restraining the defendants 1 and 2 from in any manner interfering with the administration or functioning of the plaintiff trust; (2) Declare that the lease deed dated 15.04.2016 executed by the 3rd defendant representing the Plaintiff Trust in favour of the 1st defendant is unlawful, illegal, invalid, void and not binding on the Plaintiff Trust; (2A) Directing the defendant No.1 to handover peaceful and vacant possession of the suit property to the plaintiff trust.

For Plaintiff

: Mr.R.Srinivas
for Mr.S.Sithirai Anandam

For Defendants

: Mr.M.S.Krishnan,
Senior Counsel
for Mr.T.Balaji for D1
Mr.R.Ramesh for D2

O.A.No.156 of 2019

The Chettinad Charitable Trusteeship
represented by its Trustee Dr.A.C.Muthiah,
aged 76 years,
Chettinad House,
Raja Annamalai Puram,
Chennai – 600 028

..Applicant

-VS-

1. M.A.M.R.Muthiah (aged 48 years)
2. Mrs.Geetha Muthiah (aged 44 years)
W/o M.A.M.R.Muthiah

Defendants 1 & 2 are having office
at Rani Seethai Hall Building,
5th Floor, No.603, Annasalai,
Chennai – 600 006.

3. M.Ramanathan,
(aged 55 years)
S/o AR.Murugappan
Having office at
Rani Seethai Hall Building,
5th Floor, No.603, Annasalai,
Chennai – 600 006.

..Respondents

Prayer in O.A.No.156 of 2019:

To pass an order of ad-interim injunction restraining the respondents/ defendants 1 to 3 their men, agents, servants and anyone claiming under or through them from in any manner demolishing or altering any portion of the suit property morefully described in the schedule mentioned property pending disposal of the suit.

For Applicant : Mr.R.Srinivas
for Mr.S.Sithirai Anandam for R1

For Respondents : Mr.M.S.Krishnan,
Senior Counsel
for Mr.T.Balaji for D1
Mr.R.Ramesh for D2

COMMON ORDER

The applicant in A.No.6433 of 2019 is the 1st defendant in the suit. The 1st respondent herein is the plaintiff.

2. The Suit has been filed for the following reliefs:

1. Declare that the 1st defendant is not a lawfully inducted trustee of the plaintiff trust.

1A. Declare the the co-option of the 2nd defendant by 1st defendant as a trustee of the plaintiff Trust on 07.12.2015 is not true, valid and is void and unlawful and that she is therefore, not a trustee of the plaintiff trust.

1B. Permanent injunction restraining the defendants 1 and 2 from in any manner interfering with the administration or functioning of the plaintiff trust;

2. Declare that the lease deed dated 15.04.2016 executed by the 3rd defendant representing the Plaintiff Trust in favour of the 1st defendant is unlawful, illegal, invalid, void and not binding on the Plaintiff Trust;

2A. Directing the defendant No.1 to handover peaceful and vacant possession of the suit property to the plaintiff trust.

3. The facts and circumstances which gave rise to the filing of the present application are stated hereunder.

(a) The plaintiff is the Charitable Trust which has been created by virtue of the Trust Deed dated 29.03.1972. The deed was executed by one Raja Sir M.A.Muthiah Chettiar. According to the stipulation in the Trust Deed, the suit property which belonged to the founder Trustee, Raja Sir M.A.Muthiah Chettiar, shall vest in the plaintiff trust and shall be utilised for the charitable purposes in terms of the objects of the Trust . The Trust Deed enumerated various charitable objects like establishing, maintaining educational, technical or technological Institutions of all kinds in India, establishing hospitals, dispensaries, maintaining the houses of orphan or supporting and educating students and destitute children in India etc.

(b) Subsequent to the founding of the Trust, Dr.Raja Sir M.A.Muthiah Chettiar, co-opted his own son, Dr.M.A.M.Ramasamy, as the co-trustee of the trust on 07.04.1984. Immediately after the co-option of his son, Dr.Raja Sir M.A.Muthiah Chettiar died on 12.05.1984. According to the plaintiff, the surviving trustee Dr.M.A.M.Ramasamy, co-opted his cousin Dr.A.C.Muthiah, grand son of the founder Trustee late Dr.Raja Sir M.A.Muthiah Chettiar, as another trustee on 30.09.1991. It further transpired that the said Dr.M.A.M.Ramasamy appeared to have unilaterally co-opted the applicant herein, the 1st defendant in the suit, as one of the

Trustees of Plaintiff Trust in terms of letter dated 30.04.2004.

(c) According to Dr.A.C.Muthiah, who claims himself to be the sole trustee of the plaintiff trust as on date, the applicant/ 1st defendant was the adopted son of Dr.M.A.M.Ramasamy and during the lifetime of Dr.M.A.M.Ramasamy, due to serious differences and strain in the relationship between the father and the adopted son, Dr.M.A.M.Ramasamy disowned the applicant/1st defendant and appeared to have even executed a Will dated 18.02.2015 declaring that the applicant/ 1st defendant was not his son.

(d) Subsequently, Dr.M.A.M.Ramasamy expired on 02.12.2015 and according to the plaintiff, the Trust is represented only by the sole surviving trustee, Dr.A.C.Muthiah after the death of Dr.M.A.M.Ramasamy on 02.12.2015. According to him, the induction of the applicant/1st defendant as a trustee on 30.04.2004 was illegal as it was unilaterally done by Dr.M.A.M.Ramasamy without the consent of the other trustee, namely himself.

(e) While the matter stood thus, the applicant herein, the 1st defendant in the suit filed O.S.No.6359/2014 before the City Civil Court, Chennai, seeking the following reliefs.

a) Permanent Injunction restraining the defendant from conducting any meeting of "Chettinad Charitable Trust" on 18.11.2014 at Chettinad House, Raja Annamalaipuram

Chennai - 600 0028 in the absence of the plaintiff or any other future date without the participation of the Plaintiff.

b) Permanent Injunction restraining the defendant from unilaterally Co-opting or appointing anyone as Trustee of "Chettinad Charitable Trust" without the consent of the Plaintiff."

(f) Subsequently, another suit has been filed in O.S.No.6604/2015 before the City Civil Court, Chennai, by the applicant herein, for the following reliefs.

a) Declaration declaring that the Plaintiff (the 1st defendant herein) and the 2nd defendant (Dr.M.A.M.Ramasamy) are the only Trustees of the trust (the plaintiff herein).

b) Permanent Injunction restraining the 2nd Defendant (Dr.M.A.M.Ramasamy) from conducting a meeting on 28.11.2014 or on any other future dates of the plaintiff Trust with the Participation of the 3rd Defendant (Dr.A.C.Muthiah).

(g) In the earlier suit filed by the plaintiff herein in O.S.No.6359/2014, Dr.A.C.Muthiah, who claims to be the trustee of the plaintiff Trust was not made as a party and in that context, after the death of Dr.M.A.M.Ramasamy, a petition was filed in I.A.No.18005/2015 in O.S.No.6359/2014 for his impleadment as the defendant in the suit. The impleadment was ordered by the City Civil Court on 09.03.2018 and as against that, the applicant herein filed C.R.P.(PD).No.2812/2018 before this Court. In any case, ultimately, the said C.R.P. and the suit, both came to be

dismissed as having become infructuous, in view of the scope of the prayer sought for in O.S.No.6359/2014 on the subsequent event of death of Dr.M.A.M.Ramasamy, who was the sole defendant in the suit at the time when the suit was instituted, vide this Court's order dated 10.12.2020.

(h) It also transpired that after the death of Dr.M.A.M.Ramasamy on 02.12.2015, the applicant herein/ 1st defendant has co-opted his wife, the 2nd defendant in the suit as a Trustee in the plaintiff Trust on 07.12.2015. According to the plaintiff, the co-option was illegal and void, as the applicant himself was not a lawfully inducted trustee and therefore, the co-option of the 2nd defendant, his wife cannot be valid. Aggrieved by the action of the applicant herein, one, calling himself as a trustee, two, co-opting his wife, the 2nd defendant and three, administering the Trust, the suit has been filed by the Trust represented by Dr.A.C.Muthiah for the aforementioned prayers. The substance of the dispute as pleaded by the plaintiff herein is that the applicant herein, the 1st defendant was not lawfully inducted into the plaintiff Trust in 2004 as according to him, he was inducted unilaterally by Dr.M.A.M.Ramasamy without the consent of the other Trustee namely himself. According to him, he having been inducted as a Trustee by the said Dr.M.A.M.Ramasamy on 30.09.1991 itself, the applicant herein could not have been inducted in 2004 without his consent.

(i) Apart from seeking declaration to declare that the applicant herein was not lawfully inducted Trustee in the plaintiff Trust, consequential declaration has also been sought to declare the co-option by the applicant of his wife on 07.12.2015, the 2nd defendant in the suit, as illegal and void. The other prayers in the plaint are connected to the main issue as to the validity of the induction of the applicant herein, the 1st defendant and his subsequent actions.

(j) The plaintiff has also filed an application in O.A.No.156/2019 seeking interim injunction restraining the respondents/ defendants 1 to 3 from in any manner demolishing or altering any portion of the suit property. On behalf of the applicant herein, the above application No.6433 of 2019 has been filed under Order 7 Rule 11 of C.P.C. seeking to reject the plaint principally on the ground that the present suit is a clear abuse of process of the Court and does not disclose any cause of action, besides, the suit is hit by limitation. As the above application has been filed seeking to reject the suit itself, the same is taken up for hearing first.

4. Mr.M.S.Krishnan, the learned Senior counsel appearing for the applicant herein would at the outset submit that the present suit filed by the plaintiff is a gross abuse of process of the Court for several reasons. The learned Senior Counsel has taken this Court to relevant facts from the time

when the Trust was created on 29.03.1972, the induction of Dr.M.A.M.Ramasamy by his father Raja Sir M.A.Muthiah Chettiar on 07.04.1984 and the subsequent demise of the founder trustee, Dr.Raja Sir M.A.Muthiah Chettiar on 12.05.1984 and also the death of Dr.M.A.M.Ramasamy on 02.12.2015 together with the details of the induction of the applicant as a trustee on 30.04.2004 and the laying of two suits by the applicant herein before the City Civil Court.

5. According to the learned Senior Counsel, the suit itself is not maintainable as Dr.A.C.Muthiah has no locus standi to maintain the same. His very claim to trusteeship in the plaintiff trust is the subject matter of his before the City Civil Court, Chennai in O.S.No.6604/2014. Even according to him (Dr.A.C.Muthiah Chettiar), he was inducted as a trustee in the plaintiff trust on 30.09.1991 and confirmation of his appointment as trustee was issued by Dr.M.A.M.Ramasamy, in and around July, 1998. The very same controversy, whether it was a fact that he was inducted as a trustee in September, 1991 or it was an utter falsehood was the subject matter of consideration before the City Civil Court, Chennai in O.S.No.6604/2014.

6. According to the learned Senior Counsel, the document which was produced in support of his claim being inducted as Trustee on

30.09.1991 was a forged document produced before the City Civil Court in support of the claim of being inducted as a Trustee in the plaintiff trust. The applicant herein who was the plaintiff therein has challenged the document stating that it was a concocted one as its letter head shows “Chettinad House, Raja Annamalaipuram, Chennai – 600 028”. In 1991, the city of 'Chennai' now known, was called only as 'Madras'. The name came to be changed only in September, 1996. In fact, it was proved before the City Civil Court that all the documents, communications issued by the Chettinad House, during the time from 1991 till 1996 or so were bearing the address as 'Madras' and not 'Chennai'. Only this document alone bears the name of 'Chennai' and therefore, it was a clear case of forgery and manufactured for the purpose of the pending case before the City Civil Court.

7. In this regard, learned Senior Counsel has taken this Court through the interim order passed by the City Civil Court in I.A.Nos.17165 & 17166 of 2014 in C.S.No.6359 of 2014 dated 08.12.2014. The Interlocutory Applications were filed seeking temporary injunction restraining the respondent/defendant (Dr.M.A.M.Ramasamy) from conducting any meeting of the trust and injunction restraining the respondents/ defendants from appointing any one as Trustee. Though the injunction prayers had been allowed and while allowing the prayers, a detailed order had been passed by

the learned City Civil Judge. In the order, the Court *prima facie* found that the so called letter dated 30.09.1991 was a created document recently only for the purpose of the suit. The Court, further held that the alleged idea of putting antedate of the letter as 30.09.1991 would strengthen the suspicion that the letter has been fabricated for the purpose of the suit. When the injunction was directly in operation as against Dr.A.C.Muthiah, the question of he calling himself as a trustee and filing the suit on behalf of the Trust is to be held not maintainable. In any case, when the core controversy qua parties as to whether Dr.A.C.Muthiah could be considered as a lawfully inducted trustee or not is the subject matter of lis before the Suit in O.S.No.6604/2014 pending before the City Civil Court, the present suit is a gross abuse of process of the Court.

8. The learned Senior counsel would further submit that the suit is not maintainable for other reasons as well. The learned Senior Counsel would specifically draw the attention of this Court to the letter dated 30.04.2004 signed by the then sole trustee Dr.M.A.M.Ramasamy co-opting his son, the applicant herein. This letter has been confirmed by Late Dr.M.A.M.Ramasamy in the counter affidavit filed before the City Civil Court in I.A.Nos.17165 and 17166 of 2014 in O.S.No.6359 of 2014. In paragraph No.7, he clearly makes an averment that the applicant herein was

made a Trustee along with him and Dr.A.C.Muthiah, after 1996. He claims that there were three trustees of the plaintiff Trust. The factum of the applicant herein as a trustee was acknowledged by the defendant in the above suit, Dr.M.A.M.Ramasamy himself. This Court specific attention has been drawn to the written statement filed in O.S.No.6604 of 2014 by Dr.A.C.Muthiah, who now claims to represent the plaintiff Trust, acknowledging the fact in paragraph No.13 that the applicant herein, the plaintiff therein had come to the Trust only after his co-option after his so called adoption. The written statement was filed in February, 2015. Even in the written statement filed on behalf of late Dr.M.A.M.Ramasamy in O.S.No.6359 of 2014, the fact of the applicant being co-opted as trustee after his adoption in the year 1996 has been acknowledged in paragraph No.8.

9. As far as the induction of Dr.A.C.Muthiah as a trustee in the written statement filed by late Dr.M.A.M.Ramasamy, it was vaguely averred in paragraph Nos.7 that Dr.A.C.Muthiah who was the 3rd defendant in that suit was inducted as a trustee during his 60th birthday celebration in September, 1991 and no formal letter of appointment was issued to him, as such letter was not felt necessary on account of the close family relationship. In his written statement filed in the other suit

O.S.No.6604/2011, Dr.M.A.M.Ramasamy averred in para No.6 that subsequently, the letter of confirmation was issued which became necessary in view of the adoption of the applicant herein as his son in 1996 in order to avoid any questions being raised at a later point of time. According to the learned Senior counsel, no date had been mentioned as to the exact date of his confirmation of his appointment.

10. The learned Senior Counsel, apart from the legal contention of abuse of process of the Court by the plaintiff herein, the suit is also to be rejected on the ground of limitation. According to him, from the above facts, it could be seen that the suit was filed before the City Civil Court in O.S.No.6604/2014 claiming the Trusteeship to the exclusion of Dr.A.C.Muthiah and the limitation period of three years had expired in 2017 itself in terms of the provisions of the Article 58 of the Limitation Act. The learned Senior counsel, referred to paragraph No.2 of the plaint wherein it is averred that the applicant herein was inducted as a trustee vide letter dated 30.40.2004 of Late Dr.M.A.M.Ramasamy. When the fact of induction of the applicant herein as a trustee was well within the knowledge of Dr.A.C.Muthiah all along, filing the suit before this Court in 2019 to declare that the applicant was not lawfully inducted as a trustee and other consequential prayer are to be rejected as being clearly time barred.

11. In regard to the legal contentions, the learned Senior Counsel relied on the following decisions.

i) **1998(3) SCC 573 (K.K.Modi v. K.N.Modi)**. This Court's attention has been to paragraph No.44 which is extracted hereunder.

44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and

exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.

ii) **1999 SCC Online Bombay 495 (SNP Shipping Service Private Limited v. Kara Mara Shipping Co. Ltd.)**. This Court's attention has been to paragraph Nos.21 to 24 which are extracted hereunder.

21. What is an abuse of the process of the Court again came up for consideration before the Apex Court in K.K. Modi v. K.N. Modi, (1998) 3 SCC 573 and the Supreme Court ruled that re-litigation is one of the examples of an abuse of the process of the Court and a party if advised to reagitate the same issue which has already been decided earlier against him, it is contrary to justice and public policy and is, therefore an abuse of process of Court. In paragraph 44 of the report, the Apex Court held thus:—

“44. One of the examples cited as an abuse of the process of the Court is relitigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the Court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the Court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the Court especially where the proceedings are absolutely groundless. The Court then has the power to stop such proceedings summarily and prevent the time of the public and the Court from being

wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.”

22. The present case as already noted above, is a classic example of re-agitating the same issue by a party which has been held against him by the highest Court of the land. Despite the fact that it has been held that for setting up of a limitation fund in the matter this Court has no jurisdiction, the plaintiffs are seeking to invoke jurisdiction of a Court having no jurisdiction on misconstruction and misreading of the judgment of the highest Court. Such attempt of the litigant has to be stopped immediately in the interest of justice and for the benefit of public at large to prevent the time of the public and the Court being wasted.

23. It may observe here that one of the reliefs in the present suit for declaration that SNP Shipping is in no manner whatsoever linked, owned or controlled legally or beneficially by the Merali family or any other entity is subject matter of another Suit 2352 of 1999 filed before this Court and the learned Counsel for WTCC informed that SNP Shipping has made statement in that suit during the course of arguments that they (SNP Shipping) would not press the prayers relating to aforesaid declaration in this suit.

24. I, therefore, hold that the present suit besides that this Court has no jurisdiction, is also liable to be dismissed as an abuse of the process of the Court.

iii) **2019 SCC Online Madras 29067 (Meenakshi Overseas v. V.V.V. & Sons Edible Oils Limited)**. This Court's attention has been to paragraph Nos.33, 34, 35 & 36 which are extracted hereunder.

33.Be that as it may, leading case with regard to description of the term/expression 'cause of action' is Nawal Kishore Sharma v. Union of India reported in (2014) 9 SCC 329. Relevant paragraph in Nawal Kishore Sharma case is paragraph 10 and the same reads as follows:

"10. In State of Rajasthan v. Swaika Properties [(1985) 3 SCC 217], the fact was that the respondent Company having its registered office in Calcutta owned certain land on the outskirts of Jaipur City, was served with notice for acquisition of land under the Rajasthan Urban Improvement Act, 1959. Notice was duly served on the Company at its registered office in Calcutta. The Company, first appeared before the Special Court and finally the Calcutta High Court by filing a writ petition challenging the notification of acquisition. The matter ultimately came before this Court to answer a question as to whether the service of notice under Section 52(2) of the Act at the registered office of the respondent in Calcutta was an integral part of cause of action and was it sufficient to invest the Calcutta High Court with a jurisdiction to entertain the petition challenging the impugned notification. Answering the question this Court held : (Swaika Properties case [(1985) 3 SCC 217], SCC pp. 222-23, paras 7-8)

“7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under subsection (5) of Section 52 of the Act the appellants were entitled to require the respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession under subsection (6) thereof.

8. The expression ‘cause of action’ is tersely defined in Mulla's Code of Civil Procedure:

‘The “cause of action” means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court.’

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within

the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The Notification dated 8-2-1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.”

34. Besides this, learned senior counsel for first defendant also pressed into service a decision of learned Single Judge of this High Court in Mytrah Energy (India) Limited v. Gamesa Renewable Private Limited reported in

2016-4-L.W. 86. This judgment was pressed into service for the principle that for plaint to be sustained, cause of action should not just be a mere ground of title, but it should be fact which entitles the plaintiff to get relief. In other words, it is for the principle that cause of action should be material cause of action.

35. Besides this, a judgment of a Division Bench in Syed Mohamed Salahuddin v. Ahmed Abdulla Ahmed Al Ghurair reported in (2018) 6 MLJ 257 was pressed into service to say that once the reliefs cannot be granted owing to a statutory bar, a suit filed claiming the same also would be barred. It was submitted that relief cannot be granted in the light of interpretation of Section 56 of TM Act as in Crompton Greaves and therefore, suit is clearly barred.

36. To be noted, Division Bench judgment in Syed Mohamed Salahuddin reported in (2018) 6 MLJ 257 was carried to Supreme Court in Ahmed Abdulla Ahmed Al Ghurair v. Star Health and Allied Insurance Company Limited and Supreme Court vide judgment dated 26.11.2018 in Civil Appeal Nos. 9786-9799 of 2018 confirmed the judgment of Division Bench of our High Court.

According to the learned Senior Counsel, the first two decisions, relate to abuse of process of the Court and re-litigation of matters by filing vexatious and frivolous case. The third case relate to cause of action. The above case laws squarely to be applied to the present facts and circumstances of the

case.

12. Finally, the learned Senior Counsel summed up saying that the suit is to be rejected for the following grounds.

(i) The suit is gross abuse of process of the Court in the face of the very same controversy raised in this suit, is pending trial before the City Civil Court in O.S.No.6604/2014.

(ii) The present suit is also not maintainable as it amounted to re-litigation on the same subject matter, which is pending trial before the City Civil Court in O.S.No.6604/2014.

(iii) The fact of induction of the applicant in 2004 as trustee in the plaintiff Trust is well within the knowledge of Dr.A.C.Muthiah who claims to represent the plaintiff trust if not atleast from the date of the suit filed before the City Civil Court in 2014. Therefore, the filing of the present suit in 2019 is clearly barred by limitation.

(iv) The City Civil Court, Chennai, granted interim injunction restraining the then sole Trustee Dr.M.A.M. Ramasamy, the defendant in the suit from inducting any other trustee in I.A.Nos.17165 and 17166/2014 and O.S.No.6359/2014 dated 08.12.2014 and in the face of such injunction being in operation, the present suit is not maintainable as Dr.A.C.Muthiah has no locus standi to file the suit in the first place on behalf of the plaintiff

Trust.

(v) In the cumulative facts and circumstances, particularly, pendency of O.A.No.6604 of 2014 before the City Civil Court, there is no cause of action for Dr.A.C.Muthiah to file the present suit claiming himself to represent the plaintiff Trust as a Trustee. For all the above said grounds/ reasons, the Suit is to be rejected as not maintainable.

13. Per contra, Mr.R.Srinivas, the learned counsel for the 1st respondent would submit that unless the conditions and the requirements as laid down under Order 7 Rule 1 of C.P.C. are satisfied, particularly, in terms of sub-clause (a) and (d), as per the grounds taken in the rejection application, the plaint cannot be struck off. The learned counsel invited the attention of this Court to the Suit prayer. Apart from declaring the induction of the applicant herein as trustee as illegal, there are other prayers relating to the induction of the 2nd defendant as a trustee and also the 3rd defendant action in executing the lease deed dated 15.04.2016 seeking to represent the plaintiff trust in favour of the applicant herein and also direction to hand over vacant possession of the suit property etc.

14. According to the learned counsel, there cannot be any partial rejection of plaint. Even assuming that in respect of the first prayer, there is

some force in the arguments advanced on behalf of the applicant/plaintiff, the learned counsel would draw the attention of this Court to the averments contained in CRP (PD) No.2812 of 2018. The plaintiff had come to know the claim of the applicant herein as the sole trustee after the demise of Dr.M.A.M.Ramasamy, of the plaintiff Trust only from the averments as contained in the affidavit filed by the applicant herein in the said C.R.P. The C.R.P. was filed in 2018 and after coming to know the malicious claim by the applicant herein, the plaintiff herein was constrained to initiate the suit proceedings immediately in 2019. Therefore, the Suit is not hit by limitation. According to the learned counsel, in any case, the aspect of limitation is a mixed question of fact and law. The limitation issue could be decided only in the final determination of the Suit.

15. Further, the co-option of the 2nd defendant is a fraudulent act on the part of the applicant herein as the date of knowledge was the relevant factor and only in the C.R.P. proceedings which was initiated in 2018, the plaintiff had come to know about the illegal claim of the applicant herein. As regards the pendency of O.S.No.6604/2015, the learned counsel would submit that Section 10 of the C.P.C. read with Article 227 of the Constitution of India confer power on this Court to stay the suit proceedings before the Subordinate Court.

16. In any case, the learned counsel would reiterate that the application of limitation is a mixed question of fact and law which cannot be decided on the basis of the averments in the affidavits alone. When fraud is alleged against the applicant herein, the date of knowledge is the crucial consideration in terms of Article 58 of the Limitation Act. This Court has to necessarily go by the averments in the plaint alone and not on the basis of what is pleaded on behalf of the defendants. The averments in the plaint do not attract the mischief of Order 7 Rule 11 of C.P.C. At all.

17. The learned counsel would rely on the following decisions in support of his contention.

i) ***2006(3) SCC 100 (Mayer (H.K.) Ltd. And others. vs. Owners & Parties, vessel M.V.Fortune Express and others)***. The learned counsel has drawn the attention of this Court to paragraph No.12 which is extracted hereunder.

12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint

cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

The above observation of the Hon'ble Supreme Court reiterated the principle that the plaint cannot be rejected on the basis of the allegation made in the written statement or in the application for rejection of plaint.

(ii) **2018 (11) SCC 780 (Sejal glass Limited vs. Nivalan Merchants Pvt.Ltd.).** The learned counsel has drawn the attention

of this Court to paragraph Nos.4,5, 8 & 9 which are extracted hereunder.

4. It is settled law that the plaint as a whole alone can be rejected under Order 7 Rule 11. In Maqsd Ahmad v. Mathra Datt & Co. [Maqsd Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337 : AIR 1936 Lah 1021] , the High Court held that a note recorded by the trial court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms : (AIR p. 1022 para 4 : SCC OnLine Lah para 4)

“4. ... There is no provision in the Civil Procedure Code for the rejection of a plaint in part, and the note recorded by the trial court does not, therefore, amount to the rejection of the plaint as contemplated in the Civil Procedure Code.”

5. Similarly, in Bansi Lal v. Som Parkash [Bansi Lal v. Som Parkash, AIR 1952 Punj 38] , the High Court held : (AIR p. 39, para 7)

“7. But the real question which arises in this appeal is whether there can be a partial rejection of the plaint. Mr Chiranjiva Lal Aggarwala submits that a plaint can either be rejected as a whole or not at all, and he has relied on a statement of the law given in Mulla's

Civil Procedure Code at p. 612 where it is stated: "This rule (Order 7 Rule 11) does not justify the rejection of any particular portion of a plaint." In support of this statement the learned author has relied on Raghubans Puri v. Jyotis Swarupa [Raghubans Puri v. Jyotis Swarupa, ILR (1906-07) 29 All 325] , Venkata Rangiah Appa Rao v. Secy. of State [Venkata Rangiah Appa Rao v. Secy. of State, 1930 SCC OnLine Mad 123 : ILR 54 Mad 416 : AIR 1931 Mad 175] and Maqsud Ahmad v. Mathra Datt & Co. [Maqsud Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337 : AIR 1936 Lah 1021] In reply to this argument Mr Puri has submitted that it is really five suits which had all been combined in one and therefore in this particular case the rejection of a part was nothing more than rejection of three plaints. But the suit was brought on one plaint and not five suits were brought. The law does not change merely because the plaintiff chooses in one suit to combine several causes of action against several defendants which the law allows him. It still remains one plaint and therefore rejection of the plaint must be as a whole and not as to a part. I am therefore of the opinion that the learned Senior Subordinate Judge was in error in upholding the rejection as to a part and setting aside the rejection in regard to the other part. This appeal which I am treating as a petition for revision must therefore be allowed and the rule made absolute, and I order accordingly."

...

...

8. *We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 CPC against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other defendants. This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order 7 Rule 11. In all such cases, if the plaint survives against certain defendants and/or properties, Order 7 Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.*

9. *If only a portion of the plaint, as opposed to the plaint as a whole is to be struck out, Order 6 Rule 16 CPC would apply. Order 6 Rule 16 states as follows:*

“16. Striking out pleadings.—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.”

It is clear that Order 6 Rule 16 would not apply in the facts of the present case. There is no plea or averment to the effect that, as against the Directors,

pleadings should be struck out on the ground that they are unnecessary, scandalous, frivolous, vexatious or that they may otherwise tend to prejudice, embarrass or delay the fair trial of the suit or that it is otherwise an abuse of the process of the court.

The above decision would support the case of the learned counsel for the respondent/ plaintiff that there cannot be rejection of plaint in part under Order 7 Rule 11 of C.P.C. The learned counsel relied on the ruling only to show that there are prayers, other than declaration of induction of the applicant herein as trustee as illegal and thus, the prayers like induction of the 2nd defendant as trustee in 2015 and the execution of the lease by the 3rd defendant which were not the subject matters of consideration before the pending suit in the City Civil Court.

(iii) 2019(4) SCC 367 (Pawan Kumar vs. Babulal since deceased through legal representatives and others). Learned counsel would draw the attention of this Court to paragraphs Nos.13 and 14 which are extracted hereunder.

13. In the present case, the controversy has arisen in an application under Order 7 Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the plaint, the

question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject-matter of assessment at the stage when application under Order 7 Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not. We may quote the following observations of this Court in Popat and Kotecha Property v. SBI Staff Assn. [Popat and Kotecha Property v. SBI Staff Assn., (2005) 7 SCC 510] : (SCC p. 515, para 10)

“10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.”

14. We, therefore, allow this appeal, set aside the view taken by the courts below and dismiss the application preferred by the second defendant under Order 7 Rule 11 CPC. Since the suit has been pending since 2006, we direct the trial court to expedite the matter and dispose of the pending suit as early as possible and preferably within six months from today. Needless to say that the merits of the matter will be

gone into independently by the trial court.

In the above decision, the Hon'ble Supreme Court has held that the Court must see whether accepting the averments in the plaint the suit is barred by any law or not. Any disputed questions cannot be decided at the time of considering the application filed under Order 7 Rule 11 CPC. The ratio in the case is that ultimately, the Court has to be fully satisfied only from the averments in the plaint, leaving no scope for any doubt.

18. The learned counsel submitted that the averments as contained in the plaint would clearly disclose that there is cause of action and the plea of limitation taken for rejecting the plaint is a disputed question of fact which cannot be decided at this stage. Moreover, as held by the Hon'ble Supreme Court, the plaint cannot be rejected in part in terms of Order 7 Rule 11 of C.P.C. The learned counsel, therefore, submitted that the application for rejection of plaint is devoid of merits and liable to be dismissed.

19. By way of reply, the learned Senior counsel for the applicant Mr.M.S.Krishnan would submit that as far as rejection of plaint in part is concerned, he would once again draw the attention of this Court to the plaint prayers and would submit that if the prayer, namely, declaration that

the applicant herein is not lawfully inducted as trustee of the plaintiff trust is rejected in terms of the pleadings and the legal contentions, the other prayers contained in the plaint would have to go automatically as those are consequential prayers which cannot stand independently. He therefore, submitted that the arguments in this regard on behalf of the plaintiff are misconceived and invalid.

20. Heard the learned Senior, Mr.M.S.Krishnan for the applicant/defendant and the learned counsel Mr.Srinivas, for the 1st respondent/plaintiff, and the learned counsel Mr.R.Ramesh, for the 2nd respondent/defendant.

21. On behalf of the applicant/ 1st defendant several grounds have been urged for rejection of the plaint with the supportive materials and bolstering the submissions with the case laws. The first of the objections which has been strongly advanced is the abuse of process of the Court by the plaintiff herein in the facts and circumstances, pleaded herein.

22. It is an admitted fact that the applicant herein has filed the suit way back in 2014 in O.S.No.6604/2014 before the City civil Court, Chennai. The prayer in the suit is to declare him along with the Late

Dr.M.A.M.Ramasamy, who is the 2nd defendant in the suit as the only trustees of the plaintiff Trust. The effect of the prayer in that suit was to exclude the plaintiff herein from claiming himself as lawfully inducted trustee by the late Dr.M.A.M.Ramasamy. When the very claim of Dr.A.C.Muthiah calling himself as a trustee of the plaintiff Trust, is the core consideration before the City Civil Court in O.S.No.6604/2014, the present suit filed by him is clearly intended to act as a counterblast to the case filed by the applicant herein before the City Civil Court.

23. Further, in the earlier suit in O.S.No.6359 of 2014 which was ultimately dismissed as having become infructuous by this Court on 10.12.2020 in C.R.P.(PD) No.2812/2018, this Court's attention has been drawn to the common order passed by the City Civil Court in I.A.Nos.17165 and 17166 of 2014 dated 08.12.2020. In that order, the learned City Civil Court has made a clear and categoric observation that the so called induction of Dr.A.C.Muthiah as trustee vide letter dated 30.09.1991 was found to be a fabricated document on a prima facie consideration. The Court has further observed that the document was created only for the purpose of the Suit.

24. It is relevant to recall the facts which had impelled the Court

to come to such conclusion. The letter dated 30.09.1991 purported to have been authored by Late Dr.M.A.M. Ramasamy had the address of Chettinad House, describing the City of Madras as 'Chennai' which was factually not correct, as the City of Madras was rechristened as Chennai only in 1996. In fact, there were several other communications which were relied on by the parties during the years from 1991 to 1996, where address of the Chettinad House was described as Madras only. Therefore, the Civil Court, having found more than a *prima facie* case, had granted interim injunction as prayed for in the suit in two above mentioned I.As. As rightly contended by the learned Senior Counsel for the applicant that injunction was in operation till the present suit was filed before this Court as the suit came to be dismissed subsequently only on 10.12.2020. Therefore, the Suit is filed with an oblique motive coupled with malicious view before this Court for achieving a collateral purpose of derailing the proceedings in O.S.No.6604/2014 pending before the City Civil Court, Chennai and preventing the same from reaching finality. .

25. Moreover, the facts as narrated above would indisputably demonstrate that the entire controversy that is sought to be agitated before the City Civil Court in O.S.No.6604 of 2020 is in relation to the occupation of the office of the Trustee of the plaintiff Trust. It is a claim between the

applicant herein versus the first respondent herein. It is needless to mention that the outcome of the suit proceedings before the City Civil Court in O.S.No.6604 of 2014 would ultimately decide as whose case is based on facts and materials and who is the lawfully inducted trustee of the plaintiff Trust. In such scenario, laying of the present suit by Dr.A.C.Muthiah claiming himself to be the trustee is a devious attempt to obstruct the course of justice in the pending suit before the City Civil Court. The filing of the present suit before this Court is a brazen attempt by the plaintiff herein to stymie the proceedings before the City Civil Court and derive unjust and unfair advantage to himself in the process. Therefore, this Court has no hesitation in concluding that the suit laid by the plaintiff is gross abuse of process of the Court and the two judgments relied on by the learned Senior counsel in **1998 (3) SC 573** and **1999 SCC Online 495** could be aptly applied and followed in support of the present decision of this Court.

26. As far as the limitation aspect is concerned, on behalf of the applicant herein, it has been well established beyond any pale of doubt that the respondent/plaintiff has been having knowledge of the applicant's induction as a trustee of the plaintiff trust in 2004. Even assuming that he was not aware of the induction in 2004, when the two suits (O.S.Nos.6359 & 6604 of 2014) were filed in 2014, a clear stand had been taken on behalf

of Dr.A.C.Muthiah himself and also Dr.M.A.M.Ramasamy that the applicant herein had been co-opted in the Trust only after his so called adoption in 1996. The relevant averment contained in the written statement had also been referred to specifically by the learned Senior Counsel for the applicant. In fact, it was pleaded in the written statement by Dr.A.C.Muthiah that the plaintiff therein was acting against the interest of the Trust for his personal benefits which is a clear acknowledgement of the fact that the induction of the applicant herein as trustee of the Trust was to his knowledge. In fact, the written statement appeared to have been filed in February 2015. If that month and year is taken into consideration, the present suit is clearly barred by limitation in regard to the main prayer in the suit.

27. In this regard, the learned counsel for the respondent/ plaintiff urged that in terms of Article 58 of the Limitation Act, the date of knowledge alone is a crucial factor and he referred to averments as contained in the affidavit filed by the applicant herein in C.R.P.No.2812/2018 claiming the date of knowledge from the averment therein. The said submission is demonstrably contrary to records and fact. In fact, even in the earlier suit (O.S.No.6359/2014) which has been dismissed as infructuous by the Court, there was a clear admission on behalf

of Dr.M.A.M. Ramasamy of the induction of the applicant herein as a trustee in paragraph No.8 of the written statement filed on his behalf. When Dr.A.C.Muthiah claims himself to be the Trustee since 1991 cannot feign complete ignorance for all those years about the induction of the applicant herein as a trustee and claim to have come to know of such induction only in 2018. The so called claim of ignorance of over a decade hardly carries any conviction with this Court.

28. From the entirety of the facts that are connected to the lis between the parties, there cannot be any modicum of doubt that the respondent/plaintiff herein is well aware of the trusteeship claim of the applicant herein and if not earlier atleast, from 2014 when the suits were filed and pending before the City Civil Courts. The plaintiff cannot conceal his knowledge only for the purpose of overcoming the aspect of limitation for laying the present suit. In the said circumstances, this Court is of the considered view that the suit is ex facie barred by limitation and therefore, sub-clause (e) of Order 7 Rule 11 of C.P.C. is attracted in this case.

29. As regards the other aspect of non disclosure of cause of action, once again the plaintiff is unable to explain as to what prompted him with any independent cause of action for filing the present suit. Although a

feeble attempt has been made that there are several prayers different from the main prayer seeking declaration of induction as trustee of the applicant herein as illegal, the submissions on this aspect are to be rejected outright as being without any substance. As rightly contended by the learned Senior Counsel for the applicant, if the main prayer is struck off from the relevant portion, mandatorily and consequentially, all other prayers would fall to ground. The so called other prayers if examined as a whole with circumspection, this Court has no hesitation that these prayers cannot independently sustain itself if the first prayer is found to be not maintainable. Therefore, it should be taken that if the rejection of plaint in this case is to be accepted, all the prayers being form part of a single lis which hinged only on the controversy, namely whether the applicant herein was lawfully inducted trustee of the plaintiff Trust or not, would also deemed to be rejected. Further, the subject matter of the lis before this Court indisputably being the same before the City Civil Court in O.S.No.6604/2014, this Court does not find any cause of action for laying the present suit. Therefore, on this ground also, this court finds that the suit is to be rejected in terms of sub-clause (a) of Order 7 Rule 11 C.P.C.

30. In fact, one other ground was also raised by the learned Senior Counsel as to the *locus standi* of Dr.A.C.Muthiah representing the plaintiff

Trust. This Court is entirely in agreement with this contention in this regard for the simple reason that the claim to trusteeship by Dr.A.C.Muthiah itself has come under serious cloud in the proceedings before the City Civil Court in O.S.No.6604/2014. Further, his very induction as trustee on 30.09.1991 itself was adversely commented upon by the City Civil Court in its order in Interlocutory Application dated 08.12.2014 in O.S.No.6359 of 2014. In the teeth of the legal uncertainty as to the claim of trusteeship by Dr.A.C.Muthiah and his right to represent the plaintiff Trust having been shrouded in serious controversy, maintaining the present suit by him claiming to represent the Trust is a crafty attempt to pitchfork himself into the Trust by filing the present suit.

31. There are two aspects to be seen in the present suit being filed by Dr.A.C.Muthiah, one, as on date, he may not have any locus standi to file a suit as contended by the learned Senior Counsel on behalf of the applicant herein. Two, by filing the present suit, he is indirectly trying to achieve what he could not achieve before the pending suit in O.S.No.6604/2014. In fact, by being a plaintiff in the present suit, he is seeking to legitimatise his position as if he was a lawfully inducted trustee representing the Trust before this Court. In the said circumstances, it is a combination of abuse of process of Court and a mischievous attempt to overshadow the lack of locus

standi in maintaining the suit. On both counts, the suit is to be held as not maintainable and liable to be dismissed.

32. In the conspectus of the above judicial discourse, this Court is fully satisfied that the application filed on behalf of the applicant for rejection of plaint is to be allowed. The suit filed by the plaintiff herein is to be dismissed for the detailed reason set forth above.

33. Accordingly, the Application in A.No.6433 of 2019 is allowed. The Suit is dismissed. Consequently, the injunction application in O.A.No.156 of 2019 is closed. No costs.

Sd/- V.P.N.J.
22/09/2021

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)
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