



CRP (PD) NO.382 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24 / 09 / 2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NO.382 OF 2019

AND

CMP NO.2635 OF 2019

1.M.J.Harishkumar
2.C.B.Suriya Narayanan
3.S.Krishnaveni

... Petitioners

Vs.

1.L.Manimozhi Arasan
2.C.Sathisuganya
3.C.B.Chandira Narayanan
4.C.B.Sankara Narayanan

5.The Superintendent of Police
SP Office
Sathuvacheri,
Vellore – 632 009.
(Respondents 2 to 5 are given up)

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.7 of 2019 on the file of the learned Third Additional District Court, Thirupattur.



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For Petitioners : Mr.N.Manokaran

For Respondent-1 : Mr.S.Hussain Afroze

ORDER

The present Civil Revision Petition has been preferred under Article 227 of the Constitution of India to strike off the plaint in O.S.No.7 of 2019 on the file of III Additional District Court, Thirupattur.

2.The plaint was filed for a relief of declaration of Sale Deed dated 01.10.2018 as null and void and for declaration declaring the cancellation of Power of Attorney Deed dated 13.06.2013 as not valid and binding on the plaintiff and for specific performance of the Sale Agreement dated 20.09.2007 pursuant to the Power of Attorney Deed dated 16.06.2005 with regard to the Suit property which is in possession of the plaintiff or in the alternative for refund of the advance amount.

3.The plaintiff is the first respondent. He entered into a Sale Agreement with the sixth defendant / fourth respondent on 20.09.2007. The



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Suit property is a joint family property. It is owned by one C.A.Baskar Babu, his wife and two sons, namely, defendants 2 to 6. They have given a registered Power of Attorney dated 16.06.2005 in favour of the sixth defendant. He entered into a Sale Agreement, as mentioned above, on 20.09.2007. Time was not the essence of the contract. The total sale consideration was fixed as Rs.1 Crore. A sum of Rs.90,00,000/- (Rupees Ninety Lakhs Only) was received as advance by the sixth defendant and after receiving the balance sale consideration of Rs.10,00,000/- the defendants 2 to 6 are bound to execute the Sale Deed in favour of the plaintiff or anybody nominated by him. As per the recitals of the Sale Agreement, the plaintiff was put in possession of the entire Suit property and the original documents bearing Nos.238/1998 and 293/1998 were entrusted to him.

4.By virtue of the Power of Attorney Deed, the sixth defendant sold the property in Plot No.7, which belonged to the second and fifth defendants under registered Sale Deed dated 17.06.2010. Later, on the sentimental value, at the request of the sixth defendant, it was reconveyed for



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good and valid consideration to the sixth defendant by registered Sale Deed dated 25.10.2013. The Sale Deeds dated 17.06.2010 and 25.10.2013 are valid, true and binding on all concerned.

5.The plaintiff was demanding the sixth defendant to execute the Sale Deed in his favour after receiving the balance sale consideration in respect of the Suit property. In the meanwhile, one of the Principals namely, C.A.Baskar Babu died on 02.02.2012 and the sixth defendant extended the time for execution of the Sale Deed due to the death of C.A.Baskar Babu. The plaintiff learnt that the defendants 2, 4 and 5 along with 6th defendant, are more interested to defeat, delay and defraud the plaintiff without executing the Sale Deed and were trying to encumber the Suit property. Hence, the plaintiff issued a legal notice dated 17.02.2018 to the defendants 2, 4, 5 and 6 and it was replied by them on 06.03.2018 with an averment that the Power of Attorney Deed was cancelled on 13.06.2013. The plaintiff came to know of the fact only through the reply notice dated 06.03.2018. The said cancellation of Power of Attorney Deed is not valid and true and the same



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will not bind the plaintiff. Before issuance of the legal notice dated 15.10.2018, the plaintiff learnt that the defendants 2 and 3 have executed the Sale Deed dated 01.10.2018 in favour of the first defendant and the Sale Deed is not valid and binding on the plaintiff.

6.The second defendant executed a Settlement Deed in favour of the third respondent in respect of the Suit property which is also not valid. The original documents of the Suit property, namely, Document Nos.234/1998 and 293/1998 are in the custody of the plaintiff and the possession and enjoyment of the Suit property is also with him and therefore, the alleged Sale Deed dated 01.10.2018 will not give possession to the first defendant. Therefore, the recitals of the Sale Deed are false and thus, the Sale Deed is not valid, true and binding on the plaintiff. The legal notice issued by the defendants with false allegations are not tenable. From the date of demand i.e., on 17.02.2018, the defendants have failed to perform their part of the contract and further, they have cheated and defrauded the plaintiff from performing his part of contract. Therefore, the Suit has been filed in



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time and there is cause of action to sue against the defendants as time runs from 17.02.2018 onwards. Hence, the plaintiff filed the Suit for the above said relief.

7.The defendants 1 to 3 have preferred the above Civil Revision Petition on the grounds that the Suit is barred by limitation and it does not conform to the requirements of Order VII Rule 6 CPC. Further, the plaintiff failed to plead his readiness and willingness in compliance with Form 47 of Appendix “A” of Order VI Rule 6 CPC and the challenge as to the three registered documents are not in conformity with Order VI Rule 4 CPC. The pleadings of misrepresentation, fraud and undue influence, breach of trust, wilful default, are not supported by specific pleadings. Further, the plaintiff has suppressed and withheld the material documents, which amounts to playing fraud on the Court. In spite of disclosure of the factum of the transactions, there is no specific pleadings. Further, during the exchange of notices, the defendants have sought for the alleged Sale Agreement dated 20.09.2007, but it was not produced before the defendants. The Suit is bad



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for undervaluation also. The defendants would claim that the Suit is a clear abuse of process of law for getting a spurious claim and it is frivolous in nature. Therefore, it is liable to be struck off. In support of their contention, the defendants relied on various judgments of the Hon'ble Supreme Court as well as this Court.

8.It is true to state that the averments in the plaint are germane for consideration to strike off and for rejection of the same. It is also true to state that Article 227 of the Constitution of India shall be sparingly exercised and the parties shall be directed to avail the remedy of filing an application under Order VII Rule 11 CPC for rejection of plaint.

9.The learned counsel for the first respondent would contend that the defendants shall first avail the remedy under Order VII Rule 11 CPC for rejection of plaint and thereafter only, they can approach this Court. In support of his contention, he would rely on the following judgments: -



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(i) Judgment of the Hon'ble Supreme Court in ***CHHOTANBEN AND ANOTHER VS. KIRITBHAI JALKRUSHNABHAI THAKKAR AND OTHERS*** [2018 (4) CTC (SC) 206]

(ii) Judgment of this Court in ***A.R.SURESH AND ANOTHER VS. TEK SMARK GROUP REP. BY ITS SOLE PROPRIETOR AND ANOTHER*** [2016 (4) MLJ 674]

(iii) Judgment of this Court in ***C.JAWAHAR APPASAMY VS. A.VANCHI CHIDAMBARA BHARATHI*** [2018 (1) MWN (CIVIL) 745]

(iv) Judgment of this Court in ***T.K.CHITHIRAN AND ANOTHER VS. C.SAMSARI @ CHITHIRAN*** [2015 (3) CTC 485]

10.From the perusal of the plaint, it is seen that, at the outset, the entire claim is based on the Sale Agreement dated 20.09.2007. The said agreement is an unregistered Sale Agreement. The sixth defendant has



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executed the Sale Agreement in favour of the plaintiff. The sixth defendant was appointed as a Power of Attorney vide registered Document No.198/2005 on 16.06.2005. There is no doubt that the said document was executed on 16.06.2005 by all the family members for sale of the properties belonging to them. But the said unregistered Sale Agreement fixes the value of the property as Rs.1 Crores. Out of this amount, a sum of Rs.90,00,000/- (Rupees Ninety Lakhs Only) is said to have been received as advance. But, it is a matter for trial. However, the recitals in the Sale Agreement specified that whenever the balance sale consideration of Rs.10,00,000/- is paid and whenever the purchaser calls the vendor to execute the sale deed, the second party, namely, the sixth defendant shall come and register the Sale Deed. Further, the possession of the property was entrusted with the defendants along with the original Title Deeds, namely, Document Nos.238/1998 and 293/1998. From the above, it is seen that the possession was handed over on the date of agreement, and the original Title Deeds were entrusted to the plaintiff. But the original Title Deeds are not shown as plaint documents.



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11. Now that, it has to be seen as to whether the Suit is within the limitation period. It is stated that Rs.90,00,000/- was paid in respect of an unregistered Sale Agreement, without any receipts and without any details of mode of payment. Even assuming that the said payment was made, there shall be specific averments with regard to the same.

12. Be that as it may, now that the Sale Agreement dated 20.09.2007 is sought to be performed before the death of one of the Principals, namely, C.A.Baskar Babu, in the year 2012. After that, next demand was made only on 17.02.2018 by way of a legal notice.

13. The Hon'ble Supreme Court in its judgment in ***VEERAYEE AMMAL VS. SEENI AMMAL [2002 (1) SCC 134]*** has observed as under:

“12. In K.S. Vidyanadam & Ors. v. Vairavan [1997 (3) SCC 1] this Court held:

“Even where time is not of the essence of the contract, the plaintiffs must perform his part of the



contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property."

13.The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means as soon as circumstances permit. In Law Lexicon it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary



circumstances; as soon as circumstance will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

14.This Court in ***SURYAGANDHI VS. LOURDUSWAMY*** [2002 (3) ***MLJ*** 788] has observed as under:

"24. Assuming for the purpose of argument that the defendant has not produced the original document of title and encumbrance certificate, which is not an impossibility, there is no reason at all for the plaintiff to keep quiet for nearly Nine years and thereafter make a demand under Ex.A.13. The assumption on the part of the appellate court that for nine years and till a demand is made the contract is kept alive and the limitation to institute a suit commences



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only after a demand is made after 8 years 10 months and the limitation has to be reckoned from the date of demand viz., Ex.A.13, is legally unsustainable. If such a view is taken the purchaser could wait or keep silent or even more for Ten years to make a demand and thereafter it could be contended that the suit claim is not barred by limitation or the purchaser is entitled to seek for specific performance. On the facts the view taken by the first appellate court is unsustainable in law and it is a clear misconception of the legal position.

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27. One another aspect the learned counsel for the defendant highlighted is that the plaintiff has not acted within a reasonable time and Nine years and above is not a reasonable time at all for the plaintiff to awake from the deep sleep and demand for sale. In Vidyanandam vs. Vairavan, the Apex Court has laid down thus:-

"Even where time is not of the essence of the contract, the plaintiff must perform his part of the contract



within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property."

28. In Veerayee Ammal Vs. Seeni Ammal, reported in 2002(1) SCC 136, while examining the word "reasonable" in the context of specific performance of sale agreement, the Apex Court held thus:-

13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In



P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

29. On the facts of the case by all standards, it cannot be said that the plaintiff has acted reasonably. Nine years and odd is not a reasonable time at all by all standards and the plaintiff has to blame himself in keeping quiet for nine years and thereafter issuing a notice. Further, there is nothing to show that the plaintiff has kept the contract alive for nine years except his assertion that he is in possession of the suit property. The possession of the plaintiff is not in terms of the agreement to sell, nor it is in



part performance, but possession is that of a tenant, which commenced long prior to the sale agreement, the plea of part performance is untrue and false.

In the instant case, there was a delay of about nine months between the last extended time and the notice given by the plaintiff to the defendant calling upon the latter to execute a sale deed. There was no correspondence during this period between the plaintiff and the defendant with regard to extension of time for completion of the contract and there is nothing to show that anything was done by the plaintiff to keep alive the agreement of sale. In the above circumstances, the principles laid down in the above case would apply to the facts of this case and from the considerable delay and laches on the part of the plaintiff, we can easily infer that there was a waiver or abandonment of the contract."

36. Concedingly the plaintiff has not offered to pay the balance of sale price within six months or closely following thereafter or within three years from the date of the agreement or the date fixed for performance, but he kept



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quiet for nine long years and made a demand and therefore it has to be held that the plaintiff has not only failed to keep the contract alive, but also failed to perform his part of the contract. After having kept quiet for nine long years, it is not open to the plaintiff to blame the defendant that the defendant has not performed his part of the contract. The first appellate court proceeded on the question of limitation as if the limitation starts to run only from the time when the plaintiff issued a notice and the defendant has refused to perform or complete the sale. This view cannot be sustained and the lower appellate court has misread [Art.54](#) of the Limitation Act. [Art.54](#) of The Limitation Act reads thus:-

“description of suits Period of limitation Time from which period begins to run For specific performance of a contract Three years The date fixed for the performance, or, if no such date is fixed, when the plaintiff has noticed that performance is refused.”

37.In this case the date has been fixed for performance, namely six months and assuming that three



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years has to be reckoned from the date of the agreement even then the suit instituted after nine years is barred by limitation. The construction placed on [Art.54](#) by the Lower appellate court cannot be sustained in law.

15. In the instant case, the plaintiff entered into a Sale Agreement on 20.09.2007. He avers that he demanded performance of the contract in the year 2012 itself before the death of one of the Principals namely C.A. Baskar Babu, who died on 02.02.2012. Even before that, the plaintiff and the sixth defendant have entered into a sale transaction. On 17.06.2010, the sixth defendant sold the property belonging to the defendants 2 and 5. In that event, there is no explanation as to why the remaining properties were not registered. Curiously, after the execution of the said Sale Deed dated 17.06.2010, one of the Principals died on 02.02.2012 and on 13.06.2013, the registered Power of Attorney Deed vide document No.198/2005 was cancelled vide Document No.6479/2013. The recitals in the Cancellation Deed specifically mentioned that the Power of Attorney was informed of the cancellation.



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16.The crucial point is that after the said cancellation of Power of Attorney Deed, the plaintiff executed a registered Sale Deed dated 25.10.2013, conveying the very same property in Plot No.7 to the sixth defendant for valid consideration. There is no specific averments with regard to the payment of sale consideration to the transaction while a sum of Rs.90,00,000/- was paid to the Power of Attorney by virtue of the unregistered Sale Agreement. It is more crucial to note that during the sale transaction dated 25.10.2013, the said Power of Attorney Deed was already cancelled. Of course, for registering a property in favour of the sixth defendant, who is the Power of Attorney, the subsistence of power is not material. But what is material is that the encumbrance with regard to the property entered in the registers of the Sub Registrar. There is no specific explanation or averments as required under Order III Rule 6 CPC.

17.The plaintiff cannot plead ignorance of the fact and simply say that he made a demand on 17.02.2018 by virtue of a legal notice and came to know of the fact that the property was sold, by virtue of the reply



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notice dated 06.03.2018. Only by the reply notice, he came to know of the cancellation of Power of Attorney Deed. It is well settled that the agreement holder shall prove his readiness and willingness on day-to-day basis and that the delay had not occurred due to his fault. But, in fact, there were other transactions. The second defendant had settled the property by virtue of a registered Settlement Deed bearing No.1219/2017 dated 28.09.2017. There is no specific averment as to the registration of the Settlement Deed and the knowledge of the plaintiff.

18. Whenever a litigant approaches the Court, he shall plead and prove the facts. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. But in the instant case, in order to prove that the Suit is well within the limitation period, the plaintiff has not pleaded the necessary facts, which will enable him to obtain a decree. In that view of the matter, the plaint filed after a period of 11 years is hopelessly barred by limitation.



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19. A Division Bench of this Court in

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DR.L.RAMACHANDRAN VS. K.RAMESH AND OTHERS [2015 (5) CTC

629] has observed 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. “

20. In so far as the pleadings with regard to the exemption of limitation is concerned, as contended by the learned counsel for the petitioners, the plaintiff is bound to plead the grounds of exemption from limitation. Order VII Rule 6 of the Code of Civil Procedure mandates that where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the grounds upon which exemption from such law is claimed.

21. In the instant case, the plaintiff simply makes an averment that from the date of demand on 17.02.2008 and from the date of his knowledge viz., 06.03.2018, the Suit is in time. There is no explanation as to why the limitation shall not be calculated from the date of agreement.



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22.As per the judgment of this Court ***SURYAGANDHI's case*** (*cited supra*) the plaintiff is expected to act within a reasonable time. A period of eleven years is not a reasonable time at all for the plaintiff to awake from the deep sleep and made a demand, particularly, when he was in continuous touch with the Power of Attorney, namely, the sixth defendant and had transactions, with whom he had other sale transactions. Therefore, the Suit is hopelessly barred by limitation.

23.In respect of cause of action is concerned, the plaint shall disclose the cause of action for each prayer. The cause of action is a bundle of facts, which taken with the right applicable to them gives the plaintiff the right to relief against the defendants. The plaintiff in the present case has simply pleaded as follows:

“Since the 2nd defendant has settled the suit property in favour of the 3rd defendant by way of registered settlement deed and by virtue of the same, the defendants 2 and 3 had executed sale deed in favour of the



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1st defendant in respect of the suit property. The alleged settlement was created in order to defeat, delay and defraud the plaintiff from enforcing the sale agreement. Hence the alleged settlement deed is not valid and true and same is not binding on the plaintiff.”

But, in the cause of action, the execution of Settlement Deed was not raised giving rise to the filing of the Suit.

24.It is well settled that if on an entire and meaningful reading of the plaint, it is found that the Suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the Court is empowered to terminate the civil action at the threshold. Order VI Rule 4 CPC mandates that in a case of fraud, breach of trust, wilful default, shall be pleaded specifically.

25.It is relevant to note that in the judgment of the Hon'ble Supreme Court in **CANARA BANK VS. P.SELATHAL AND OTHERS** [2020 (2) MLJ 591 (SC)] it is observed as under:



“7.3. In the case of T. Arivandandam (supra), while considering the very same provision i.e. Order 7 Rule 11 of the CPC and the decree of the trial Court in considering such application, this Court in para 5 has observed and held as under:

“5. 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 complaints. The learned Munsif must remember that if on a meaningful – not formal – reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC 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 10, CPC. An activist Judge is the answer to irresponsible law suits....”

7.4. In the case of [Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust](#) (2012) 8 SCC 706, this Court in paras 13 has observed and held as under:

“13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue.”

7.5. In [A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem](#) (supra), this Court explained the meaning of “cause of action” as follows:



“12..... It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which is not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

7.6. In the case of Sopan Sukhdeo Sable (supra) in paras 11 and 12, this Court has observed as under:

“11.....

12. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam (supra).”

7.7. In the case of Madanuri Sri Rama Chandra Murthy (supra), this Court has observed and held as under:



“7. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case.”

7.8. In the case of [Ram Singh v. Gram Panchayat Mehal Kalan](#) (1986) 4 SCC 364, this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.



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9. Relying upon and following the decision of this Court in the case of O.C. Krishnan and others (*supra*), thereafter the Division Bench of the Madras High Court in the case of M/s Cambridge Solutions Limited (*supra*), has rejected the plaint in which the order passed by the DRT was challenged, in exercise of powers under Order 7 Rule 11 (d) of the CPC. It is required to be noted that in the said case also there were allegations of fraud in the plaint and considering the averments in the plaint, it was found that the allegations of fraud are illusory. It is observed by the Division Bench in the said decision that specific instances and acts of fraud with evidence have to be pleaded in the plaint. It is further observed that mere statements are not enough. It is further observed that it is not sufficient if just fraud is pleaded and there must be material to show that the fraud is committed.”

26. The First Bench of this Court in **CAMBRIDGE SOLUTIONS LIMITED VS. GLOBAL SOFTWARE LIMITED AND OTHERS [2017 (1) CTC 497]** relied on a judgment of the Orissa High Court



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in **PADMA BEWA VS. KRUPASINDHU BISWAL AND OTHERS [AIR 1986 ORI. 97]**
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The relevant portion of the said judgment reads as under:

“15. In Padma Bewa v. Krupasindhu Biswal and others, AIR 1986 Ori. 97, it has been held as under:

“6. A plea of fraud is to be raised in the pleadings by giving the particulars thereof as required under Order 6, Rule 4 of Civil P. C. Pleadings should be concise, but they should also be precise. When fraud is charged against a defendant, it is an acknowledged rule of pleading that the plaintiff must set forth the particulars of the fraud which is alleged. It is not enough to use such general words as 'fraud', 'deceit' or 'machinations'. The circumstances on which a plea of fraud is raised must be incompatible with the hypothesis of good faith.

7. When misrepresentations are alleged, the party pleading them should state as to each misrepresentation, its date and whether it was made in writing or verbal and as to each verbal misrepresentation, the occasion thereof. While it is true that 'undue influence', 'fraud' and 'misrepresentation'



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are cognate vices and may, in part, overlap in some cases, they are in law distinct categories and are in view of Order 6, Rule 4, read with Order 6, Rule 2 of Civil P. C. required to be separately pleaded, with specificity, particularity and precision. (See AIR 1976 SC 163 [Afsar Shaiikh v. Soleman Bibi](#)).

27. Further, the First Bench in **Cambridge Solutions's case** (*cited supra*) has also relied on a judgment of the Hon'ble Supreme Court in **T.ARIVANANDAM VS. SATYAPAL [AIR 1977 SC 2421]** and observed as under:

*“21. This court, after careful perusal of the plaint, feels that the averments regarding fraud and collusion are non-existent and have been made only to sustain the suit. Procedural irregularities by the tribunal not affecting the parties concerned cannot amount to fraud. The Honourable Supreme Court in its decision reported in AIR 1977 SC 2421 (**T.Arivanandam Vs. Satyapal**) has held as follows:-*



“5. 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 complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII R.11 C.P.C. taking care to see that 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. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The [Penal Code](#) (Ch. XI) is also resourceful enough to meet such men, and must be triggered



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against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."

22. It is very clear from the above judgment that it is the duty of every trial court to carefully analyze whether the cause of action pleaded in the averments in the plaint is real or fictitious. In case, it is found to be surreal, the plaint must be rejected at the thresh hold with costs.

28. In the present case, even though the plaintiff alleged the acts of fraud, misrepresentation, breach of trust etc., there is no specific details to prove the same in compliance with Order VI Rule 4 CPC. On the other hand, the plaint averments discloses that the original Title Deeds, namely, Document No.238/1998 and 293/1998 were entrusted to him. In the plaint Document No.6 - Settlement Deed executed by the second defendant in favour of the third defendant dated 28.09.2017, it is categorically mentioned that it is a self earned property of the second defendant and it is in exclusive possession and enjoyment of him and the patta also stands in his name and



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that he settled it in favour of the third defendant. Further, the factum that the property originally purchased by the second defendant in his individual capacity and it is his separate property is substantiated by plaint Document Nos.8 and 9, the reply notice dated 06.03.2018 and the registered sale deed dated 01.10.2018. In spite of the same, the plaintiff pleads that it is a joint family property.

29.As noted above, the plaintiff shall plead every fact necessary for the plaint and to prove them so as to enable him to obtain a decree. But the plaint is silent in the aspect of pleading that as to how he was put in possession and what are the materials to prove his possession and as to how the property is a joint family property.

30.The Hon'ble Supreme Court in ***POPAT AND KOTECHA PROPERTY VS. SBI STAFF ASSOCIATION [2005 (7) SCC 510]*** has observed as under:

"22. There is distinction between "material facts"



and "particulars". The words "material facts" show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between "material facts" and "particulars" was brought by Scott, L.J. in Bruce v. Odhams Press Ltd.

23. Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule



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*11 does not preclude the plaintiffs from presenting a fresh
plaint in terms of Rule 13."*

31.As per the above judgment, omission of a single material fact leads to an incomplete cause of action and the statement in the plaint becomes bad. It is necessary to provide the complete material facts. Mere giving a statement or a particular that it is a joint family property is not enough, but it should contain the material facts as to how it is a joint family property and that how it gives rise to cause of action. Furthermore, as pleaded that the original documents are handed over to him vide Document Nos.238/1998 and 293/1998, those documents were not produced before the Court along with the plaint.

32.It is well settled that withholding of a vital document in order to gain advantage, would amount to playing fraud on the Court and the plaintiff would be guilty of playing fraud on the Court and on the opposite party.

33.In the instant case, even though a specific reply was given to



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the legal notice that the properties are separate properties of the second defendant and the original document would reveal the same, in order to sustain the pleading that it is a joint family property and in order to get undue advantage with the strength of the agreement for sale, the plaintiff has withheld those documents, which amounts to playing fraud on the Court.

34.This Court in ***RAMIAH ASARI VS. TMT.KURSHAD BEGAUM AND ANOTHER [1999 (1) CTC 600]*** relying on a judgment of the Hon'ble Supreme Court in ***K.K.MODI VS. K.N.MODI [1998 (3) SCC 573]*** has observed as under”:

“17. Honourable Supreme Court in a recent decision reported in [K.K. Modi v. K.N. Modi](#), , had occasion to consider this question. In paragraph 44 of the Judgment, their Lordships held thus,

“..... 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 courts 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," (Italics supplied)

.....

18. Taking into consideration above decision, I feel it is a fit case where the said power should be invoked. On going by the averments of plaint, I am satisfied that there is no chance of plaintiff succeeding in the suit and the claim is made only for collateral purpose or it is only a spurious claim. It is of frivolous nature and to prevent the time of public and court being wasted, suit should not be



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allowed to be proceeded with. Improper use of machinery of court also should not be allowed to be continued for the continued prosecution of this vexatious litigation. Interest of Justice being paramount consideration, I feel it is the fit case that the plaint is to be struck off the file.”

Thus, the plaint averments on the allegations of fraud, does not disclose any cause of action and in fact, creates illusory cause of action and thereby, vexatious and *malafide* averments are made to overcome the law of limitation. In view of the above judgment in ***K.K.Modi's case (cited supra)*** the plain is liable to be struck off.

35.In yet another judgment of this Court in ***TAMIL NADU HANDLOOM WEAVERS' CO-OPERATIVE SOCIETY VS. S.R.EJAZ [2009 (5) CTC 710]*** the learned Judge has explained the extent of supervisory jurisdiction relying on the judgment of the Hon'ble Supreme Court and the relevant paragraph reads as under:

“49.In Kishore Kumar Khaitan v. Praveen Kumar



Singh, 2006(2) SCALE 304 = (2006) 3 SCC 312) the Supreme Court indicated the extent of jurisdiction under *Article 227* of the Constitution of India thus:

"13. The jurisdiction under *Article 227* of the Constitution may be restrictive in the sense that it is to be invoked only to correct errors of jurisdiction. But when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact, the said finding of fact cannot be said to be one rendered with jurisdiction and it will still be amenable to correction at the hands of the High Court under *Article 227* of the Constitution. The failure to render the necessary findings to support its order would also be a jurisdictional error liable to correction."

(Emphasis supplied)

50. The Supreme Court in *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675, considered the nature of jurisdiction under *Article 227* of the Constitution of India and held thus :

"22. ... It is well settled that the power of superintendence so conferred on the High Court is



administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under [Article 227](#) is wider than the one conferred on the High Court by [Article 226](#) in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

25. ... In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its



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own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under [Article 226](#) of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.”

36.It is well settled that in a Suit for specific performance as per Section 16(c) of the Specific Relief Act, 1963, a person shall aver and prove that he has always been ready and willing to perform the essential terms of contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant. In fact, the readiness and willingness shall be proved on day today basis.

37.In the instant case, the plaintiff is said to have paid a sum of Rs.90,00,000/- out of the total sale consideration of Rs.1 Crore. The balance amount to be paid is only Rs.10,00,000/- which is a very small sum when compared to the total sale consideration.



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38.In the judgment of the Hon'ble Supreme Court in ***PADMAKUMARI AND OTHERS VS. DASAYYAN AND OTHERS [2015 (8) SCC 695]*** it is observed as under:

"11. Another ground urged by learned counsel for defendant Nos. 12 to 15 is that the pleadings on behalf of the plaintiff must be strictly in conformity with Order 6 Rule 3 of the Code of Civil Procedure ("CPC" for short) which provides Form of pleadings and placed strong reliance upon Clause 3 of Form No. 47 in Appendix 'A' which reads thus:

"The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice".

12. The learned counsel further places reliance upon the plaint averments at para 6, which is quoted hereinafter, submitted that the said averments are not strictly in conformity with Order 6 Rule 3 CPC of Form 47 of the



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aforesaid clause, therefore, the plaintiff has not shown readiness and willingness which is the condition precedent as required under [Section 16\(c\)](#) of the Specific Relief Act, that has been ignored by both the Courts below, therefore, the concurrent finding recorded by the High Court in the absence of this important aspect of the case has not only rendered the finding erroneous in law but the same are contrary to the judgments of this Court. Learned counsel placed strong reliance upon the following judgments in the cases of [Jugraj Singh & Anr. vs. Labh Singh & Ors.](#), (1995) 2 SCC 31 at para 6, [Ram Awadh vs. Achhaibar Dubey](#), (2000) 2 SCC 428, [Ouseph Varghese vs. Joseph Aley & Ors.](#), (1969) 2 SCC 539, [Abdul Khader Rowther vs. P.K. Sara Bai & Ors.](#), (1989) 4 SCC 313, [Pushparani S. Sundaram & Ors. vs. Pauline Manomani James \(D\) & Ors.](#), (2002) 9 SCC 582, [Manju Nath Anandappa Urf Shrivappa Hansai vs. Tammanasa & Ors.](#), (2003) 10 SCC 390 paras 15, 17 and 18”.

As per the above judgment, it is very clear that the plaint averments does not conform to the mandates of Order VI Rule 3 CPC and Form 47 provided in



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Annexure “A” in the schedule.

39. In the absence of pleading with regard to the readiness and willingness and also withholding of the material facts and material documents, would render the plaint bad for no cause of action, time barred, non compliance of the mandatory requirements of law and barred by limitation and barred by law, as held by His Lordship Justice V.R.Krishna Iyer in ***T.ARIVANANDAM VS. T.V.SATYAPAL AND ANOTHER [1977 (4) SCC 467]***. Para 5 of the said judgment reads as under:

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently 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



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formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that 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. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The [Penal Code](#) (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good."

40. In the considered opinion of this Court, the present case on hand is absolutely clear abuse of process of law and accordingly, the plaint in



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O.S.No.7 of 2019 on the file of III Additional District Court, Thirupattur is

struck off and the Civil Revision Petition stands allowed. No costs.

Consequently, connected civil miscellaneous petition is closed.

24 / 09 / 2021

Index : Yes/No

Internet : Yes/No

Speaking / Non-speaking order

TK

To

The Third Additional District Judge

Third Additional District Court

Thirupattur.



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M. GOVINDARAJ, J.

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