

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(NPD) No.1563 of 2012

and

M.P.No.1 of 2012

Chandra @ Savithri
W/o. Late P.G.Gopal

..Petitioner/Petitioner/1st Defendant

Vs

1.Parvathi (Deceased)

...Respondent/Respondent/Plaintiff

2. The Director
Stationary & Printing Department
Annasalai, Chennai- 2

3.The Works Manager
Govt. Central Press
chennai – 600 079

4.Pension and Pay Officer
College Road
E.V.K.Sampath Buildings, Chennai – 600 006.

... Respondents/Respondents/Defendants

5.G.Balasubramanian S/o.Late P.G.Gopal

6. G.Krishnan S/o.Late P.G.Gopal

...Respondents

**(RR5 & 6 brought on records as Lrs of deceased 1st respondent
vide order of Court dated 13.09.2017 by VMVJ made in
CMP No.14544/2017 to 14546/2017 in CRP No.1563 of 2012)**

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India seeking to set aside the fair and decreetal order passed by the learned I Additional Family Court Judge, Chennai, in I.A.No.889 of 2011 in O.S.No.194 of 2010 dated 01.03.2012.

For Petitioner : Mr.G.Ilamurugu

Respondent-1 : Died

For Respondent 2 to 4 : NA

For Respondents 5 and 6 : Mr.R.Manoharan (NA)

ORDER

(This case has been heard through video conference)

The revision has been filed against the fair and decreetal order passed in I.A.No.889 of 2011 in O.S.No.194 of 2010 dated 01.03.2012 on the file of the I Additional Family Court, Chennai, dismissing the petition filled under Order VII Rule 11 C.P.C seeking to reject the plaint.

2. The brief facts of the case:

The revision petitioner is the 1st defendant in the original suit. The 1st respondent/plaintiff had filed O.S.No.194 of 2010 against the revision petitioner and three other defendants with a prayer to set aside the decree of divorce dissolving the marriage of the plaintiff with

Late.P.G.Gopal, passed in O.P.No.75 of 1981 dated 30th July 1981 on the file of the VI Assistant Judge, City Civil Court, Madras, and to declare the marriage of the revision petitioner / 1st defendant with the deceased Late.P.G.Gopal as illegal and subsequently to direct the 2nd and 3rd defendants to sanction 50% of the eligible family pension of the deceased P.G.Gopal to the 1st respondent/plaintiff from 01.11.2009 without cost.

3. It is the case of the plaintiff that she is the legally wedded wife of Late.P.G.Gopal and their marriage was solemnized on 08.06.1960 at Pattipulam Village, Tirupporur, as per Hindu Rites and Customs and that they have got two children out of the marriage. It is the further case of the plaintiff that the deceased P.G.Gopal was employed as a Compositor in the Government Central Press, Department of Stationery and Printing, Mint Building, Chennai-79, and retired on 31.05.1991 and he died on 16.03.2006. The plaintiff claimed that she is 100% illiterate and she was informed about the death of her husband only after his cremation by the 1st defendant. Thereafter, she was very much shocked, disappointed and mentally inactive. Subsequently, when she recovered, she approached the Government authorities for sanction of family pension of her late husband P.G.Gopal in the year 2009 and it was informed that the family pension has already been

sanctioned to the 1st defendant and that the said Late P.G.Gopal had already got a decree of divorce against the plaintiff by an exparte order dated 30.07.1981 vide O.P.No.75 of 1981 on the file of the VI Assistant Judge, City Civil Court, Madras. It is the further case of the plaintiff that the said decree of divorce had been obtained on the ground of desertion by playing fraud when the said Late.P.G.Gopal was living with her in the same house. Even after the decree of divorce, her husband Late P.G.Gopal was living with her and that the decree was not given effect to till his death. It is her further case that she was aware of the illegal relationship between her husband and the 1st defendant, but she did not know that her husband had married the 1st defendant subsequent to the decree of divorce. Further it had been averred that the decree of divorce could have been obtained for two reasons viz. 1) On the insistence of the 1st defendant to receive the retirement / death benefits of Late P.G.Gopal, 2) to save his skin from the departmental disciplinary proceeding for bigamy. It is her further case that the 1st defendant was fully aware of the entire divorce proceedings and she was a party to the fraud and cheating played on the life of the plaintiff. It is further averred that when the plaintiff made a hue and cry on the information that the 1st defendant was drawing the family pension of Late. P.G.Gopal, the 1st defendant had offered her 50% of the eligible family pension of P.G.Gopal to

silence her and had sent Rs.1000/- every month through money order. This fact has also been admitted by the 1st defendant through her lawyer's reply dated 18.11.2009 and this payment was stopped subsequently. Further the plaintiff had claimed that her husband P.G.Gopal had nominated the 1st defendant to receive the family pension taking advantage of the decree of divorce which was obtained by fraud. The plaintiff claimed that the nomination is invalid, illegal and liable to be set aside. It is further averred that as per Rule 49(7)(a)(1) of the Tamil Nadu Pension Rules, if there are more than one wife of the deceased Government Servant, then the family pension shall be paid to them in equal share and that the decree of dissolution of marriage obtained by fraudulent means is not a bar to the suit since "wife" includes a woman who has been divorced by her husband and remains unmarried and such divorced woman continuous to enjoy the status of claiming maintenance under Section 125 Cr.P.C. The plaintiff had averred that the cause of action arose when the deceased P.G.Gopal obtained a decree of divorce against her on 30.07.1981. The plaintiff's husband expired on 16.03.2006, thereafter, the 1st defendant was receiving the entire family pension of her husband and was paying Rs.1000/- as maintenance to the plaintiff and after sometime that is during November 2009, she had stopped paying the said sum of Rs.1,000/- and refused to come for any settlement

regarding the money obtained through family pension of the deceased Government servant / husband. The plaintiff had further averred that the 1st defendant had paid Rs.1000/- till October 2009 and stopped payment thereafter and since no limitation is prescribed under Section 125 Cr.P.C. to claim maintenance, the suit filed is not barred by limitation. In the suit the plaintiff had also filed I.A.No.3152 of 2010 seeking for injunction restraining the other respondents / employees of her late husband and not to disburse the pension benefits of the 1st defendant. In I.A. 3152 of 2010, the employers of the plaintiff's husband had stated that P.G.Gopal was employed as a Compositor in the Government Central Press, Department of Stationery and Printing, Mint Building, Chennai-79, retired from the service on 31.05.1991 and was receiving pension and that he had divorced his wife, the plaintiff by order dated 30.07.1981 in O.P.No.75 of 1981 before the VI Assistant City Civil Court, Madras, and subsequently married the 1st defendant Tmt.Chandra @ Savithri and had nominated his second wife Tmt. Chandra @ Savithri for receiving all his terminal benefits. The said P.G.Gopal died on 16.03.2006 after his retirement and thereby, the family pension was given to the said Chandra @ Savithri, the 2nd wife of P.G.Gopal as per his nomination and the terminal benefits including family pension have already been settled and that they don't have any remarks in respect of

making payment of 50% of the pension to the plaintiff. Thereafter, the revision petitioner / 1st defendant filed a petition in I.A.No.889 of 2011 under Order VII Rule 11 Cr.P.C. seeking to reject the plaint filed by the 1st respondent / plaintiff. The trial Court by order dated 01.03.2012 dismissed the petition against which the revision has been filed.

4. During the pendency of the revision, the first respondent/plaintiff had died and thereby her legal heirs have been impleaded in the revision petition as respondents 5 and 6. The respondents 2 and 3 are employers of late P.G.Gopal and the fourth respondent is the pension and pay officer and thereby the respondents 2 to 4 are formal parties. No representation for the respondents 2 to 4. The respondents 5 and 6 are legal heirs of the deceased/ first respondent. Mr. Manoharan, Advocate had entered appearance and there is no representation, despite the case being listed on several occasions.

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5. The learned counsel for the petitioner would submit that the revision petitioner is the first defendant in O.S.No.194 of 2010 filed by the respondent/plaintiff. The suit had been filed to set aside the decree of divorce in HMOP No.75 of 1981 dated 30.07.1981 by the VI Assistant City Civil

Court, Chennai claiming that the decree of divorce was obtained by fraud. The entire allegations of fraud are only made against the late husband of the plaintiff. Admittedly the revision petitioner was not party to the proceedings in HMOP. No.75 of 1981 and thereby there is no cause of action or allegation against the revision petitioner for having played fraud. Even as per the plaint the marriage between the plaintiff and the late P.G.Gopal was solemnized on 08.06.1960 and the marriage was dissolved by the decree of divorce dated 30.07.1981. It is the admitted case of the plaintiff that her husband died on 16.03.2006 and at the time of death he was living with the revision petitioner and death was not intimated to her immediately and it was informed to her later. Further it is the admission of the plaintiff that after the demise of late P.G.Gopal the revision petitioner was drawing the family pension and that the revision petitioner had offered 50% of the eligible family pension of her late husband to silence her and also sent Rs.1000/- every month through money order, thus making it clear that the plaintiff was aware of the death of her husband and that the revision petitioner was receiving the family pension of her husband. When that being so, any steps against the same should have been taken by the plaintiff within a period of three years from such knowledge, whereas the suit itself has been filed during the year 2010 after the period of limitation. The plaintiff by clever

drafting avoided dates of knowledge to overcome the bar of limitation. He would further submit that the second prayer in the suit was to declare the marriage of the revision petitioner with her husband P.G.Gopal as illegal. The plaintiff admitted to having knowledge that the revision petitioner was receiving family pension based on the subsequent marriage and nomination by her husband . On receiving the family pension she ought to have filed the plaint within three years from the date of death of her husband on 16.03.2006. He would further submit that the reading of the suit does not disclose any real cause of action against the petitioner. No averments have been made against the petitioner for having done any act for invoking cause of action. In the absence of allegations of such act, no cause of action can accrue against the petitioner. The plaintiff by clever drafting had created illusory cause of action and by camouflaging events and by suppressing real facts had filed vicious suit to defeat the right of the petitioner. The suit is nothing but vicious and vexatious, which is abuse of process of Court. By clever drafting and camouflaging the plaintiff had conveniently avoided mentioning the dates to create an illusory cause of action. The trial Court without properly analyzing the suit and without properly appreciating the facts had dismissed the petition filed to reject the plaint.

6. The learned counsel would further submit that Order 7 Rule 11 of Civil Procedure Code is mandatory in nature and if any grounds is specified in clause (a) to (e) are made out, the Court is bound to reject the plaint. The conduct of the plaint is a relevant consideration and the Court has to take into consideration the relevant factors while deciding the application and the Court ought to have rejected the plaint. Further the suit prayer is barred by limitation as per law. The trial Court has grossly erred in dismissing the petition seeking to reject the plaint.

7. In support of his contention, the learned counsel for the petitioner relied on the following judgements of the Hon'ble Apex Court.

1. Dahiben Vs. Arvind Bhai Kalyanji Bhanusali reported in (2020) 7 SCC 366

2. In Raghwendra Sharan Singh Vs. Ram Prasanna Singh reported in (2020) 16 SCC 601

3. In N.V.Srinivasa Murthy Vs. Mariyamma (Dead) by Proposed Lrs. reported in (2005) 5 SCC 548.

8. Heard the learned counsel for the petitioner.

9. In this case the revision petitioner is the defendant. She has filed a petition under Order 7 Rule 11 to reject the plaint on the ground that it does not disclose any cause of action and that it is barred by limitation and that it is a very vexatious suit.

10. It is useful to refer to Order 7 Rule 11 of the Civil Procedure Code

11. Rejection of plaint.— *The plaint shall be rejected in the following cases:(a) where it does not disclose a cause of action;*

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate;]

[(f) where the plaintiff fails to comply with the provisions of rule 9:]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

11. Before getting into the discussions of the case this Court feels it apposite to refer to the relevant paras in the decisions relied on by the petitioner with regard to the legal position enunciated by the Hon'ble apex court with regard to the rejection of the plaint under Order 7 Rule 11 of CPC.

12 *In Dahiben Vs. Arvind Bhai Kalyanji Bhanusali reported in (2020) 7 SCC 366 it is held that;*

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.

24. "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1. In Swamy Atmananda v. Sri Ramakrishna Tapovanam [Swamy Atmananda v. Sri Ramakrishna Tapovanam, (2005) 10 SCC 51] this Court held : (SCC p. 60, para 24)

"24. A cause of action, thus, 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. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded."

(emphasis supplied)

24.2. In *T. Arivandandam v. T.V. Satyapal* [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)

“5. ... The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, 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...”

(emphasis supplied)

24.3. Subsequently, in *ITC Ltd. v. Depts Recovery Appellate Tribunal* [ITC Ltd. v. Depts Recovery Appellate Tribunal, (1998) 2 SCC 70] this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

25. The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2(j) defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article.

26. Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under:

<i>"Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
58. <i>To obtain any other declaration.</i>	<i>Three years</i>	<i>When the right to sue first accrues.</i>
59. <i>To cancel or set aside an instrument or decree or for the rescission of a contract.</i>	<i>Three years</i>	<i>When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him."</i>

The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues.

27. In Khatri Hotels (P) Ltd. v. Union of India [Khatri Hotels (P) Ltd. v. Union of India, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484] this Court held that the use of the word "first" between the words "sue" and "accrued", would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.

28. A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh [State of Punjab v. Gurdev Singh, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082] held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" mean the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11 (d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.

In Raghwendra Sharan Singh Vs. Ram Prasanna Singh reported in (2019) 2 CTC 823 ; (2020) 16 SCC 601 : 2019 SCC OnLine SC 372 at page 608 it is held that;1

6.3. While considering the scope and ambit of the application under Order 7 Rule 11 CPC, few decisions of this Court on Order 7 Rule 11 CPC are required to be referred to and considered.

6.4. In *T. Arivandandam [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467]*, while considering the very same provision i.e. Order 7 Rule 11 CPC and the decree of the trial court in considering such application, this Court in para 5 has observed and held as under: (SCC p. 470)

“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.”

6.5. In *Church of Christ Charitable Trust & Educational Charitable Society [Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612]*, this Court in para 13 has observed and held as under: (SCC p. 715)

“13. While scrutinising the complaint 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.”

6.6. In *ABC Laminart (P) Ltd. v. A.P. Agencies [ABC Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163]*, this Court explained the meaning of “cause of action” as follows: (SCC p. 170, para 12)

“12. A 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. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. 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 if 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.”

6.7. In *Sopan Sukhdeo Sable* [*Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137*] in paras 11 and 12, this Court has observed as under: (SCC p. 146)

“11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] .)”

6.8. In *Madanuri Sri Rama Chandra Murthy* [*Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602*] , this Court has observed and held as under: (SCC pp. 178-79, para 7)

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The

relevant facts which need to be looked into for deciding the application are the averments of the plaint only. 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 averments disclose a cause of action or 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. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

6.9. In *Ram Singh [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.

7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15-12-2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the

gift deed, brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as Defendant 10. It appears that the summon of the suit filed by the defendant being TS (Partition) Suit No. 203 of 2001 was served upon Defendant 10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in T. Arivandandam [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC.

In N.V.Srinivasa Murthy Vs. Mariyamma (Dead) by Proposed Lrs. reported in (2005) 5 SCC 548 it is held that;

17. This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant on the observations of this Court in the case of T. Arivandandam v. V. Satyapal [(1977) 4 SCC 467] : (SCC p. 468)

“The trial court must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must 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. The

trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Chapter 11) and must be triggered against them.”

13. Now discussing the facts of the case in consonance with the above legal pronouncement, in this case, the suit in O.S.No.194 of 2010 has been filed by the 1st respondent/ plaintiff to set aside the decree of divorce in O.P.No.75 of 1981 dated 30.07.1981 and to declare the marriage of the revision petitioner with the deceased P.G.Gopal as illegal.

14. A reading of the plaint does not make out any cause of action in respect of setting aside the decree of divorce in O.P.No.75 of 1981 dated 30.07.1981 since the revision petitioner/1st defendant was not a party to the proceedings and no allegation has been made out against her. Further, a perusal of the plaint shows that it is a case where the plaintiff has conveniently created an illusory cause of action by clever drafting and the plaintiff has conveniently avoided the date on which the right to sue accrues. It is the admitted case of the plaintiff that her husband expired on 16.03.2005, whereas she has deliberately failed to mention from when she

had got the knowledge that the name of the revision petitioner/1st defendant was entered in the the service records of the respondents 2 to 4 and from when the revision petitioner/1st defendant started receiving pension and paid her 50% of the eligible family pension of P.G.Gopal. However, she had conveniently and cleverly mentioned that the revision petitioner had paid Rs.1000/- till October 2009 and stopped payment thereafter and thereby, the suit was within the period of limitation. A suit seeking declaration ought to have been filed within three years when the right to sue first accrues and now there is a bar of limitation as per Article 58 and 59 of limitation Act. Only to avoid delay the plaintiff has purposefully avoided mentioning the dates on which the right to sue first accrued.

15.This is Court is of the opinion that the suit filed by the plaintiff in O.S.No.194 of 2010 is hopelessly barred by limitation and is manifestly vexatious and meritless not disclosing a clear right to sue and is an abuse of process of the Court and bereft of any merit. The trial Court has committed error in not rightly exercising the power under Order VII Rule 11 Cr.P.C. while dismissing the application filed by the revision petitioner/1st defendant.

16.In view of the above, the Civil Revision Petition is allowed. The order passed in I.A.No.889 of 2011 dated 01.03.2012 in O.S.No.194 of 2010 is set aside. The plaint in O.S.No.194 of 2010 stands rejected and dismissed.

17. With the above observations, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.07.2021

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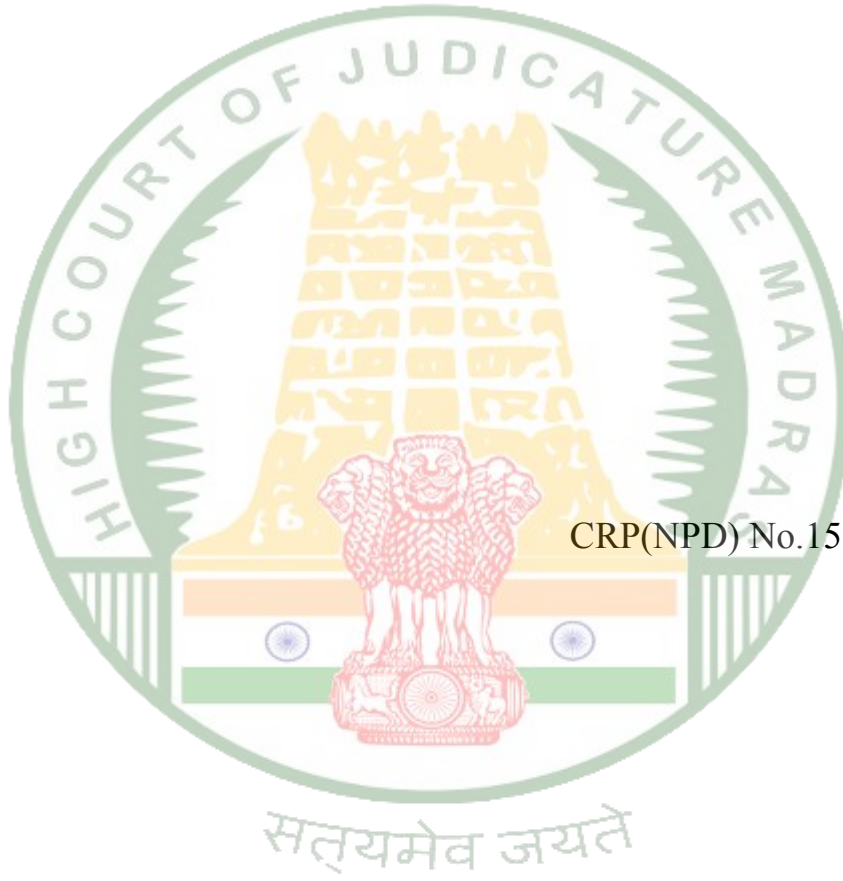
To
The I Additional Family Court Judge,
Chennai,



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A.D.JAGADISH CHANDIRA,J.

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CRP(NPD) No.1563 of 2012

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