



CRP.(PD).No.850/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.(PD).No.850/2019 and CMP.No.5533/2019

**[Video Conferencing]**

R.Sivaprakasam

.. Petitioner

Vs.

R.Soundarajan

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition by setting aside the order and decretal order made in I.A.No.506/2014 in O.S.No.101/2011 dated 03.08.2018 and to struck off the plaint in O.S.No.101/2011 on the file of the learned Subordinate Judge at Tiruvallur.

|                |   |                  |
|----------------|---|------------------|
| For Petitioner | : | Mr.R.Subramanian |
| For Respondent | : | Mr.R.Ponnusamy   |

**ORDER**

(1) This Civil Revision Petition is directed against the order dated 03.08.2018 passed in I.A.No.516/2014 in O.S.No.101/2011 on the file of the Sub-Court, Tiruvallur.



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(2) Brief facts that are necessary for the disposal of the Civil Revision Petition are as follows:

- (3) The revision petitioner is the defendant in the Suit in O.S.No.101/2011 on the file of the Sub-Court, Tiruvallur. The respondent herein as plaintiff, filed the Suit in O.S.No.101/2011 for declaration that the Settlement Deed dated 10.12.1997 executed in favour of the defendant with regard to the Suit item is null and void and not binding on the plaintiff. The Suit is also for a consequential permanent injunction restraining the defendant in any manner acting on the strength of the said Settlement Deed.
- (4) It is the case of respondent/plaintiff that the Suit property originally belonged to Alamelammal alias Ammakannammal under a Sale Deed dated 20.05.1970. The plaintiff and the defendant are brothers and sons of one Ramadass and grand sons of Alamelammal alias Ammakannammal. It is the case of plaintiff that on 31.10.1997, his grand mother namely, Alamelammal alias Ammakannammal executed a Power of Attorney Deed in favour of the plaintiff authorising the plaintiff to deal with the Suit property.



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(5)

It is also stated that the said Alamelammal alias Ammakannammal received a sum of Rs.95,000/- which according to the plaintiff was the market value and put the plaintiff in possession of the property. The plaintiff himself admit that the Power of Attorney Deed was cancelled subsequently on 17.12.1997 revoking the Power of Attorney in favour of the plaintiff. Stating that the Power of Attorney Deed was cancelled without assigning any reason, it is stated by the plaintiff that said cancellation is null and void and that the Power of Attorney Deed cannot be unilaterally cancelled. It is further stated that even before the revocation of Power of Attorney Deed, the plaintiff had executed a registered Agreement of Sale in favour of one Seethalakshmi on 04.11.1997.

(6)

It is the case of plaintiff that he is in possession of the Suit property. However, it is admitted in the plaint that the Alamelammal alias Ammakannammal executed a registered Settlement Deed dated 10.12.1997 in favour of defendant and others. It is seen that the defendant claimed through the grand mother Alamelammal alias Ammakannammal under the registered Settlement Deed dated 10.12.1997, where as the plaintiff claimed to be the owner on the



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basis of Power of Attorney Deed which was cancelled. It is contended by the plaintiff that the said Settlement Deed was a creation of defendant and it is also invalid as it would never create any right to the Suit property in favour of defendant.

- (7) It is also stated that the plaintiff who had acted upon the Power of Attorney Deed had acquired a subsisting right in the Suit property before the alleged Settlement Deed dated 10.12.1997. Except stating that he had executed a registered Agreement of Sale in favour of one Seetaluxmy on 04.11.1997, no other transactions is referred to in the plaint. In paragraph 5 of the plaint, the plaintiff specifically admitted that the defendant had filed a Suit against the plaintiff for declaration of title in his favour and for permanent injunction against the plaintiff in O.S.No.102/1999 on the basis of the Settlement Deed. It is also contended that the said Suit was resisted and contested while denying the truth, execution and validity of the deed of cancellation of Power of Attorney and the validity of the Settlement Deed. It is further contended that the defendant filed a petition to amend the prayer in the Suit in O.S.No.102/1999 for deleting the relief of declaration. It is alleged



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that the said Suit was withdrawn with liberty to file a fresh Suit on the same cause of action on 19.07.2011. It is stated that the plaintiff's right to question the Settlement Deed was denied by the withdrawal of earlier Suit and that therefore the present Suit is filed.

- (8) The plaint contained the following facts in Paragraph No.6 which reads as follows:

*“....6.The cause of action of the Suit arose at Tiruvallur and Taluk, where the Suit item is located and within the jurisdiction of this Hon'ble Court and or 15.09.2010 when the High Court passed an order allowing the amendment of the Plaint in O.S.No.102/1999 and on 09.07.2011 when the plaintiff withdrawn the said Suit, thereby denying the right of the defendant therein from challenging the validity of the Settlement Deed and the title of the defendant in the Suit item and thereafter.”*

- (9) The defendant in the Suit filed written statement in O.S.No.101/2001 disputing the factual averments. The maintainability of the Suit and the bar of Suit by limitation have also been raised. It is stated in the written statement that the plaintiff in the Suit in O.S.No.101/2011 had disclosed that he had already sold B schedule property which was settled in favour of the



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- plaintiff under the Settlement Deed dated 10.12.1997.
- (10) Therefore, it is the case of defendant that the plaintiff himself has derived a substantial right under the Settlement Deed dated 10.12.1997. It is also contended by the defendant that the Suit with regard to the relief of declaration is hopelessly barred by limitation. Stating that the Suit is barred by limitation on the admitted facts and that the Suit is an abuse of process of law the defendant in the Suit filed an application in I.A.No.516/2014 in O.S.No.101/2011 for rejection of plaint under Order VII Rule 11(a) & (d) of CPC. In the application filed by the revision petitioner it is stated that the plaintiff has obtained the benefit under the Settlement Deed who had acted on the basis of the document by executing subsequent Sale Deed in favour of a stranger in respect of the property allotted to him under the document and has filed the Suit suppressing material facts and the Suit as framed, is nothing but an abuse of process of law. The Sale Deed produced by the revision petitioner and the contents thereof is not disputed before this Court by the counsel.



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(11) Secondly, it is submitted that the Suit is barred by limitation. Referring to Article 59 of the Schedule to the Limitation and the Suit being filed 17 years after the Settlement Deed, it is contended that the Suit is barred by limitation, particularly when there is no averment in the plaint to save the Suit from limitation. The application filed by the revision petitioner under Order VII Rule 11 (a) & (d) of CPC was contested by the respondent/plaintiff on the ground that the Settlement Deed was never acted upon and that he had executed the Sale Deed in respect of the property in his personal right and not as one claiming under the Settlement Deed. However, the recitals are different.

(12) It is further stated that the question of limitation should be considered only on merits of evidence and not by pleadings. The Trial Court was of the view that question of limitation is always a question of law and facts and that an opportunity should be given to the respondent/plaintiff to prove that the Suit is filed within limitation from the date of cause of action. Since, the averments raised by the revision petitioner should be considered on the basis of evidence at the time of trial, the Trial Court declined to reject the



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plaint under Order VII Rule 11 (a) & (d) of CPC. Relying upon the judgment of the Hon'ble Supreme Court in the case of ***Kamala And Others Vs. K.T.Eshwara Sa And Others*** reported in ***2008 AIR (SC) 3174***, the Trial Court observed that the question whether the Suit is barred by any law or not should be considered, based on the averments made in the plaint and there cannot be any addition or subtraction for the purpose of invoking Order VII Rule 11 (a) & (d) of CPC. challenging the same, the defendant in the Suit has preferred the above Civil Revision Petition.

- (13) Learned counsel appearing for the revision petitioner demonstrated before this Court that the document namely, the Settlement Deed which is challenged by the plaintiff in the Suit was acted upon by the plaintiff himself. He relied upon the document of Sale Deed executed by the plaintiff in respect of a property allotted to the plaintiff himself in the said Settlement Deed. The recitals of the Sale Deed are to the effect that the plaintiff acquired the property under the Settlement Deed executed by his grand mother, Alamelammal alias Ammakannammal.



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Secondly, learned counsel appearing for the revision petitioner submitted that the Suit for declaration is governed by Article 58 of the Schedule to the Limitation Act. As per Article 58, the limitation starts “*when the right to sue first accrues*”. Article 59 of the Schedule to the Limitation Act, deals with cancellation or setting aside an instrument or decree. As per the Article 59, of the Schedule to the Limitation Act, limitation starts “*when the facts entitling the plaintiff to have the instrument of decree cancelled or set aside or the contract rescinded first become known to him*”. For Article 58, the limitation starts from the date of cause of action. Since, the plaintiff filed the Suit 17 years after the Settlement Deed was executed, the question that was put to the learned counsel for plaintiff/respondent is whether the plaint averments would save the period of limitation. In other words, the specific question put to the learned counsel appearing for the plaintiff, is how the Suit filed 17 years after the Settlement Deed would be in time? Learned counsel appearing for the plaintiff submitted that the cause of action arose only when the plaint in earlier Suit in O.S.No.102/1999 was amended withdrawing the declaratory relief or when the earlier Suit



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was dismissed as withdrawn. It is not in dispute that the earlier Suit was filed by the defendant for declaration of title and for consequential injunction restraining the plaintiff herein from interfering with his right to collect the rents.

(15) The prayer in the present Suit is for grant of declaration that the Settlement Deed dated 10.12.1997 executed in favour of the defendant in the Suit with regard to the Suit item is null and void and not binding on the plaintiff. The cause of action arose when the plaintiff came to know about the Settlement Deed. From the plaint itself, it is seen that the plaintiff has admitted that he was aware of the Settlement Deed dated 10.12.1997 at least when the Suit was filed in O.S.No.102/1999. In such circumstances, it should be noted that there is no intervening factor or event to extend the period of limitation. The plaintiff has not pleaded any other fact or event or transaction that would save the period of limitation to seek a declaration as to the validity of settlement, 17 years after settlement.

(16) Learned counsel appearing for the revision petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of *Fatheji*



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**& Company and another Vs. L.M.Nagpal & Co., reported in 2015**

**SAR (Civil) 601.** That was a case where a Suit was filed beyond the period of three years for specific performance of contract. However, the High Court reversed the well considered order of the Trial Court rejecting the plaint as barred by law of limitation, applying the relevant Article of Limitation Act for filing the Suit for specific performance of contract.

- (17) The Hon'ble Supreme Court found that the Suit filed beyond three years from the date of limitation can be terminated by rejecting the plaint under Order VII Rule 11(a) & (d) of CPC.

It is relevant to extract of the relevant portion of the judgment which reads as follows:

*“...5.We considered the rival submissions. The specific performance is claimed of a written agreement of sale dated 02.07.1973 and as per the terms the performance of the contract was fixed till 02.12.1973. The defendants by subsequent letters dated 07.04.1975, 01.10.1975 and 01.08.1976 sought for extension of time to enable them to obtain permission of the lessor and the last extension of six months expired on 01.02.1977. In view of Order 7 Rule 11(a) and (d) CPC the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. Article 54 of the limitation Act stipulates that the limitation for filing the Suit for specific performance of the contract is three years from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that performance is refused.*



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*6.The fact that the plaintiffs were put in possession of the property agreed to be sold on the date of agreement itself would not make any difference with regard to the limitation of filing the Suit for specific performance. In fact both the Courts below have rightly held that Article 54 of the Limitation Act does not make any difference between a case where possession of the property has been delivered in part-performance of the agreement or otherwise. In the same way the Courts below have also concurrently held even if any permission is to be obtained prior to the performance/completion of the contract, the mere fact that the defendants have not obtained the said permission would not lead to interference that no cause of action for filing the Suit for specific performance would arise. Further it is also not the case for postponing the performance to a future date without fixing any further date for performance. The last extension for a period of six months w.e.f. 01.08.1976 sought for by the defendants expired on 01.02.1977. The present Suit seeking for specific performance was filed by the plaintiffs on 29.04.1994, much beyond the period of three years."*

*(emphasis supplied)*

- (18) The learned counsel for the petitioner, relied upon an unreported judgment of the Hon'ble Supreme Court in the case of ***K.Akbar Ali Vs. K.UmarKhan and Others*** dated 17.07.2018 in ***Special Leave Petition (Civil) No.31844/2018*** wherein the Hon'ble Supreme Court considered the Power of Attorney Deed relied upon by the plaintiff to find out whether the Power of Attorney Deed authorise an act of sale of the property and held that Suit based on the pre-emption agreement executed by the agent does not give any right to plaintiff and confirmed the order of Division Bench of this Court, rejecting the Plaint. Paragraphs 11 to 13 are relevant and hence



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extracted below:-

*“11.The argument advanced by the petitioner/plaintiff that the Plaint discloses triable issues, and therefore, should not be rejected at the initial stages is devoid of merit. The entire basis of filing of a Suit is the pre-emption agreement dated 05.11.1998 executed by a Power of Attorney holder. To confer a right and to bind the owner, there has to be a valid Power of Attorney. In the absence of valid Power of Attorney, no right will accrue to the plaintiff.*

*12.It is patently clear from a meaningful reading of the plaint in its entirety that the plaintiff has no cause of action against the first defendant being the owner of the suit property, the Power of Attorney being patently invalid. The inter-se dispute between the heirs of the deceased-Defendant No.1 will not confer any right on the petitioner as his claim is based upon a pre-emption agreement executed by a power of attorney, which does not authorize the attorney to deal with the property of the said defendant.*

*13. The Division Bench of the High Court has done substantial justice by nipping in the bud, a suit which is ex facie not maintainable for want of cause of action against the defendants or any of them, thereby saving precious judicial time as also inconvenience and expenditure to the parties to the suit”.*

*(emphasis supplied)*

- (19) In the above judgment, another judgment of Hon'ble Supreme Court in ***I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others*** reported in ***AIR 1998 SC 634*** is quoted with approval. The Hon'ble Supreme Court has observed that clever drafting creating illusion of cause of action are not permitted in law and a clear right to Sue should be shown in the Plaint. It is also held that the Court must see that the bar in law of the Suit is not camouflaged by



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devious and clever drafting of the Complaint. It is stated that the Court has the inherent power to see that frivolous or vexatious litigation are not allowed to consume the time of the Court.

- (20) In yet another judgment dated 09.07.2020, the Hon'ble Supreme Court in ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) (D). The LRS and Ors. in Civil Appeal No.9519/2019***, considered the plea under Order VII Rule 11(d) CPC in a Suit for cancellation of Sale Deed dated 02.07.2009 and for declaration of subsequent Sale Deed dated 01.04.2013 as illegal, void and ineffective. The Hon'ble Supreme Court considered the Complaint averments and documents filed along with the Complaint and held that the plea taken by the plaintiffs is to create an illusory cause of action, so as to overcome the period of limitation. The relevant discussion in the judgment in Para 15 is extracted below:-

*“...15.1 On a reading of the Complaint and the documents relied upon, it is clear that the plaintiffs have admitted the execution of the registered Sale Deed dated 02.07.2009 in favour of Defendant No.1/Respondent No.1 herein.*

*Para 5 of the complaint reads as :*

*“(5)...Thus, subject of the aforesaid terms the plaintiffs had executed Sale Deed selling the Suit property to the opponent no.1 vide Sale Deed dated 02.07.2009 bearing Sr.No.5158...”*



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The case made out in the *Plaint* that even though they had executed registered *Sale Deed* dated 02.07.2009 for a sale consideration of Rs.1,74,02,000 an amount of only Rs.40,000 was paid to them. The remaining 31 cheques mentioned in the *Sale Deed*, which covered the balance amount of Rs.1,73,62,000 were alleged to be “bogus” or “false, and allegedly remained unpaid.

We find the averments in the *Plaint* completely contrary to the recitals in the *Sale Deed* dated 02.07.2009, which was admittedly executed by the plaintiffs in favour of Respondent No.1. In the *Sale Deed*, the plaintiffs have expressly and unequivocally acknowledged that the entire sale consideration was “paid” by Defendant No.1/Respondent No.1 herein to the plaintiffs.

Clauses 3 and 4 of the *Sale Deed* are extracted herein below for ready reference:-

“Since the full amount of consideration of the sale as decided above, has since been paid by you the Vendees to we the Vendors of this Sale Deed, for which we the Vendors of this Sale Deed acknowledged the same so, we or our descendants, guardian or legal heirs is to take any dispute or objection in future that such amount is not received, or is received less, and if we do so then, the same shall be void by this deed and, if any loss or damage occurs due to the same then, we the Vendors of this sale deed and descendants, guardians, legal heirs of we the vendors are liable to the pay the same to you the vendees or your descendants, guardian, legal heirs and you can recover the same by court proceedings.

(4) We the party of Second part i.e. Vendors of the sale deed since received full consideration on the above facts, the physical possession, occupancy of the land or the property mentioned in this sale deed has been handed over to you the Vendee of this sale deed, and that has been occupied and taken in possession of the land or property mentioned in this sale deed by you the Vendee of this sale deed by coming at the site and therefore, we the Vendors of this sale deed have not to raise any dispute in the future that the possession of the land or the property has not been handed over to you.  
...”



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(emphasis supplied)

*The Sale Deed records that the 36 cheques covering the entire sale consideration of Rs.1,74,02,000 were “paid” to the Plaintiffs, during the period between 07.07.2008 to 02.07.2009.*

*15.2 If the case made out in the Plaint is to be believed, it would mean that almost 99% of the sale consideration i.e. Rs.1,73,62,000 allegedly remained unpaid throughout. It is, however inconceivable that if the payments had remained unpaid, the Plaintiffs would have remained completely silent for a period of over 5 and ½ years, without even issuing a legal notice for payment of the unpaid sale consideration, or instituting any proceeding for recovery of the amount, till the filing of the present suit in December 2014.*

*15.3 The Plaintiffs have made out a case of alleged non-payment of a part of the sale consideration in the Plaint, and prayed for the relief of cancellation of the Sale Deed on this ground.*

*Section 54 of the Transfer of Property Act, 1882 provides as under :*

*“54. ‘Sale’ defined.—‘Sale’ is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.”*

*The definition of “sale” indicates that there must be a transfer of ownership from one person to another i.e. transfer of all rights and interest in the property, which was possessed by the transferor to the transferee. The transferor cannot retain any part of the interest or right in the property, or else it would not be a sale. The definition further indicates that the transfer of ownership has to be made for a “price paid or promised or part paid and part promised”. Price thus constitutes an essential ingredient of the transaction of sale.*

*In Vidyadhar v. Manikrao & Anr.<sup>14</sup> this Court held that the words “price paid or promised or part paid and part promised” indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price*



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would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a “sale”, 14 (1999) 3 SCC 573. the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

In view of the law laid down by this Court, even if the averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. The Plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered Sale Deed.

We find that the suit filed by the Plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order VII Rule 11 (a).

15.4 The Plaintiffs have averred in the plaint that the period of limitation commenced on 21.11.2014, when they obtained a copy of the index of the Sale Deed dated 02.07.2009, and discovered the alleged fraud committed by Defendant No.1.

The relevant extract from the plaint in this regard is set out hereinbelow :—

“(7) ... Not only that but also, on obtaining the copy of the index of the sale deed of the acts committed by the Opponent No.1, 4, 5 and on obtaining the certified copy of the sale deed, we the plaintiffs could come to know on 21- 11-2014 that, the Opponent No.1 had in collusion with Opponent No.4, 5 mentioned the false cheques stated below in the so called sale deed with intention to commit fraud and no any consents of we the plaintiffs have also been obtained in that regard. The said cheques have not been received to we the plaintiffs or no any amounts of the said cheques have been credited in accounts of we the plaintiffs. Thus, the cheques which have been mentioned in the agreement caused to have been executed by the Opponent No.1, the false cheques have been mentioned of the said amounts. Not only that but also, the agricultural land under the suit had been sold by the Opponent No.1 to the Opponent No.2 Dillipbhai Gordhanbhai Sonani and the Opponent No.3, Laljibhai Gordhanbhai Sonani on 1-4-2013.



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for Rs.2,01,00,000/- as if the said sale deed was having clear title deeds. On taking out the copy of the said sale deed with seal and signature on 21-11-2014, it could come to the knowledge of we the plaintiffs. We the plaintiffs have not done any signature or witness on the said agreement. The said agreement is not binding to we the plaintiffs. Since the said agreement is since null, void and invalid as well as illegal, therefore, no any Court fee stamp duty is required to be paid by we the plaintiff on the said agreement and for that we the plaintiffs rely upon the judgment of the Supreme Court in A.I.R.2010, Supreme Court, Page No. 2807....”

(emphasis supplied)

*The plea taken in the plaint that they learnt of the alleged fraud in 2014, on receipt of the index of the Sale Deed, is wholly misconceived, since the receipt of the index would not constitute the cause of action for filing the suit.*

*On a reading of the plaint, it is clear that the cause of action arose on the non-payment of the bulk of the sale consideration, which event occurred in the year 2009. The plea taken by the Plaintiffs is to create an illusory cause of action, so as to overcome the period of limitation. The plea raised is rejected as being meritless and devoid of any truth”.*

(emphasis supplied)

- (21) Learned counsel appearing for the respondent however, submitted that the Hon'ble Supreme Court and this Court has held in several judgments that the question of limitation should always be taken as a mixed question of law and facts and it is not desirable to reject the plaint on the ground that the Suit itself is barred by limitation. This Court, normally considers the issue of limitation as a mixed question of law and fact. When facts are not in dispute and the plaint averments does not disclose any special circumstance to save



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limitation, it is not necessary that the party should be burdened to face trial to establish admitted facts during trial. Under Section 3 of Limitation Act, the Suit instituted beyond the period of limitation is liable to be dismissed although limitation has not been set upon a defence. Under Section 9 of the Limitation Act, once time has begun to run, no subsequent disability or inability to institute the Suit stops limitation. In state of ***Punjab Vs. Gurdev Singh reported in (1991) 4 SCC 1***, the Hon'ble Supreme Court has held that the Court must examine the Complaint and determine where the right to sue first accrued to the plaintiff, and whether on the assumed facts, the Complaint is with him. It is further observed that the Suit must be filed 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. In the entire complaint, this Court is unable to find averments which would save the Suit from bar of limitation. The document challenged in the Suit was of the year 1997. The Suit is presented 17 years after the execution of the Settlement Deed without their being proper plea to save or to extend limitation under any of the provision of the Limitation Act.



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Even before this Court the only contention raised by the learned counsel appearing for the plaintiff/respondent is that the cause of action for the Suit arose to the plaintiff only when the amendment in the earlier Suit was allowed. The plaintiff has come forward with the specific prayer to declare the Settlement Deed as void. Having filed the Suit to declare the nullify of document 17 years after its execution, the plaintiff is expected to come forward with a specific plea how the Suit is not barred by limitation. Based on the Settlement Deed, the defendant filed the earlier Suit in O.S.No.102/1999. The moment, the defendant claimed right under the Settlement Deed the right to sue accrues. The cause of action arises when the defendant asserted his right under the Settlement Deed in the previous Suit. However, the withdrawal of earlier Suit is pleaded as a reason to give fresh cause of action. This is illusory. As per Article 58 of Schedule to the Limitation Act, the time begins to run when the right to sue first accrues. The period of limitation will begin to run from the date when the right to sue first accrues. Similarly, to cancel or set aside an instrument, Article 59 of the Schedule to the Limitation Act applies and limitation starts when



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the facts entitling the plaintiff to have the instrument or decree cancelled or set aside first become known to the plaintiff. The Settlement Deed was known to him when the earlier Suit was filed and when the plaintiff acted on the basis of such Settlement Deed to alienate one of the property allotted him. Hence, the plaintiff can not plead that the right to sue accrued to him when the earlier Suit was withdrawn. As observed by the Hon'ble Supreme Court in a few judgments, the plea taken by the plaintiff is to create an illusory cause of action in order to overcome the period of limitation.

- (23) In the case of ***T.Arivandandam Vs. T.V.Satyapal and Another*** reported in (1977) 4 SCC 467 the Hon'ble Supreme Court has observed 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 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 complaints. 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 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*



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*party at the first hearing so that bogus litigation can be shot down at the earliest stage”.*

*(emphasis supplied)*

- (24) This Court has also held that the revision petitioner has got the benefit of the Settlement Deed which is challenged by him in the present Suit. After allowing the Settlement Deed to be acted upon and deriving benefits out of the Settlement Deed, the plaintiff has come forward with the Suit suppressing material facts. Though, this Court is inclined to hold the Suit is an abuse of process of law, for the purpose of rejecting the plaint, this Court is not inclined to rest its decision in this revision petition only on the ground that the Suit filed by the plaintiff is an abuse of process of law.
- (25) However, the Suit is hopelessly barred by limitation and there is no escape or way for the plaintiff to save the Suit from the bar of limitation from the averments made in the plaint. In such circumstances, this Court is unable to sustain the reasoning of the learned Judge while dismissing the application filed by the respondent/plaintiff under Order VII Rule 11(a) & (d) of CPC.
- (26) Accordingly, this Civil Revision Petition is **allowed** and the order in I.A.No.516/2014 in O.S.No.101/2011 on the file of the Sub-Court



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at Thiruvallur is set aside and the plaint in O.S.No.101/2011 on the file of the Sub Court, Thiruvallur stands rejected. Consequently, connected miscellaneous petition is closed.

03.12.2021

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Internet : Yes

To

The Sub-Court, Tiruvallur.

S.S.SUNDAR, J.,

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