

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.2802 of 2016
and C.M.P.No.14255 of 2016

1.Sarathambal @ Saratha

2.Kannammal

(Mentally ill person represented by
Guardian & Sister Sarathambal @ Saratha)

3.P.Senthil Kumar

4.G.Balasubramani

...Petitioners

Vs.

1.Muthuganesan

2.The Sub Registrar

Mulanur SRO

Having office at Dharapuram Road
Mulanur, Dharapuram Taluk, Tiruppur District.

3.The Sub Registrar

Dharapuram SRO

Having office near Taluk Office
Dharapuram Town & Taluk

Tiruppur District.

...Respondents

(No relief claimed against the respondents 2 & 3 herein and they are formal parties, hence notice may be dispensed with in this Revision)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.207 of 2016 on the file of the District Munsif Court at Dharapuram.

For Petitioners : Mr.T.Murugamanickam
Senior Counsel for
Mr.Ma.P.Thangavel

For Respondents : Mr.N.Manokaran
for Mr.N.Ponraj for R1
R2 & R3 - given up

ORDER

The Civil Revision Petition is filed to strike off the plaint in O.S.No.207 of 2016 on the file of the District Munsif Court at Dharapuram.

2.The petitioners are defendants 1 to 4 in the suit filed by the 1st respondent herein. The 1st respondent filed the suit for declaration declaring that the Power of Attorney dated 15.07.2016 was registered vide document 1128 of 2016 is fraudulent and invalid with reference to the 1st item of the suit schedule property. Further prayed for permanent injunction restraining the defendants 3 to 6 from executing and registering any conveyance or documents in respect of the 1st item of the suit schedule property on the strength of the Power of Attorney dated 15.07.2016.

3.Mr.T.Muthugamanickam, learned Senior Counsel would submit that the petitioners 1 and 2 are maternal aunts of the 1st respondent herein,

i.e., the 1st respondent's father's own sisters. The 1st respondent already filed a suit for partition in which the petitioners 1 and 2 are the defendants 24 and 25 respectively. The preliminary decree was passed and allotted 5/16th share to the 2nd petitioner herein, in respect of the A and B schedule property and remaining property equally shared by other defendants. Even till today, no final decree application was filed by any of the parties.

4. After the preliminary decree, the 1st respondent herein executed two settlement deeds in respect of his undivided shares in favour of his wife. In so far as the undivided share of the petitioners 1 and 2 herein they executed Power of Attorney in favour of the 3rd petitioner herein. Now, the 1st respondent filed a suit for declaration declaring that the Power of Attorney dated 15.07.2016 is null and void and restraining the other defendants from alienating the suit property on the strength of the Power of Attorney to the third parties. The 1st respondent is no way connected with the undivided share of the suit property belong to the petitioners 1 and 2 herein. The 1st respondent has no locus to file a suit questioning the Power of attorney executed by the petitioners 1 and 2, since he is not the party to the document and also admittedly the undivided share is belong to the

petitioners 1 and 2 herein. Therefore, the suit itself is sheer abuse of process of law and it is liable to be strike off *in limine*.

5.He further submitted that the suit property subjected to the partition suit filed in O.S.No.92 of 1987, in which the suit properties the undivided 5/16th share was already allotted to the petitioners 1 and 2 as well as the 1st respondent herein. In pursuant to the preliminary decree, the 1st respondent already executed Power of Attorney in favour of his wife. Therefore, he cannot question the share allotted to the petitioners 1 and 2 herein. Though there is alternative remedy to reject the plaint under Order 7 Rule 11, the 1st respondent has no locus to file the present suit as well as no cause of action arose to file the suit and the suit is clear abuse of process of law. In support of his contentions, he relied upon the following Judgments,

(i) in the case of ***Zee Telefilms Ltd Vs. Suresh Productions and others [2020 4 CTC 898]***,

(ii) in the case of ***P.Baskar and other Vs. P.Annadurai [2020 SCC Online Madras 6229]***.

6.Per contra, the learned counsel for the 1st respondent would submit that the 2nd petitioner herein is mentally ill person under the Mental

Health Act 1997, represented by his father Natraya Asari. In fact the said Natraya Asari was appointed as guardian by the Court in the earlier suit itself filed for partition in O.S.No.92 of 1987. Therefore, the power of attorney executed by her is not valid one, since she is a mentally unsound person. He further submitted that the property of the mentally unsound person has to be dealt with only with the permission of the District Court and duly appointed by the Manager and guardian. The petitioner herein did not obtain any order to maintain the property belong to the 2nd petitioner herein. He further submitted that the alleged power of attorney was registered with the Registrar Office, Moolanur, whereas the said property is situated at Tharapuram. Purposefully, the petitioners added the 2nd item of the suit property, which is situated at Dharapuram, and executed power of attorney in an suspicious manner at Moolanur registered at SRO, Registrar Office, Moolanur, which has absolutely no jurisdiction. Therefore, there are triable issues in the suit and it cannot be dismissed on its threshold. He further submit that when there is alternative remedy is very much available under Order 7 Rule 11 CPC, the Civil Revision Petition itself is not maintainable under article 227 of the Constitution of India. In support of his

contention, he relied upon the Judgments

(i) in the case of ***Jacky Vs. Tiny @ Antony [2014(6) SCC 508]***,

(ii) in the case of ***Virudhunagar Hindu Nadargal Dharma Paripalana Sabai Vs. Tuticorin Educational Society [2019 (5) CTC 696 SC]***

(iii) in the case of ***K.Ponnammal Vs. V.Thayanban [2012 (1) MWN 701]***

(iv) in the case of ***Ganapathi Subramanian Vs. S.Ramalingam [2007 (3) LW 515]***

(v) in the case of ***Vaish Agarwal Panchayat Vs. Inderkumar [2015 (6) CTC 555 SC]***

(vi) in the case of ***G.Subramani Vs. V.Rajasekaran [2013 (4) CTC 468]***

(vii) in the case of ***M.Prince Manohar Vs. Bhima Lakshmi Narashammah [2014 (2) MLJ 61]***

7.Heard Mr.T.Murugamanickam, Senior Counsel, appearing for the petitioners and Mr.N.Manokaran, learned counsel for the 1st respondent.

8.The petitioners are the defendants 1 to 4 in the suit filed by the 1st respondent for declaration and injunction. The 1st item of the suit property which was allotted in pursuant to the preliminary decree passed in O.S.No.92 of 1987 dated 23.12.1993 for partition in favour of the 1st and 2nd petitioners herein. Infact 5/16th share of the family property allotted to the 1st respondent herein in pursuant to the partition decree. The 1st respondent already settled undivided share in his wife favour by the settlement deed dated 03.05.2016. While being so, in so far as the petitioners 1 and 2, the undivided share of the property, they executed power of attorney in favour of the 3rd petitioner herein.

9.Admittedly, the 2nd petitioner is a mentally unsound person and as such she was represented by her mother Alamelu, in the partition suit in O.S.No.92 of 1987. Nowhere, the said Natraya Asari was appointed as guardian of the 2nd petitioner herein as contended by the learned counsel for the 1st respondent. The power of attorney in favour of the 3rd petitioner herein was executed in respect of the undivided share of the suit property which was allotted in the preliminary decree in O.S.No.92 of 1987. Though

the 1st respondent is the brother's son of the petitioners 1 and 2 herein, he is nothing to do with the undivided share allotted in favour of the petitioners 1 and 2 herein and he has no locus to question the power of attorney executed by them in respect of their undivided share. The suit filed by the 1st respondent is only to grab the entire share of the 1st and 2nd petitioners herein, by utilizing the unsoundness of the 2nd petitioner. Infact, in the plaint, the 1st respondent averred that the undivided share which was allotted in favour of the 1st and 2nd petitioners are taken by the 1st respondents father viz., Natraya Asari, in the interest of mentally ill 2nd petitioner herein. She is also under the custody of the said Natraya Asari. Furher, it is also assured that he will not claim any right over their undivided share which was allotted in the partition decree. Therefore, it is very crystal clear that the 1st respondent only to grab their share filed the present suit that too without any locus and without any cause of action.

10. On perusal of cause of action in the suit, it is stated as follows:

"XIV. The cause of action for the suit arose on 23.12.1993, when the Preliminary decree was passed in

O.S.No.92 of 1987, Sub Court, Dharapuram, on subsequent dates when the plaintiff continued the absolute possession and management of the suit property, on 19.06.2016 when the 1st defendant claimed 1/2 share in the item 1 of the suit property, on 15.07.2016 when the 1st defendant executed the alleged power attorney, On 19.07.2016 when some unknown persons visited and measured the item 1 of suit property and on all subsequent dates at Dharapuram Town, Dharapuram Taluk and Tirupur District and within the Jurisdiction of this Hon'ble Court."

11. There is absolutely no cause of action arose to file the present suit. The 1st respondent filed the suit for partition alleging that the suit property belongs to their family property. While being so, his father already made alienations regarding their family properties. Therefore, he filed the partition suit by making allegations as against his own grandfather. While pending the suit, his grandfather died and the petitioners 1 and 2 are being the daughters, they were impleaded as 24 and 25th defendants in the partition suit. Since the 2nd petitioner is mentally unsound person she was

represented by her mother Alamelu. Therefore, nowhere the Natraya Asari, viz., the father of the 1st respondent herein was appointed as guardian to represent on behalf of the 2nd petitioner herein. Therefore, the 1st respondent has no locus to challenge the guardianship of the 2nd petitioner herein.

12.The learned Senior Counsel relied upon the Judgment reported in *2020 SCC Online Madras 6229*, in which this Court has held in the similar circumstance, which reads as follows

"12. The Hon'ble Apex Court in 2020 (16) SCC 601 [Raghwendra Sharan Singh Vs.Ram Prasanna Singh (Dead) by LRs wherein it is held that:-

6.6 In the case of Sopan Sukhdeo Sable (supra) in Paras 11 and 12, the Apex Court has observed as under:

"11. In I.T.C 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 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.Arivandanadam v. T.V.Satyapal (supra)]

6.8. In the case of Ram Singh (supra), 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.

....As observed and held by Apex Court in the cases of Sham Lal alias Kuldip (supra); N.V.Srinivas Murthy (supra) as well as in the case of Ram Prakash Gupta (supra), considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation,

the same can be rejected in exercise of powers under Order 7 Rule 11(d) of the C.P.C.

In, (2020) 7 Supreme Court Cases 366

[Dahiben Vs.Arvindbhai Kalyanji Bhanusali (Gajra)

Dead through Legal Representatives and others],

wherein it is held that:-

(i) The remedy under Order 7 Rule 11 C.P.C is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

(ii) the power conferred on the Court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to

be strictly adhered to. Under Order 7 rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

(iii) Having regard to Order 7 rule 14 C.P.C, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint. In exercise of power under this provision, it should be treated as a part of the plaint. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

(iv)The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. It is not permissible to cull out a sentence of a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into.

(v)If, however, on a meaningful reading of the plaint, it is found that the suit does not disclose right to sue, cause of action or suit is barred by any law and the Court has no option but to reject the plaint and without any merit, Order 7 Rule 11 C.P.C.

(vi) 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 not option, but to reject the plaint.

(vii) ... "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. While considering an application under Order 7 Rule 11 C.P.C what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory. What is required is that a clear right must be made out in the plaint. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, 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.

(viii) 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. The use of the word "first" between the words "sue" and "accrued", requires the Court to 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.

(ix) 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.

(x)...The present case is a classic case, where the plaintiffs by clever drafting of the plaint, attempted to make out an illusory cause of action, and bring the suit within the period of limitation.

(xi) In Raghwendra Sharan Singh, (2020) (6) SCC 601, the Supreme Court held that the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed.

.....
.....

29. In fine,

[1] The suit plaint in O.S.No.110 of 2020 is nothing but an outcome of clever drafting by a man of legal knowledge in manufacturing suit on time barred dead wood rights and mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for.

[2] The complaint prayer are reproduced, as it is, for proper appreciation of clever camouflaging as to how prayers are cleverly drafted to overcome partition suit for specific performance and to claim time barred claims and to create illusory cause of action by imagining words of pleadings.

[3] In essence, the respondent/plaintiff seeking to declare his entitlement to title to the suit to an oral agreement for oral partition after four years registered partition, on the basis of an unfilled and undisclosed agreement. In law, an agreement will not confer or create title over the property as per Section 54 of Transfer of Property Act. By device of clever drafting of the complaint, the respondent/plaintiff is attempting to file a fictitious suit on the basis of an illusory cause of action and suit of the present nature is nothing but camouflage to get over the bar of limitation and the present suit for re-opening the partition after final partition viz., time barred relief, as per Limitation Act.

[4] The suit, as such framed and filed ought not to have been taken on file and numbered as the same is nothing but 'pure' abuse of process of Court (as held in Dahiben

case reported in 2020 (7) SCC 366 and Raghwendra Sharan Singh case reported in 2020 (6) SCC 601.

[5] Normally, this Court will exercise "Judicial restrain" to exercise the powers conferred under Article 227 of the Constitution of India, to reject the plaint pending before the lower Courts. However, on facts and circumstances of the case, continuation of trial of suit shocks the 'Judicial Consciences' of this Court, as in the present one, I am of the view that, it amounts to "abuse of process of Court" and the same is to be "nipped in the bud, as held by the Hon'ble Supreme Court, 2017 (13) SCC 174 [Madanuri Sri Ramachandra Murthy V.Syed Jalal]"

13.The above Judgment is squarely applicable to the case on hand. The contention of the present suit is sheer abuse of process of Court and it has to be struck off. Though there is alternative remedy under Order 7 Rule 11 CPC, it is an independent and special remedy, whereas the Court is erred to summarily dismissing the suit at the threshold without proceeding to record evidence and taking a trial on the basis of the evidence adduced. If it is satisfied then the action should be terminated on any of the ground

contained in this provision. As held by the Hon'ble Supreme Court of India, in the case of *Madanuri Sri. Ramachandra Murthy Vs. Syed Jalal* reported in [2017 13 SCC 174], which is relied upon by this Court in the above Judgment had held that on facts and the circumstances of the case, continuation of trial of suit shocks the 'Judicial Consciences' of this Court, as in the present one, and the Court is of the view that, it amounts to "abuse of process of Court" and the same is liable to be "nipped in the bud".

14. Therefore, this Court exercises the powers conferred under Article 227 of the Constitution of India and inclined to strike off the plaint itself. In view of the above discussion, the Judgments cited by the learned counsel for the 1st respondent are not helpful to the case on hand.

15. Accordingly, the plaint in O.S.No.207 of 2016 on the file of the District Munsif Court at Dharapuram, is hereby struck off and this Civil Revision Petition stands allowed. No costs. Consequently connected miscellaneous is closed.

11.02.2021

Index: Yes/No

Speaking Order: Yes/No

Jer

To

The District Munsif Court at Dharapuram,

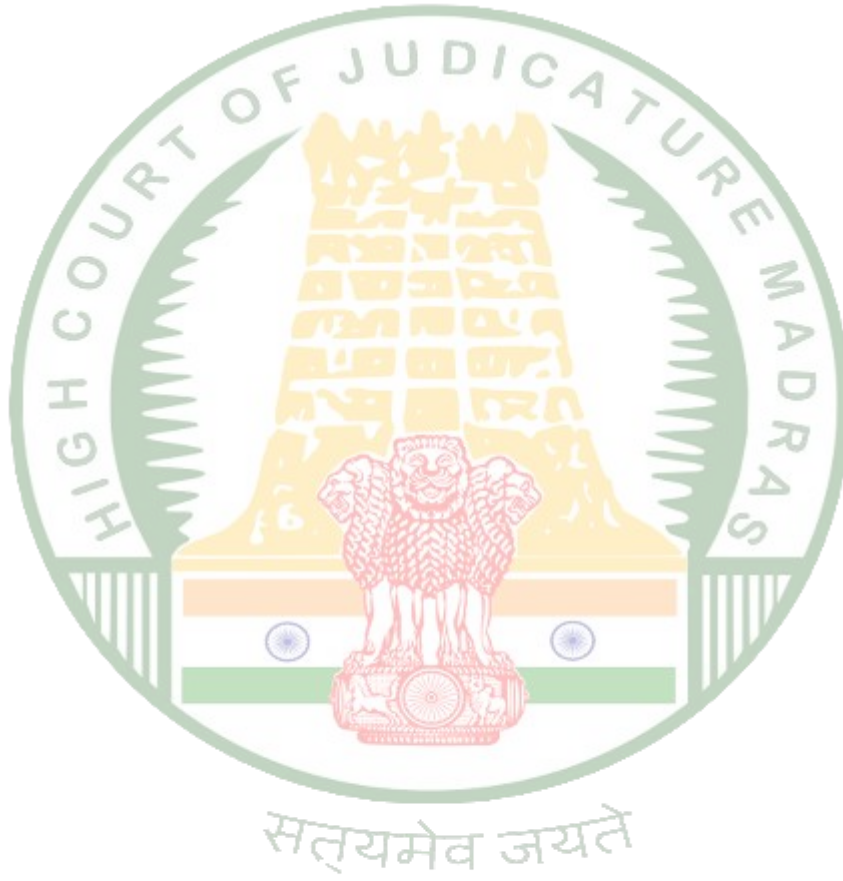


G.K.ILANTHIRAIYAN.J,

Jer

WEB COPY

C.R.P.(P.D).No.2802 of 2016
and C.M.P.No.14255 of 2016



11.02.2021

WEB COPY