

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.03.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.1636 of 2019 and
C.M.P.Nos.10709 and 25564 of 2019

1. K.Jaganathan
2. J.Damayanthi
3. A.Priya
4. A.Arulgandhi Petitioners

Vs.

1. S.Vijayalakshmi
2. Minor Pooja
3. Minor Sanjana
Minors 2 and 3 rep by mother and
guardian the 1st respondent.
4. The Sub Registrar,
Kumarapalayam SRO
Kumarapalayam,
Namakkal District ... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the suit in O.S.No.73 of 2018 on the file of the learned District Munsif Court, Tiruchengode by allowing the Civil Revision Petition.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.M.Devendran for
Mr.M.Sankar

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O R D E R

The present Civil Revision Petition has been filed to strike off the suit in O.S.No.73 of 2018 on the file of District Munsif Court, Thiruchengode by allowing this petition filed under Article 227 of Constitution of India by raising various grounds.

2. The case of the petitioners is that the suit was filed by the respondents / plaintiffs seeking declaration declaring that the deed of revocation of the settlement dated 10.02.2009 registered as document no.6261 of 2009 on the file of 5th defendant therein and the 4th respondent herein in this Revision Petition with respect to the suit property, viz., the land and two storey building at No.69, Ayyan Thottam, New Pallipalayam road, Kumarapalayam, Namakkal District is valid, ab initio and not binding on the suit property and on the plaintiffs and for a permanent injunction against the 3rd defendant therein from dealing with the suit property in any manner.

3. The respondents / plaintiffs in the said O.S. No.73 of 2018 has submitted that the 1st plaintiff married her husband late K.J.Sivaraman during 09.03.2006 and the said marriage was an arranged marriage and they gave birth to the 2nd and 3rd plaintiffs, who were born on 16.10.2009 and 02.11.2011 respectively. The 1st defendant and the 2nd defendant are the parents of the 1st plaintiff's husband and the 3rd defendant is the daughter of the 1st and 2nd defendants. The 4th defendant is the husband of the 3rd defendant and son-in-law of the 1st and 2nd defendants and they are closely related to each other.

4. It is further submitted by the respondents / plaintiffs before the court below that the 1st and 2nd defendants had purchased a vacant house site bearing No.69, Ayyan Thottam, New Pallipalayam Road, Kumarapalayam, Bimash No.119, of Kumarapalayam Agraharam Village, Periya murungaithar punjai land, measuring to an extent of 2307 and a half square feet, which has been registered as Document No.389 of 2004 SRO Kumarapalayam, by paying valuable consideration and enjoyed the same. The said property was settled on 28.11.2005 through a registered deed of settlement, which is registered as Document No.3957 of 2005 before the Sub Registrar Office, Kumarapalayam on the 1st plaintiff's husband and he was put in possession of the suit property and mutation of all revenue records were carried out in his name and was enjoying the same without any hindrance whatsoever. As per the covenants of the said settlement deed, the 1st and 2nd defendants did not reserve any right for cancellation of the said settlement deed executed by them and the 1st Plaintiff's husband got it as an absolute property by way of settlement.

5. The respondents / plaintiffs also submits that the 1st plaintiff's husband has mortgaged the suit property with State Bank of India, SSI Bhavani vide Housing Term Loan Account

30026680812 and has repaid the loan and the same was closed on 15.04.2010. The said property was settled in favour of 1st plaintiff by way of a registered settlement deed dated 20.04.2010 as document No.2636 of 2010 at SRO Kumarapalayam and they are the owner and in absolute possession of the said property.

6. The 1st and 2nd defendants were in possession of the ground floor of the building and occupied the 1st floor and since the 2nd defendant harassed the 1st respondent therein in many days, she vacated the 1st floor premises and took lease of a house in a nearby area where the plaintiffs are presently residing. The 1st and 2nd defendants leased out the 1st floor portion to a tenant and getting monthly rent from the tenant. The 1st plaintiff is in possession and enjoyment of the said property settled on her ever since the date of settlement and they are the absolute owner of the property. The petitioners 3 and 4 / respondents 3 and 4 executed the general power of attorney in favour of the 4th defendant, who in turn executed a sale deed in favour of his wife, 3rd defendant and they all of them have cheated the 1st plaintiff and her husband and now they are in the streets without any sufficient means to maintain themselves.

7. The 2nd defendant and her husband had cancelled the settlement deed executed by them in favour of the 1st plaintiff's husband unilaterally which is not known to the 1st plaintiff or her husband during their life time. The plaintiffs were under the bonafide belief that the said settlement is in existence. The 1st plaintiff, who had applied for encumbrance certificate had come to understand that the settlement deed executed by the 1st and 2nd defendants, which is a registered document as document no.3957 of 2005, at SRO, Kumarapalayam was cancelled unilaterally by document no.626 of 2009 dated 10.02.2009 and subsequently executed another settlement deed in favour of the 3rd defendant, by registered document no.8068 of 2013 dated 30.10.2013. सत्यमेव जयते

8. The plaintiffs before the court below also contended that the 5th defendant has no authority to register a cancellation of the settlement deed unilaterally and the said unilateral cancellation of settlement deed was done without giving notice to the 1st plaintiff's husband. It is settled law that the settlement deed cannot be cancelled unilaterally and the 5th defendant failed in his duty to inform them. The deed of revocation of settlement deed dated 10.02.2009 registered as document no. 626 of 2009 on the file of the 5th defendant is invalid, and ab initio void and not binding on the suit property

and the plaintiffs seek for permanent injunction restraining the defendants 1 to 4 from dealing with the suit property in any manner whatsoever by effecting mutation of owner's name effected in his favour in all the public records pertaining to the suit property.

9. It is the further contention of the plaintiffs before the court below that the suit is not barred by limitation, as the same is being filed within three years from 20.09.2017, when the 1st plaintiff came to know about the deed of revocation of settlement dated 10.02.2009 through encumbrance certificate. The 1st plaintiff further submits that based on the settlement deed, her husband had settled the said property in her favour and when the 1st and 2nd defendants' property by way of the settlement deed has been completely divested rights on over the suit property, it is pertinent to note that they have not even reserved right of revocation in the deed of settlement and they cannot unilaterally revoke the said settlement deed dated 28.11.2005. The deed of revocation of settlement deed dated 10.02.2009 registered as document no.626 of 2009 is invalid and prayed for declaring that the deed of revocation of settlement deed dated 10.02.2009 registered as document no.6261 of 2009 of 5th defendant, viz., SRO Kumarapalayam with respect to the suit property, viz., land and two storey building at No.69, Ayyanthottam, new Pallipalayam Road, Kumarapalayam, Namakkal District is invalid, abinitio void and not binding on the suit property. Further prayed for permanent injunction against the 3rd defendant and her men from dealing with the suit property in any manner whatsoever by effecting mutation of owner's / assessee's name in favour of the 3rd defendant in all the public records pertaining to the suit property.

10. The defendants in O.S.No.73 of 2018 have approached this Court by way of present Civil Revision Petition under Article 227 of the Constitution of India with the prayer to strike off the suit in O.S.No.73 of 2018 on the file of learned District Munsif, Thiruchengode.

11. The case of the Civil Revision Petitioners is that the suit was filed by the respondents / plaintiffs in O.S.No.73 of 2018 seeking declaration declaring that the deed of revocation of settlement dated 10.02.2009 registered as document no.6261 of 2009 on the file of 5th defendant therein and the 4th respondent herein in this Revision petition with respect to the suit property, viz., land and two storey building at No.69 Ayyan Thottam new pallipalayam road, kumarapalayam, Namakkal district and a permanent injunction against the 3rd defendant therein from dealing with the suit property in any manner.

12. Further, the plaintiffs had filed the above suit stating that the 1st and 2nd defendants during the year 2004 had purchased the vacant site no.69, Ayyan Thottam, New Pallipalayam Road, Kumarapalayam, Namakkal District in AVR measuring no.2307 of 2005 square feet from his predecessor in its title from one R.Prabakaran by way of a registered sale deed dated 28.11.2005 registered as document no.389 of 2004 wherein possession and enjoyment were settled in favour of the 1st plaintiff's husband. The 2nd defendant and her husband settled the above said property in favour of 1st plaintiff's husband and the 2nd and 3rd plaintiff's father late Sivaraman, by way of a registered deed of settlement dated 3957 of 2005 was put in possession of suit schedule property and mutation of all revenue records were carried out in his name and was enjoying the same as his own property without any hindrance whatsoever.

13. It was further contended by the respondents / plaintiffs that the settlement deed was executed by the 1st and 2nd defendants in favour of their son late Sivaraman. It was further contended that the plaintiffs having accepted the settlement deed and acknowledge the same were put in possession on the same day, the settlement deed was acted upon by changing the names in the revenue record. Thereafter, by pledging the said property and selling the 1st plaintiff's seedhana articles and gold jewellery they have put up a construction over a said vacant site, which is now two storeyed building and the 1st plaintiff's husband had mortgaged the suit property with the State Bank of India for housing term loan and subsequently repaid the said bank loan.

14. Later, the said property was settled in favour of the 1st plaintiff by way of a registered settlement deed dated 20.04.2010 after paying the mortgage amount and registered as Document no.2636 of 2010 and the plaintiffs are enjoying the same as absolute owners. The 1st plaintiff's husband died suddenly on 22.08.2017 due to cardiac arrest leaving behind the plaintiffs as legal heirs. The 1st plaintiff further submits that the after the death of her husband there had been several misunderstanding between the defendants and the plaintiffs' family during the year 2017 and when she applied for encumbrance certificate for the settlement of property it was revealed to her that the suit schedule property was settled in her favour of her husband as early as on 28.11.2005 by way of registered settlement deed by document no. 3957 of 2005 was subsequently cancelled by the 1st and 2nd defendants by deed of revocation of the settlement deed dated 10.02.2009 registered as document no. 626 of 2009. Further the 1st plaintiff alleges that she came to

know about that and subsequently the 1st and 2nd defendants settled the suit schedule property in favour of the 3rd defendant, viz., daughter by way of her registered document dated 30.10.2013 in document 1868 of 2013.

15. The 1st plaintiff further alleged that the unilateral cancellation of settlement deed, which was settled in her late husband favour as early as on 2005 is illegal and the subsequent settlement in favour of the 3rd defendant is also illegal. Under these circumstances, the plaintiffs have approached the civil court, viz., the District Munsif Court, Thiruchengode by filing O.S.No.73 of 2018 and upon receipt of summons, the defendants have filed the present Civil Revision Petition seeking to strike off the plaint under Article 227 of the Constitution of India.

16. Mr.Manoharan, learned counsel appearing for the petitioners / defendants contended that the suit in O.S.No.73 of 2018 filed for declaration in the year 2018 to declare the deed of revocation of settlement deed dated 10.02.2009 is clearly hit by Article 58 of Limitation Act, since the same was not filed within three years from the date on which the right to sue first accrues and hence the suit has to be struck off, as the same is barred by limitation.

17. The learned counsel for the petitioners / defendants further submitted that when the settlement deed was executed by the 1st and 2nd defendants / 1st and 2nd petitioners in favour of 1st plaintiff's husband, the settlement deed was not acted upon by the plaintiffs and hence the 1st and 2nd defendants had cancelled the settlement deed in the year 2009 and the 1st plaintiff's husband having not challenged the same during his lifetime as the 1st plaintiff's husband died only on 23.08.2017 and the revocation of settlement deed was done on 10.02.2009, the respondents / plaintiffs have no right to challenge the same when the 1st plaintiff's husband has knowledge about the revocation of settlement deed.

18. The learned counsel for the petitioners also contended that unilateral cancellation is not prohibited and unilateral cancellation is permissible by way of extinguishment deed, as held by the Hon'ble Supreme Court in Satya Pal Anand Vs. State of M.P. And others [AIR 2016 SC 4995.] The learned counsel also further contended that by clever drafting of the plaint, the question of limitation was sought to be got over by camouflaging the real issues in the suit and making it appear, as if it was filed in time.

19. Mr.M.Sankar, learned counsel appearing for the respondents/ plaintiffs contended that by no stretch of imagination the cancellation of settlement deed ought not to have been accepted by the sub-registrar, the 5th defendant therein as a question of unilateral cancellation is prohibited under the law and when the unilateral cancellation of settlement deed itself is illegal, subsequent registration of settlement deed by the 1st and 2nd petitioners / 1st and 2nd defendants in favour of the 3rd defendant is also illegal.

20. It is the further contention of the learned counsel for the respondents / plaintiffs that the plaintiffs having come to know the cancellation of settlement deed later when applied for the encumbrance certificate in the year 2017, the suit filed in the year 2018 the same is well within the limitation period and the learned counsel further contended that there are every cause of action for the suit to be tried and sought for dismissal of the present Revision Petition.

21. That apart, Mr.N.Manoharan, learned counsel for the petitioners / defendants also relied on the citation reported in 2019 (2) MWN (Civil) 88 [Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by Ors] in support of his claim and submitted that when the suit is barred by limitation on the plain reading of the plaint, the plaint can be rejected at threshold and the relevant Paragraph Nos.6.3 to 8 is extracted hereunder for ready reference:

"6.3 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 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 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....." 6.4 In the case of Church of Christ Charitable Trust and Educational Charitable Society (supra), 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." 6.5 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. 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." 6.6 In the case of Sopan Sukhdeo Sable (supra) in paras 11 and 12, this 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 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 (supra).” 6.7 In the case of *Madanuri Sri Rama Chandra Murthy (supra)*, this Court has observed and held as under:

“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." 6.8 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.

7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 of the 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 of the 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 No. 10. It appears that the summon of the suit filed by the defendant being T.S. (Partition) Suit No. 203 of 2001 was served upon the defendant No.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 the case of T. Arivandandam (supra) 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 of the CPC.

7.1 At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial Court.

8. Now, so far as the application on behalf of the original plaintiff and even the observations made by the learned trial Court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence is concerned, as observed and held by this 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 CPC."

22. Further the learned counsel for the petitioners / defendants had relied on the Judgment of this Court reported in 2015 (15) CTC Page 629 , [Dr.L.Ramachandran and Dr.Gayatri Devi Vs. K.Ramesh & Others] wherein he claimed that there is no necessity to conduct trial or appreciate the evidence to adjudicate the issue of limitation when the plaint averment establishes that the plaint is hopelessly barred by limitation and Paragraph No. 21, 24 and 26 are extracted herein:-

"21.It is to be noted that the transaction effected was by the first defendant in whose favour the defendants 2 to 4 executed a settlement deed. Apart from that there has been two other transactions in respect of the smaller extents in the same property executed by the defendants 2 to 4 which have not been

questioned. The specific case of the defendants 7 & 8 is that they have purchased an extent of 4650 sq.ft. of land from the 5th and 6th defendants on 26.04.1982 and their vendors, defendants 5 & 6 had purchased the property on 03.01.1979. Thus, we have no hesitation to hold that the cause of action is absolutely vague and presumably to cover up the delay and to avoid the suit being thrown out on the ground of limitation. Yet, from the admitted averments in the plaint, the learned single Judge found that the suit was barred by limitation. Therefore, it has to be held that there was no cause of action for filing the suit in the year 2000, seeking to set aside the transactions which were done in the year 1979 / 1982.

24..We have referred to the admitted factual position which has been noticed and accepted by the learned single Judge and going by the admitted factual position, the suit is clearly barred by limitation and to decide this issue no evidence is required as we have gone by only the admitted facts culled out from the Plaint and recorded by the learned single Judge.

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."

23. The learned counsel for the petitioner has referred the case of Hon'ble Supreme Court reported (1994) 1 Supreme Court Cases Page 1 [S.P.Chengalvaraya Naidu (Dead) by Lrs. Vs. Jagannath (Dead) by Lrs. and Others], to contend that the decree obtained by non-disclosure of material facts, the suit is liable

to be dismissed on account of fraud and the relevant portion, viz., Paragraph No.26 of the said Judgment is extracted below:

"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 barred 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."

24. Apart from the above, the learned counsel for the petitioners has referred to the Judgment of Hon'ble Supreme Court reported in (2013) 3 Supreme Court Cases Page 182 [Board of Trustees of Port of Kandla Vs. Hargovind Jasraj and Another] to show that the Sub Registrar has authority to register the cancellation of settlement deed or extinguishment deed and the appropriate Paragraph nos.21 to 30 is given below:-

"21. A suit for declaration not covered by Article 57 of the Schedule to the Limitation Act, 1963 must be filed within 3 years from the date when the right to sue first arises. Article 58 applicable to such suits reads as under:

Description of suit	Period of Limitation	Time from which begins to run	period
58.To obtain any other	Three years	When the right to sue	first
declaration.			
accrues.			

22. The expression right to sue has not been defined. But the same has on numerous occasions fallen for interpretation before the Courts. In State of

Punjab & Ors. V. Gurdev Singh (1991) 4 SCC 1, the expression was explained as under :

".....

"6. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. 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 that right by the defendant against whom the suit is instituted."

23. 19. Similarly in Daya Singh & Anr. V. Gurdev Singh (dead) by LRs. & Ors. (2010) 2 SCC 194 the position was re-stated as follows:

"13. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the Schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues.

14. In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the appellant-plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned Senior Counsel strongly relied on a decision of the Privy Council in reported in AIR 1930 PC 270 Bolo v. Koklan. In this decision Their Lordships of the Privy Council observed as follows:

'... There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.'

15. A similar view was reiterated in C. Mohammad Yunus v. Syed Unnissa AIR 1961 SC 808 in which this Court observed: (AIR p.810, para 7)

'7. ... The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.' In C. Mohammad Yunus, this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action.

.....Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the defendants....."

24. References may be made to the decisions of this Court in Khatri Hotels Pvt. Ltd. & Anr. V. Union of India & Anr. (2011) 9 SCC 126 where this Court observed:

"30.While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This 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. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued." (emphasis supplied)

25. The right to sue in the present case first accrued to the lessee on 13th December, 1978 when in terms of order dated 8th August, 1977 the lease in favour of the lessee was terminated. A suit for declaration that the termination of the lease was invalid hence ineffective for any reason including the reason that the person on whose orders the same was

terminated had no authority to do so, could have been instituted by the lessee on 14th of December 1978. For any such suit it was not necessary that the lessee was dispossessed from the leased property as dispossession was different from termination of the lease. But even assuming that the right to sue did not fully accrue till the date the lessee was dispossessed of the plot in question, such a dispossession having taken place on 14th of December, 1978, the lessee ought to have filed the suit within three years of 15th December, 1978 so as to be within the time stipulated under Article 58 extracted above. The suit in the instant case was, however, instituted in the year 1996 i.e. after nearly eighteen years later and was, therefore, clearly barred by limitation. The Courts below fell in error in holding that the suit was within time and decreeing the same in whole or in part.

26. Mr. Ahmadi next argued that the termination of the lease being illegal and non est in law, the plaintiff-respondents could ignore the same, and so long as they or any one of them remained in possession, a decree for injunction restraining the Port Trust from interfering with their possession could be passed by the Court competent to do so. We are not impressed by that submission.

27. The termination of the lease deed was by an order which the plaintiffs ought to get rid of by having the same set aside, or declared invalid for whatever reasons, it may be permissible to do so. No order bears a label of its being valid or invalid on its forehead. Any one affected by any such order ought to seek redress against the same within the period permissible for doing so. We may in this regard refer to the following oft quoted passage in Smith v. East Elloe Rural District Council (1956) 1 All ER 855. The following are the observations regarding the necessity of recourse to the Court for getting the invalidity of an order established:

"An order, even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.

This must be equally true even where the brand of invalidity is plainly visible : for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects."

28. The above case was approved by this Court in *Krishnadevi Malchand Kamathia & Ors. v. Bombay Environmental Action Group and Ors.* (2011) 3 SCC 363, where this Court observed:

"19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the Petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

29. To the same effect is the decision of this Court in *Pune Municipal Corporation v. State of Maharashtra and Ors* (2007) 5 SCC 211, where this Court discussed the need for determination of invalidity of an order for public purposes:

"36. It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. As Prof. Wade states: "The principle must be equally true even where the 'brand of invalidity' is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the Court".

He further states:

"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because

of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another."

38. A similar question came up for consideration before this Court in *State of Punjab and Ors. v. Gurdev Singh* (1992) 1 LLJ 283 SC ...

39. Setting aside the decree passed by all the Courts and referring to several cases, this Court held that if the party aggrieved by invalidity of the order intends to approach the Court for declaration that the order against him was inoperative, he must come before the Court within the period prescribed by limitation. "If the statutory time of limitation expires, the Court cannot give the declaration sought for".

30. Reference may also be made to the decisions of this Court in *R. Thiruvirkolam v. Presiding Officer and Anr.* (1997) 1 SCC 9, *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and Ors.* (1996) 1 SCC 435 and *Tayabbhai M. Bagasarwalla & Anr. v. Hind Rubber Industries Pvt. Ltd. etc.* (1997) 3 SCC 443, where this Court has held that an order will remain effective and lead to legal consequences unless the same is declared to be invalid by a competent court."

26. Moreover, the learned counsel for the petitioners has referred to the Judgment of this Court reported in 2017 (1) CTC page 497 [*Cambridge Solutions Limited, Bangalore Vs. Global Software Limited and others*], at Paragraph Nos. 14 to 18 and 21 to 23, to state that mere inclusion of word 'fraud' not sufficient specific instance and act of fraud have to be pleaded in the plaint.

27. Heard the learned counsels on either side in detail and perused the citations and the materials available on record.

28. It is no doubt that this Court can invoke jurisdiction under Article 227 of Constitution of India to strike out a plaint. While doing so, this Court has to follow the guidelines

issued by this Court in the case reported in 1998 (1) CTC page 66, [Ranipet Municipality Vs M. Shamsheerkhan] wherein the relevant portion, viz., Paragraph No.9 is extracted hereunder:

"9. It is this conduct of the respondent that is attacked by the petitioner as abuse of process of Court. What is 'abuse of the process of the Court'? Of course, for the term 'abuse of the process of the Court' the Code of Civil Procedure has not given any definition. A party to a litigation is said to be guilty of abuse of process of the Court, in any of the following cases:-

- (1) Gaining an unfair advantage by the use of a rule of procedure.
- (2) Contempt of the authority of the Court by a party or stranger.
- (3) Fraud or collusion in Court proceedings as between parties.
- (4) Retention of a benefit wrongly received.
- (5) Resorting to and encouraging multiplicity of proceedings.
- (6) Circumventing of the law by indirect means.
- (7) Presence of witness during examination of previous witness.
- (8) Institution vexatious, obstructive or dilatory actions.
- (9) Introduction of Scandalous or objectionable matter in proceedings.
- (10) Executing a decree manifestly at variance with its purpose and intent.
- (11) Institution of a suit by a puppet plaintiff.
- (12) Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc. (See The Code of Civil Procedure - A.I.R. Commentary to Section 151, C.P.C.) The above are only some of the instances, where a party may be said to be guilty of committing abuse of the process of Court."

Further, this Court is also to follow the guidelines issued in the case of Tamil Nadu Handloom Weavers Cooperative Society rep. By its Managing Director Vs. S.R.Ejaz, rep. by his Power Agent Muralidhar T.Balani reported in 2009 (5) LW 79, wherein it is held that where the suit itself is an abuse of the process of the Court, the same can be struck off exercising the supervisory jurisdiction of this Court. While doing so, this Court at Paragraph No.56 had observed as follows:

56."... When the subsequent suit is bound to be dismissed on the ground of both res judicata as well as constructive res judicata, there is no question of allowing the suit to continue, wasting the time of the

trial Court. Similarly, when the subsequent suit was found to be a vexatious suit initiated to circumvent the binding decree passed earlier as well as to defeat the directions issued by the Supreme Court, there is no point in directing the petitioner to approach the trial Court with an application to reject the plaint".

29. When the suit is barred by statutory provision, the Revision Petitioner will have the recourse under Order 7 Rule 11 of Civil Procedure Code for rejection of plaint. Moreover, abuse of process of court, does not fall under Order 7 Rule 11 by way of judicial legislation. The court has now recognised that Article 227 of Constitution of India can be invoked in such situations invoking the superintendence power over the subordinate courts for striking of plaint filed in abuse of Process of Court, provided the abuse of process of Court should be established and if there is any reason for a triable issue, this Court should not exercise the superintendence jurisdiction under 227 of the Constitution of India in striking off the plaint at threshold, in such situation, it would be justifiable to leave it to the trial court to decide the issues on merits. There may be exceptional cases in which the abuse of process of Court will also not hesitate to invoke the superintendence power under Article 227 of the Constitution of India to strike off a plaint. If such abuse of process of court is apparent on the face of record, this Court shall be justified in exercising the power to strike off the plaint under Article 227 Constitution of India and at the same time, strict distinction should be drawn while exercising the power under Article 227 of Constitution of India where the parties shall exercise the right under order 7 Rule 11 of CPC wherein the code stipulates that the defendant to approach the trial court within the frame work of Order 7 Rule 11 CPC. Once a specific provision is provided under the Code where a statutory remedy is available, invoking extraordinary jurisdiction of High Court under Article 227 Constitution of India should be restrained.

30. As far as the present case on hand is concerned, it is evidently clear on reading of the plaint that the respondents / plaintiffs who have approached the trial court to set it right the deed of revocation of settlement deed dated 10.02.2009 which is registered as document no.6261 of 2009 after a period of almost 11 years, is certainly barred by limitation. However, the circumstances under which the plaintiffs have approached the trial court seeking a declaratory relief should be inferred from the averments made from the plaint, which in the considered opinion of this Court is a triable issue, as the question of

limitation is the next question of law and fact. It may not be appropriate for this Court to nib the said bud at the very initial stage. It would be appropriate for the trial court to decide the issues on merits after affording sufficient opportunities to other parties. There are ample opportunities for the petitioners / defendants to resist the suit on basis of ordinary provisions of law.

31. On a perusal of the documents filed in support of this Revision petition, it is clear that deed of settlement deed dated 28.11.2005 was executed by the 2nd defendant one and her husband and the defendants have not reserve any right for cancellation and making it irrevocable. As far as the deed of cancellation dated 10.02.2009 is concerned, it is mischievly drafted and the same is evident on the plain reading of it. That apart, the letter dated 10.05.2010 addressed by the 1st petitioner goes contrary to the recitals of the cancellation deed. In the same way the police complaint dated 29.05.2015 and the letter written by the 1st petitioner to the collector dated 23.06.2017 are totally contradictory to the recitals of the cancellation deed. It is also evident from the order passed by the District Collector dated 23.03.2018 for the complaint dated 13.11.2017, wherein the District Collector had permitted the 1st plaintiff and her children to reside in the upstairs of the suit schedule property, all these facts presented by the learned counsel for the petitioners is contrary to his own arguments.

32. As such, the Hon'ble Supreme Court in Satyapal Anand Case [referred by the learned counsel for the petitioners supra] held that the Inspector General of Registration has no power to unilaterally cancel the registration of any document, which has already been registered and the role of the Registrar discharge after registration of the document which has to be inferred as that the unilateral cancellation of the settlement deed made by the 1st and 2nd petitioners is non-est in law as this Court holds that the cancellation of settlement deed by the parents is illegal and without jurisdiction it leads to the trial court as to whether the question of limitation in challenging said cancellation of settlement deed by the plaintiffs was in time or not and whether the plaintiffs are well within the limitation period to challenge the same.

33. On a plain reading of the plaint, this Court is of the view that the rejection of suit at threshold which is under challenge under Article 227 Constitution of India, where an extraordinary jurisdiction has to be exercised very cautiously and to be exercised when there are no other alternative and

efficacious remedy available for the petitioners. As such, Court should impose itself a self restrain in exercising jurisdiction under Article 227 Constitution of India, unless a prima facie has been made out and the suit is an abuse of process of law. When the said settlement deed executed in favour of the 1st plaintiff's husband and the said deed was accepted and the mutation of the names have been changed in the revenue records and they have pledged the same in the bank and obtained loan for construction and later on, the 1st plaintiff's husband who had settled the said property in his wife's favour, this Court is of the view that the petition filed by the petitioners herein cannot be accepted and the said petitioners have remedy under Civil Procedure Code and they cannot invoke the extraordinary jurisdiction of Article 227 of Constitution of India to reject the plaint in O.S.No.78 of 2018.

34. Under these circumstances, further, this Court is of the view that the Revision petitioner has not made any grounds for this Court to invoke the extraordinary jurisdiction of Article 227 of the Constitution of India and the present Civil Revision Petition fails and this Court directs the trial court to issue summons and proceed with the suit in accordance with law uninfluenced by any of the observations made by this Court in this petition. Accordingly, the present Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

ssd
To

1. The District Munsif Court,
Tiruchengode
2. The Section Officer,
V.R.Section, High Court, Madras

+1cc to Mr.N.Manokaran, Advocate SR.No.15679

+2cc to Mr.M.Sankar, Advocate SR.No.15646

C.R.P.No.1636 of 2019

SS(CO)
GMY(08/04/2021)