

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.07.2021

PRONOUNCED ON: 29.07.2021

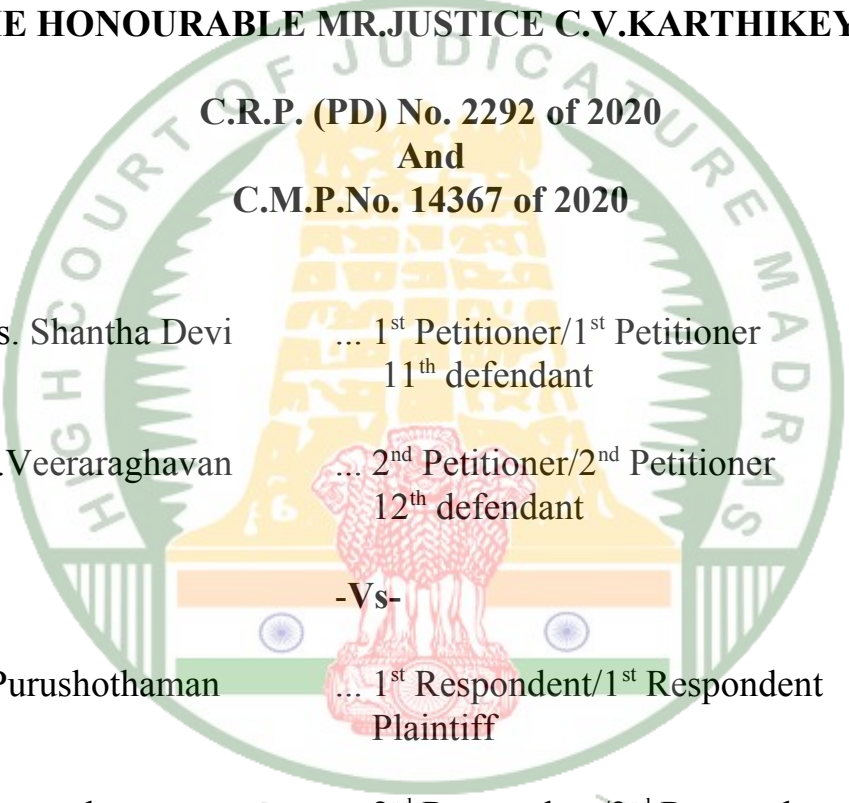
CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 2292 of 2020

And

C.M.P.No. 14367 of 2020

- 
1. Mrs. Shantha Devi ... 1st Petitioner/1st Petitioner
11th defendant
2. Mr.Veeraraghavan ... 2nd Petitioner/2nd Petitioner
12th defendant
- Vs-
1. D.Purushothaman ... 1st Respondent/1st Respondent
Plaintiff
2. Hemavathy ... 2nd Respondent/2nd Respondent
1st defendant
3. Sampath ... 3rd Respondent/3rd Respondent
2nd defendant
4. Jayalakshmi ... 4th Respondent/4th Respondent
3rd defendant
5. Sudhakar ... 5th Respondent/5th Respondent
4th defendant
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6. Srinivasan ... 6th Respondent/6th Respondent
5th defendant
7. Radhakrishnan ... 7th Respondent/7th Respondent
6th defendant
8. Rajendran ... 8th Respondent/8th Respondent
7th defendant
9. Ravichandran ... 9th Respondent/9th Respondent
8th defendant
10. Kirubavathy ... 10th Respondent/10th Respondent
9th defendant
11. Rajeswari @ Rajasri ... 11th Respondent/11th Respondent
10th defendant
12. The Sub Registrar
No.4, Second Main Road
Subramania Nagar,
Pallavaram,
Chennai – 600 043. ... 12th Respondent/12th Respondent
11th defendant
13. The District Registrar
Chennai South
2nd Floor, SIDCO Electronics
Complex,
Thiru.vi.ka Industrial Estate
Guindy,
Chennai – 600 032. ... 13th Respondent/13th Respondent
12th defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order made in I.A.No. 94 of 2019 in O.S.No. 250 of 2018 dated 29.10.2020 pending on the file of the Subordinate Judge, Tambaram.

For Petitioners : Mr. ARL. Sundaresan
Senior Counsel
for Mr. S.Vijayakumar

For 1st Respondent : Mr. R.Thiagarajan

For RR 12 & 13 : Dr.S.Suriya
Government Advocate

For RR 2 to 11 : No appearance

ORDER

This Civil Revision Petitioner has been filed by the 11th and 12th defendants in O.S.No. 250 of 2018 now pending on the file of the Sub Court, Tambaram, questioning the order dated 29.10.2020 passed in I.A.No. 94 of 2019.

2. The said Interlocutory Application in I.A.No. 94 of 2019 had been filed by the revision petitioners herein under Order VII Rule 11 of the Code of Civil Procedure seeking to reject the plaint in O.S.No. 250 of 2018. That application came to be dismissed by order dated 29.10.2020.

3. O.S.No. 250 of 2018 had been filed by the first respondent against 14 defendants seeking a Judgment and Decree in the nature of preliminary decree for partition in 'A' schedule property and allotting 5/90th share to the plaintiff and for a final decree with respect to the same and for declaration that a release deed dated 11.06.2014 registered as document No. 5175/14 in the office of the Sub Registrar, Pallavaram, as null and void and not binding on the plaintiff and for a declaration that a settlement deed dated 10.02.2017 registered as Document No. 929 of 2017 in the office of the Sib Registrar, Pallavaram, executed by the 11th defendant in favour of the 12th defendant as null and void and not binding on the plaintiff and for a permanent injunction restraining the 11th and 12th defendants from alienating or encumbering 'A' schedule property and for costs of the suit.

4. In the plaint, it had been stated that the suit properties were ancestral properties of one Kulasekaram Pillai, who was allotted the property under a partition deed dated 17.07.1930. He died intestate on 07.03.1972. His wife Mrs. Ammanji Ammal also died intestate on 03.11.1991. They left behind two daughters and one son, who succeeded to the suit properties.

5. One of the daughters died intestate leaving behind legal heirs. The plaintiff is one of her sons.

6. The 1st, 2nd, 3rd, 4th and 5th defendants are her daughters. In effect, they are the sisters of the plaintiff. Another daughter of Kulasekaran Pillai died intestate on 25.08.2017 and she left behind five legal heirs. They have been impleaded as 6th to 10th defendants. The 11th defendant is the widow of the son of Kulasekaram Pillai. The 12th defendant is her brother. The 13th defendant is the Sub Registrar, Pallavaram and the 14th defendant is the District Registrar, Chennai South. There were disputes with respect to other properties of Kulasekaram Pillai and his son Santhanakrishnan and the plaintiff and other legal heirs filed O.S.No. 467 of 2007 before the District Court at Chengalpattu. All the parties had given a power of attorney in favuor of Santhanakrishnan to conduct the judicial proceedings. He died on 11.11.2016 leaving behind the 11th defendant / his widow as his legal heir.

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7. It is claimed by the plaintiff that after his death, the other legal heirs approached the 11th defendant seeking partition of the properties. It is stated that in October 2017, the plaintiff verified the encumbrance and

found that the 11th defendant had registered a settlement deed dated 10.02.2017 in document No. 929 of 2017 registered in the office of the Sub Registrar, Pallavaram in favour of her brother, the 12th defendant. It was also found that what the plaintiff thought was a power of attorney executed in favour of Santhanakrishnan was actually a release deed. It is claimed that the said document had also been registered as document No. 5175/14 and registered in the office of the Sub Registrar, Pallavaram on 11.06.2015. The plaintiff claimed that the said document was obtained by undue influence and misrepresentation and therefore, it is void abinitio.

8. It is claimed that the 12th defendant, the brother of the 11th defendant is an Advocate and had illegally obtained the release deed. It is claimed that the suit properties are joint family properties and therefore, the release deed and the settlement deed are not valid in the eye of law. It is under these circumstances that the suit had been filed seeking partition and separate possession and also for a declaration that the release deed and the settlement deed are null and void and not binding on the plaintiff herein.

9. The 11th and 12th defendants filed I.A.No. 94 of 2019 seeking to reject the plaint under Order VII Rule 11 CPC. In the affidavit filed in support of the said application, it had been stated that the suit is barred by law of limitation and that there is no cause of action for instituting the suit and that the suit is under valued and proper Court fee had not been paid.

10. With respect to the issue of limitation, it had been stated that in O.S.No. 467 of 2007 which had been filed before the District Court at Chengalpattu, all the parties had affixed their signatures and therefore, there was no necessity to appoint Santhanakrishnan, as power of attorney agent to prosecute the judicial proceedings. The parties had signed in the plaint and also in the vakalat. The release deed was executed much later on 11.06.2014. The first sheet in the release deed was a stamp paper for Rs.20,000/- and the second sheet was a stamp paper for Rs.5,000/-. All the seven parties have signed one after another and an Advocate Mr. V.Ramanujam had also signed with his rubber stamp and address. It is claimed that the said Advocate is a relation of the seven releasors and also of the two witnesses. It is thus stated that the claim that a power of attorney was said to be executed but as a matter of fact, a release deed had been

executed, cannot be believed and that the plaintiff had come to Court pleading false facts to his knowledge. Even otherwise, it had been stated that the release deed had been executed in the year 11.06.2014 and the plaint was dated 24.08.2018 and therefore the suit is barred by the law of limitation. It has been further stated that since the plaintiff himself was the signatory to the release deed, the starting point of limitation would be the date on which the signature is affixed. Therefore, the period of limitation commenced on the date of the document, namely, 11.06.2014.

11. With respect to the fact that there was no cause of action for instituting the suit, it had been stated that the plaintiff is a real estate agent and certainly knew the difference between a power of attorney and also any other document and it had been stated that claiming that he examined encumbrance and came to know in the year 2017 that a settlement deed had been executed is false statement. As a matter of fact, the plaintiff had also sold 25 cents of land to a builder, who had constructed a multi story building and had sold the same to various parties. There were three documents successively executed on 11.06.2014 and all three are release deed and registered as Document Nos. 5173, 5174 & 5175 of 2014. Only

one of them is questioned in the plaint and it is contended that there is no bona fide on the part of the plaintiff to plead that there was no cause of action for institution of the suit.

12. With respect to the valuation of the suit, it had been stated that the suit should have been valued on the entire property, but on the other hand, the suit had been valued under Section 37(2) of the Tamilnadu Court Fees and Suit Valuations Act, 1955 with respect to the relief of partition and at Rs.300/- under Section 25(d) of the Tamilnadu Court Fees and Suit Valuation Act, which according to the petitioner was not proper and that the Court fees in accordance with the value of the property should have been paid.

13. A counter had been filed to the said application by the plaintiff stating that a power of attorney had been given to Santhanakrishnan to conduct the case. It was stated that the plaintiff was under a bonafide intention that a power of attorney alone was being executed and not a release deed.

14. With respect to the cause of action, it had been stated that the cause of action is a bundle of facts which would require analysis of pleadings and evidence to determine the same.

15. With respect to the bar by law of limitation, it had been stated that the plaintiff came to know only October 2017 that a release deed had been executed and therefore, claimed that the suit is very much within the period of limitation.

16. With respect to the valuation of the suit, it had been stated that the suit had been properly valued and proper Court fees had been paid.

17. It had been further stated that it had been pleaded in the plaint that fraud had been played which would require evidence to be recorded and therefore the plaint cannot be rejected under Order VII Rule 11 CPC.

18. A reply was filed to this counter affidavit and in the reply, a string of documents executed by the plaintiff in the years 2014 to 2018 had been given and it had been stated that the plaintiff therefore cannot claim

innocence in mistaking a release deed to be a power of attorney document.

It was stated that the suit should be rejected.

19. Heard arguments advanced by Mr. ARL. Sundaresan, learned Senior Counsel on behalf of the revision petitioners and Mr.R.Thiagarajan, learned counsel for the 1st respondent/plaintiff and Dr.S.Suriya, learned Government counsel for the 12th and 13th respondents.

20. The suit in O.S.No. 250 of 2018 now pending on the file of the Sub Court at Tambaram, is the borne of contention between the parties. It has to be mentioned that none of the parties to the suit had actually earned the properties. They did not toil to purchase the properties. They inherited then. Therefore, it is only natural, they would embark on a litigation over then. The properties originally belonged to the grandfather Kulasekaram Pillai. He had two daughters, Kamala and Vimala Bai and one son Santhanakrishnan. He and his wife died intestate. The properties went to the hands of the two daughters and the son. One of the daughter's died leaving behind the plaintiff and the 1st to 5th defendants as her legal heirs. The second daughter also died leaving behind the 6th to 10th defendants as

her legal heirs. The son also died leaving behind the 11th defendant/his wife as his legal heir.

21. With respect to the some other properties of Kulasekaram Pillai, there was an earlier litigation in O.S.No. 467 of 2007 before the District Court at Chengalpattu. Santhanakrishnan was alive at that time. He and the plaintiff and the 1st to 10th defendants were the plaintiffs. They all signed the plaint. They also signed in the vakalat. It is claimed by the plaintiffs herein, that a power of attorney was given in favour of Santhanakrishnan by the other plaintiffs in that suit to conduct the judicial proceedings. It is claimed that such a power of attorney was given in the year 2014.

22. Along with the plaint in O.S.No. 250 of 2018, a copy of the plaint in O.S.No. 467 of 2007 had been filed as the 11th document. The date of that plaint was 27.08.2007. There is no indication that the plaint was amended in the year 2014 indicating that Santhanakrishnan was the power of attorney agent of all other plaintiffs. Therefore, the contention that a power of attorney was granted to Santhanakrishnan is a mere statement, not

supported by any document, and not supported by any other plaintiffs in O.S.No. 467 of 2007 who are defendants in O.S.No. 250 of 2018.

23. The plaintiff also claims that on the guise of obtaining a power of attorney, Santhankrishnan obtained the signatures in a release deed. A charge or allegation against a dead man, levied after his death, with knowledge that it can never be controverted, has to be condemned and viewed with askance. It does not beove well to the conduct of the plaintiff in O.S.No. 250 of 2018 to levy such a charge. I fervently hope it is not created by counsels.

24. The release deed had been registered as Document No. 5175 of 2014 in the Office of the Sub Registrar, Pallavaram on 11.06.2014. The plaintiff has however suppressed that 11.06.2014 two other release deeds were actually executed by the plaintiff and the 1st to 10th defendants which documents had been registered as document Nos. 5173 & 5174 of 2014. Suppression of significant facts stare a the face of the plaintiff.

25. A copy of the release deed sought to be declared as null and void had also been filed and presented before this Court. The first sheet is a stamp paper for Rs. 20,000/- and the second sheet is a stamp paper for Rs.5,000/-. As many as seven releasors signed the release deed. The plaintiff's signature is the fifth signature. None of the other signatories to the document have raised any whisper that they were under the impression that they were executing a power of attorney and that on the guise of executing a power of attorney, a release deed was actually executed. The said statement by the plaintiff is too far fetched to believe. It has to be rejected as being totally false to the knowledge of the plaintiff.

26. The plaintiff has not stated the further facts in his plaint that he is actually a parallel of a Court bird, a registration office bird. He had registered several documents in the years 2014, 2015, 2016, 2017 and 2018. He has not stated that he does not know the difference between a power of attorney and a release deed. He has not produced a copy of the amended plaint indicating that Santhanakrishnan had been appointed as power of attorney agent of the plaintiffs in O.S.No. 467 of 2007. The plaintiff cannot innocence and ignorance and seek indulgence. The Court should take

judicial note of all these facts. On the date of the execution of the said document, he was aged 59 years. All the surviving legal heirs of Kulasekaram Pillai had signed the document. None of them have stated that they had been misled in executing the document by misrepresenting the document to be a power of attorney when it was actually a release deed.

27. Once it is evident the plaintiff has come to Court with unclean hands then, any stand taken by him will have to be scrutinising by the Court very carefully action. There has been suppression of material facts. There has been suppression of the fact that on the same day on 11.06.2014, the plaintiff had appended his signature on two other documents in the Sub Registrar's Office. Those documents were also registered. They were also release deeds. Nowhere in the release deed, is the signature of Santhanakrishnan found. A power of attorney is a bilateral document executed by a principal appointing an agent. They both sign the power of attorney document. An agency is created by such a document.

28. It is seen that there are two witnesses in the release deed. It had also been drafted and signed by an Advocate. The fact that it is a

release deed had been very clearly stated in the first page of the document and also in each page of the document in Tamil. The document is in Tamil and the plaintiff has never stated that he cannot read and understand the language. Thankfully, he has not stooped to that level. A reading of the document shows that practically in every page, there is a reference that the document is a power of attorney. There was no necessity to appoint Santhanakrishnan as a power of attorney. The plaintiff cannot plead false facts in a Court thereby sacrilegizing the sanctity of judicial proceedings. The Court cannot be treated as a playground to plead frivolous claims and expect that they would be accepted without any scrutiny.

29. In view of these facts, I hold the plaint should be struck off on that one particular fact that a false plea had been stated by the plaintiff in O.S.No. 250 of 2018. The cause of action does not exist for the suit. It is a bundle of falsity.

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30. The period of limitation to question the document commences from the date when the document is executed. The document had been executed on 11.06.2014 and the period of limitation is three years from that

particular date. The suit had been instituted only in the year 2018. Article 59 of the Limitation Act 1963 is very clear on this particular aspect. The limitation begins from the date when the cause first accrued. The cause first accrued on the date of appending the signature to the document.

31. The contention of the learned counsel for the plaintiff that limitation is a mixed question of fact and law can be appreciated if true facts have been pleaded in the plaint. Here, the plaintiff has come to Court pleading falsity with the knowledge that falsity is being pleaded.

32. The learned counsel for the first respondent/plaintiff relied on **2007 (14) SCC 183 [C.Natarajan Vs. Ashim Bai and another]**. It had been stated in the said Judgment that the question which was raised before the trial Court to urge the suit should be rejected under Order VII Rule XI (d) was different from that which was urged before the High Court. The order of the High Court was set aside primarily because they had taken into consideration facts which had not been pleaded. The facts in the present case are totally different. Here the plaintiff pleads that he was influenced to sign a document. The release deed which had been misrepresented been to

be a power of attorney had been filed as document to the plaint. It is a part of the pleadings. A mere glance of the same would show the falsity of the claim of the plaintiff and improbability of such a claim. The word release in Tamil is given in each and every page.

33. The learned counsel for the 1st respondent/plaintiff also relied on *2006 (5) SCC 658 [Balasaria Constructions (P) Ltd., Vs. Hanuman Seva Trust and others]*. It had been stated that the question of limitation is a mixed question of law and, fact and ex facie, on reading of the plaint, the suit cannot be held to be barred by limitation. In the present case, a prima facie reading of the plaint leads to the conclusion that the suit is certainly barred by limitation. Article 59 of the Limitation Act 1963 is as follows:-

“

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
59. To cancel or set aside an instrument or decree or for the rescission of a contract	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first became known to him.

”

34. To question the document, the period is three years no further. The suit instituted thereafter is barred by the law of limitation. There is no mixed question of law and fact. The document had been signed on 11.06.2014 and it was registered. The plaintiff claims that he was under the impression that it was a power of attorney and it later turned up to be a release deed. The limitation period started on 11.06.2014 when the document was actually signed. The plaintiff had very carefully stated in the plaint that in October 2017 he came to know about this particular fact. No date had not been mentioned. The circumstances under which such knowledge came to the plaintiff had not been mentioned. Clever drafting cannot make a plaint to survive the scrutiny of the Court.

35. The learned counsel for the first respondent/plaintiff also relied on **2008 (12) SCC 661 [Kamala and Others Vs. K.T.Eshwara SA and Others]**. It had been held that for a plaint to be rejected such inference should be drawn from the averments made in the plaint. In the instant case, a reading of the plaint itself shows the impossibility of the facts pleaded. Documents filed along with the plaint are also part of the pleadings and

examination of the documents particularly the release deed would show that the plaintiff had appended his signature as one among 10 other parties and none of them thought it even necessary to state that they have been misled into thinking that what they were executing was a power of attorney and not a release deed. The statement of the plaintiff has to be rejected.

36. The learned counsel for the 1st respondent/plaintiff then relied on **2014 (15) SCC 785 [*John Kennedy Vs. Ranjana*]**. The said Judgement arose on a finding of the High Court with respect to the nature of a property, whether it was self acquired or ancestral and that particular finding was interfered with. The facts are not directly related to the facts of the present case.

37. The learned counsel for the 1st respondent/plaintiff then relied on **2014 (16) SCC 125 [*Surjit Kaur Gill and another Vs. Adarsh Karu Gill and another*]**. In that case, the right to sue first accrued in the year 1992 and the suit was filed in the year 1993 and was held to be not barred by the law of limitation since a period of three years is given to sue and the period of three years had expired. If it had expired, the suit would become barred by limitation as in the present case.

38. The learned counsel for the 1st respondent/plaintiff then relied on *AIR 2015 SC 3357, [Vaish Aggarwal Panchayat Vs. Inder Kumar and Ors.]*. In that case, a conclusion had been arrived at after examining the facts pleaded in the written statement. Here the written statement had not been filed. It cannot therefore be examined by the Court. The pleadings in the plaint alone had been examined and the improbability of the facts pleaded have been stated. Therefore, the facts in said Judgment are distinguishable.

39. The learned counsel for the 1st respondent/plaintiff then relied on *2015 (2) CTC 67 [Kolli Venkata Mohan Rao and another Vs. J.M. Patricia and others]*. That was a suit for a declaration that a power of attorney and a sale deeds were null and void. A learned Single judge held that the conduct of the plaintiff showed that they were bona fide in prosecuting the matter against the defendant. The issue with respect to representation of the plaint before the District Court at Chengalpattu on return by the High Court and the delay in such representation. The facts in this case are certainly different.

40. The learned counsel for the 1st respondent finally relied on **2015 (8) SCC 331 [P.V. Guru Raj Reddy Rep. by GPA Laxminarayan Reddy and another Vs. P.Neeradha Reddy and others]**. Again, the Hon'ble Supreme Court had reiterated that while exercising the under Order VII Rule 11 CPC, only the averments in the plaint should be read and not the stand taken in the written statement. That principle is acknowledged and even in the instant case, it is only on a reading of the plaint and a perusal of the documents filed along with the plaint which forms part of the pleadings leads to the conclusion that the plaintiff had come to Court and instituted O.S.No. 250 of 2018 on the basis of a false plea. Naturally, on that ground itself, the plaintiff has to be non suited and more particularly when he had filed the suit after the period of limitation.

41. ***In Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and Others reported in (2020) 7 SCC 366,*** the Honourable Supreme Court had held as follows:-

“23.1. We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:

“11. Rejection of plaint.—*The plaint shall be rejected in the following cases—*

(a) where it does not disclose a cause of action;

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

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

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

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the

court and that refusal to extend such time would cause grave injustice to the plaintiff.”

23.2. The remedy under Order 7 Rule 11 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.

23.3. 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.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315, followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be

permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

*“12. ... The whole purpose of conferment of such powers is to ensure that a **litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court**, and exercise the mind of the respondent. **The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose.** Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”*

23.5. 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.

*23.6. 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 [**Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512**] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

23.8. *Having regard to Order 7 Rule 14 CPC, 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.*

23.9. *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.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

23.11. *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. This test was laid down in **Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I** [Liverpool & London S.P. & I*

Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a complaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the complaint itself. For the said purpose, the averments made in the complaint in their entirety must be held to be correct. The test is as to whether if the averments made in the complaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In *Hardesh Ores (P) Ltd. v. Hede & Co.* [*Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614*] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The complaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the complaint *prima facie* show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D.Ramachandran v. R.V. Janakiraman* [*D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267*; See also *Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941*].

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra* [*Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain* case [*Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315, followed in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823].

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

.....

.....

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

“24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

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

“5. ... The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is

manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing....”

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

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

[Emphasis Supplied]

42. In *K.Akbar Ali Vs. K.Umar Khan and Others* reported in 2021

SCC OnLine SC 238, the Hon'ble Supreme Court observed as follows:-

“5. It is well settled that while considering an application under Order VII Rule 11 of the CPC, the question before the Court is whether the plaint discloses any cause of action or whether the suit is barred by any law, on the face of the averments contained in the plaint itself. While considering an application under Order VII Rule 11 of the CPC the Court is not to look into the strength or weakness of the case of the plaintiff or the defence raised by the defendant.

.....

.....

*7. In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in **ITC v. Debts Recovery Appellate Tribunal** reported in (1998) 2 SCC 70 : AIR 1998 SC 634, **clever drafting creating illusions of cause of action are not permitted in law** and a clear right to sue should be shown in the plaint. Similarly the Court must see that **the bar in law of the suit is not camouflaged by devious and clever drafting of the***

***plaint.** Moreover, the provisions of Order VII Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.*

.....

.....

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]

43. In the result, this Civil Revision petition is allowed with costs of Rs.50,000/- (Rupees fifty Thousand only) and the plaint in O.S.No. 250 of 2018 on the file of Sub Court, Tambaram is rejected and is directed to be struck off from the suit register. Consequently, connected Civil Miscellaneous Petition is closed.

29.07.2021

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Index: Yes/No

Internet: Yes/No.

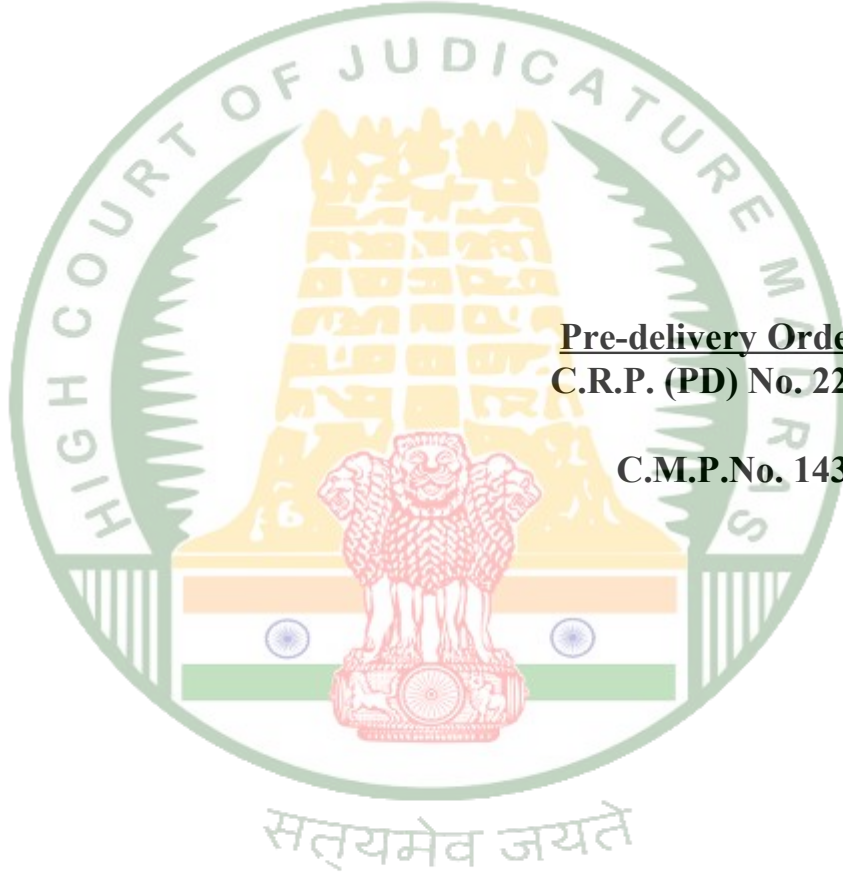
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C.V.KARTHIKEYAN, J.

vsg



Pre-delivery Order made in
C.R.P. (PD) No. 2292 of 2020
And
C.M.P.No. 14367 of 2020

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29.07.2021