

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.04.2021

PRONOUNCED ON: 03 .06.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 2745 of 2019

And

C.M.P.No. 18072 of 2019

R.Gnanprakasam

... Petitioner/Petitioner/35th Defendant

-Vs-

1. P.I. Mohammed Kutty 2 Mammooty
2. Sulfah Mohammed Kutty
3. Dulquer Salmaan Mohammed Kutty
4. Surumy Mammooty
5. P.S.Abbu

... Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, 1908 against order and decreetal order dated 03.07.2019 passed in I.A.No. 1 of 2019 in O.S.No. 7 of 2008 on the file of the learned Principal Subordinate Judge, Chengalpattu and prays for setting aside the same.

For Petitioner : Mr. T.M.Hariharan
For Respondents : Mr. V.Ramesh
Senior Counsel for
Mr. T.Thiyagarajan

ORDER

This Civil Revision Petition has been filed by the 35th defendant in O.S. No. 7 of 2008, now pending on the file of the Principal Sub Court, Chengalpattu, questioning the order dated 03.07.2018 dismissing I.A. No. 2019, which Interlocutory Application had been filed by the petitioner herein under Order VII Rule 11 of CPC to reject the plaint in O.S. No. 7 of 2008.

2. O.S. No. 7 of 2008 had been filed by the plaintiffs seeking a judgement and decree to declare that 13 Cancellation Deeds all dated 06.05.1998 bearing document nos. 996 to 1008 of 1998 on the file of the Sub Registrar, Thiruporur, Chengalpattu District, as null and void under section 31 of the Specific Relief Act, or to declare that the Compromise Decree in O.S. No. 209 of 2004 dated 10.02.2005 as null and void and not binding on the plaintiffs and to grant permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs over the suit schedule property and for costs of the suit.

3. The suit schedule property had been described as Agricultural lands measuring an extent of 40 acres comprised in Old Survey No. 41/3, and as per Patta No. 238, New Survey No. 41/4A to 41/4M, in Karunkuzhipallam Village, Kanchipuram District.

4. The suit was originally filed by 5 plaintiffs against 36 defendants. As years passed, the 37th to 60th defendants came to be impleaded.

5. After about a decade of the pendency of the suit, without any effective progress, the 35th defendant filed I.A. No. 1 of 2019 under Order VII Rule 11 CPC to reject the plaint on the ground that, out of the 40 acres mentioned as the suit property, he is in possession of 22.86 acres on the strength of a Sale Deed dated 26.03.2008 by the Principal District Court, Chengalpattu, pursuant to a decree dated 06.11.2007 in his favour in O.S. No. 488 of 2007, which suit had been filed for specific performance of an agreement of sale dated 06.11.2006, and also on the ground that therefore the title of the plaintiffs is clouded, and a suit filed without seeking

declaration of title will not lie, and further that there was no cause of action for instituting the suit. During arguments before this Court, it was also stressed that the suit was barred by the law of Limitation.

6. That application came to be dismissed, as aforesaid, by order dated 03.07.2019, with the Learned Sub Judge primarily holding that the facts in the case revealed that the issue of limitation is merged with facts and law and opportunity must be given to the plaintiffs to establish their claim. Questioning the reasons, the present Civil Revision Petition has been filed.

7. Heard arguments advanced by Mr. T.M. Hariharan, learned Counsel for the revision petitioner/35th defendant and Mr. V. Ramesh, learned Counsel for the 1st to 5th respondents/plaintiffs.

8. For the sake of convenience, the parties shall be referred as plaintiffs and defendants.

9. Mr. T.M. Hariharan took the Court through the averments in the plaint. He pointed out the trace of title as claimed by the plaintiffs. They claimed title on the strength of 13 Sale Deeds executed by the 1st and 3rd to 11th defendants dated alternatively 03.03.1997 and 24.03.1997 conveying in all 40 acres of agricultural land in Survey No. 41/3, Karunguzhipallam Village in Chengalpattu Taluk. The said defendants were the male heirs of one Kapali Pillai, who had purchased the lands from one V. Kunnappa Naicker, by sale deed dated 29.06.1936. The said 40 acres was part of a larger extent of land measuring 247.16 acres in a revenue auction. Revenue auction of the lands were resorted to since, the earlier purchaser G. Sirur, who himself had purchased the lands in an auction held by the Official Assignee had failed to pay the Government dues. The Official Assignee had brought the lands to auction owing to insolvency of the original owner, V. Subburaya Kottadiar.

10. After tracing the title thus, Mr. T.M. Hariharan then pointed out that the vendors of the plaintiffs, namely the 1st and 3rd to 11th defendants, issued notices to the plaintiffs, on 16.05.1998, complaining non

payment of consideration, and informing that the 13 sale deeds had been cancelled by documents dated 06.05.1998 and inviting the plaintiffs to receive back the actual consideration received. It had been pointed out by Mr. T.M. Hariharan, that the plaintiffs admit receipt of the notices informing cancellation of the sale deeds, and therefore, learned Counsel urged that the right to sue to declare that the said cancellation deeds were null and void, first arose on the date of receipt of the notices which was in May 1998, and therefore the suit instituted in the year 2008 seeking the said relief was hopelessly barred by the law of Limitation, by any mathematical calculation.

11. Mr. T.M. Hariharan further pointed out, that the plaintiffs had, on the other hand, instituted 11 suits in O.S. Nos. 294 to 314 of 1998 for the relief of injunction alone against the 1st and 3rd to 11th defendants. Learned Counsel was therefore emphatic in his submission that the suit was barred by the law of Limitation.

12. Mr. T.M. Hariharan also drew the attention of this Court to the order now questioned in this Civil Revision Petition and assailed the reason given to dismiss the application filed by the 35th defendant to reject the

plaint, that an issue of limitation is a mixed question of law and facts. Learned Counsel stated that no question of law was involved since, the fact that notices were issued in May 1998 is admitted, the fact that the plaintiffs knew in May 1998 that the sale deeds in their favour were cancelled is admitted and the fact that they did not institute a suit seeking the relief to set aside the cancellation deeds within the period of limitation is also admitted. The learned Counsel therefore urged this Court to interfere with the order passed and allow the Revision Petition, and thereby reject the plaint in O.S.No. 7 of 2008, now pending in the Sub Court, Chengalpattu as barred by limitation in so far as the 35th defendant is concerned.

13. Mr. V.Ramesh, learned Counsel for the plaintiffs however disputed the said arguments. Learned Counsel stated that the cancellation deeds were non est in the eye of law. Payment of consideration had been stated in the Sale Deeds and therefore urged that the unilateral cancellation deeds were void. Learned Counsel pointed out that the daughters and legal heirs of Kapali Pillai through his daughters raised a claim over the property. Later, the legal heirs of Kapali Pillai filed O.S. No. 209 of 2004 for partition of the property and a compromise was recorded on 10.02.2005, which

compromise and the decree passed thereto has also been challenged by the plaintiffs in the suit.

14. Learned Counsel also pointed out the steps taken by the plaintiffs to regularize their title. After the plaintiffs had purchased the property, the Commissioner of Land Administration, Chennai, cancelled the patta that had been issued by the Assistant Settlement Officer, without putting the plaintiffs on notice. The plaintiffs filed Writ Petitions. Orders were passed to afford the plaintiffs opportunity. The Commissioner of Land Administration, by order dated 21.02.2007, holding that the classification of land had been wrongly given, directed the plaintiffs to approach the revenue authorities. The Tahshildar, Chengalpattu, by order dated 29.09.2007, passed orders granting patta to the plaintiffs. Revenue records were also accordingly changed, including the names of the plaintiffs. The learned Counsel therefore stated that after the plaintiffs had perfected their title, they had instituted the suit seeking the reliefs as stated. Mr.V.Ramesh contended that the cancellation deeds and the compromise decree are non est in the eyes of law and by obtaining patta, the title and possession of the plaintiffs cannot be assailed, but since the cancellation deeds and the

compromise deed were a cloud to their title, the plaintiffs had instituted the suit. Learned Counsel was emphatic in his submission that the issue of limitation has to be analyzed only on the basis of the facts as projected by the plaintiffs and stated that evidence is required to bring on record all the relevant records and therefore stated that the plaint cannot be simply brushed away. He stated that the Revision should be dismissed and the order under question should be upheld.

15. In *Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and Others* reported in (2020) 7 SCC 366, the Hon'ble 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: सत्यमेव जयते

“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]*

.....
23.15. *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.*

Emphasis Supplied

In K.Akbar Ali Vs. K.Umar Khan and Others reported in 2021 SCC OnLine SC 238, the Honourable 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.

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.....

*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.*

Emphasis Supplied

*In **Dr. L. Ramachandran and another –vs- K. Ramesh and others,** reported in 2015 (5) CTC 629, a Division Bench of this Court had held as follows :*

*“Para 14 : The question that would arise is whether the Suit was filed within the period of limitation. The learned single Judge opined that to decide the question as to whether the Suit is barred by limitation, evidence has to be looked into. In our view, this may not be the case in all matters and facts of each case are germane. **When an Application is filed to dismiss the Suit, the endeavour of the Court should be to examine the admitted facts and then to***

consider as to whether the parties should face trial to decide the question of limitation.”

.....

*“Para 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.”

Emphasis Supplied

16. In accordance with the dictum laid down, the plaint will have be read as a whole in conjunction with the documents to determine whether the plaint will have to be rejected as barred by the law of Limitation, or whether there are facts which will require inviting the parties to adduce evidence and the said issue be decided on analysis of the oral and documentary evidence so adduced.

17. The suit had been filed by the plaintiffs seeking a declaration that 13 registered documents captioned cancellation deeds of earlier registered sale deeds as null and void and a further declaration that a compromise decree in O.S.209 of 2004 is also null and void and for permanent injunction against interference with possession of the suit property.

18. The suit property is 40.0 acres of agricultural lands in S. No. 41/3, Karunguzhipallam Village in Chenglpattu Taluk.

19. In the plaint, it had been stated that the agricultural lands in S. No. 43/1 originally measured 247 acres. The lands were owned by V. Subburaya Kottadiar. He had mortgaged the lands with C. Cunniah, who assigned the mortgage to T.C.A. Anzndalwar, who in turn assigned the mortgage to G. Sirur.

20. V. Subburaya Kottadiyar was declared insolvent. The Official Assignee brought the lands for sale. G. Sirur, the last assignee of the mortgage, purchased it. However he had Government dues. The property was brought again in auction, this time by the Revenue authorities. It was purchased by V. Kunnappa Naicker, by sale deed dated 22.06.1936.

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21. Out of the 247 acres, V. Kunnappa Naicker sold 121 acres to Muthukrishna Naidu and 40 acres to Kapali Pillai.

22. The said 40 acres are the subject matter of the suit, now being agitated by the plaintiffs and defendants in O.S. No. 7 of 2008 before the Sub Court, Chengalpattu. Kapali Pillai had three sons and four daughters. The surviving sons/legal heirs of predeceased son/sons and daughters of the daughters had been impleaded as 1st to 29th defendants in the suit. Thereafter, owing to further demises among the legal heirs, further defendants were impleaded, and as on the date of filing the revision, there were 60 defendants.

23. Among them, the 35th defendant/revision petitioner and the deceased 36th defendant stood on a different footing.

24. The 35th defendant/revision petitioner had entered into an agreement of sale with some of the defendants, who were represented by their power agent, S. Ravi, the 31st defendant to purchase 22.86 acres out of the 40 acres. He filed O.S. 488 of 2007, seeking specific performance, obtained a decree, pursuant to orders in Execution Petition, the Principal District Judge had also executed a Sale Deed with respect to the said 22,86

acres on 26.03.2008. He claims title and possession to the said lands.

25. The 36th defendant had also entered into an agreement of sale with some of the defendants, who again were represented by their power agent S. Ravi, the 31st defendant, had also filed O.S. No. 137 of 2008 for specific performance, also obtained a decree and pursuant to orders in E.P. No. 10 of 2009, the Principal District Judge had executed a Sale Deed on 23.04.2010.

26. The plaintiffs claim that both the sale deeds are not binding on them. They had been registered subsequent to institution of the suit.

27. The sons/legal heirs of predeceased son of Kapali Pillai, the 1st, 3rd to 11th defendants, sought patta for the 40 acres of land under the T.N. Estates (Abolition and Conversion into Ryotwari) Act, 1948, and patta was also granted by order of the Assistant Settlement Officer dated 13.05.1996.

28. They then, by 13 separate sale deeds, dated 03.03.1997 and 24.03.1997 alternatively, conveyed the entire 40 acres to the plaintiffs.

29. The Commissioner of Land Administration, Chennai, however cancelled the said patta, by order dated 26.09.1997. On that date, the plaintiffs had purchased the lands. They had not been issued with notice. Protesting non issuance of prior notice, the plaintiffs filed three Writ Petitions, and by order dated 17.11.1997, the Commissioner of Land Administration, Chennai was directed to issue notice to the plaintiffs and rehear the entire issue after granting opportunity to the plaintiffs.

30. The Commissioner of Land Administration, Chennai, issued a fresh show cause notice to the plaintiffs, enquiring why the patta granted by the Assistant Settlement Officer should not be cancelled. The hearings in the suo motto revision proceeded.

31. At this juncture, the 1st and 3rd to 11th defendants issued 6 legal notices dated 16.05.1998 to the plaintiffs stating that since the entire sale consideration as stated in the 13 sale deeds dated 03.03.1997 and 24.03.1997 had not been paid, they had cancelled the sale deeds by registered cancellation deeds dated 06.05.1998 and calling upon the plaintiffs to take back a sum of Rs.44,000/-. The plaintiffs issued a reply,

stating that the passing of consideration had been mentioned in the recitals of the 13 sale deeds.

32. Another legal notice had been issued by some of the legal heirs of the daughters of Kapali Pillai, that the sons/legal heirs of predeceased son of Kapali had executed sale deeds in favour of the plaintiffs, omitting the daughters/legal heirs of the daughters and claiming right over the property and raising issue of non payment of consideration.

33. It is the stand of the plaintiffs, that if non payment of consideration is complained, then the defendants will have to proceed only against their power agent who had executed the sale deeds seeking rendition of accounts and that the sale deeds cannot be cancelled.

34. The plaintiffs filed O.S. No. 294 to 314 of 1998 before the District Munsif Court, Chengalpattu, seeking protection of possession.

35. The defendants also claimed that Kapali Pillai left behind Will, though that was not mentioned either in the Sale Deeds in favour of the

plaintiffs or in the Cancellation Deeds or in the Written Statements filed in O.S. No. 294 to 314 of 1998.

36. Then, Damayan, one of the legal heirs of Kapali Pillai, filed O.S. No. 209 of 2004 against the other legal heirs seeking partition. In the plaint, he did not speak of any Will of Kapali Pillai. A compromise decree was passed on 10.02.2005. That decree has also been assailed by the plaintiffs in the suit.

37. In the midst of all these developments, the proceedings with respect to grant/cancellation of patta proceeded before the Special Commissioner and Commissioner of Land Administration, who by order dated 21.03.2007, held that the lands had been originally wrongly classified and therefore directed the plaintiffs to approach the Revenue authorities for grant of patta. Thereafter, further proceedings were taken up by the Tahshildar, Chengalpattu, who by order dated 29.09.2007 granted patta in favour of the plaintiffs. The plaintiffs claim that computerized patta had been granted to them. Further their names have been incorporated in the Chitta, Adangal and Field Map. It is claimed that the Tahshildar in the

order dated 29.09.2007 had observed that the plaintiffs are the owners and are in possession of the suit lands.

38. Subsequently, on 08.10.2007, on 11.10.2007 and on 27.10.2007, public notices were issued by two sets of defendants referring to the cancellation deeds and the compromise decree. The plaintiffs claim that those documents do not bind the plaintiffs. However, since the paper publications and the said documents have created a cloud over their title and possession, the suit had been filed seeking to set aside the cancellation deeds and the compromise decree.

39. In the cause of action paragraph, the plaintiffs have claimed that the last cause of action arose on 27.10.2007, when public notice was issued questioning the title and possession of the plaintiffs.

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40. Along with the plaint, the plaintiffs also filed the certified copies of the title deeds of the property, certified copies of the sale deeds registered in their favour, certified copies of the cancellation deeds, the

certified copy of the compromise decree dated 10.02.2005, the originals of the notices issued to them, the original orders of the Special Commissioner and Commissioner of Land Administration and the Tahshildar, the originals of the patta, chitta and Adangal extract and the originals of the paper publications issued.

41. In *Chhotanben and another –vs- Kiritbhai Jalkrushanabhai Thakkar and others*, reported in (2018) 6 SCC 422, a judgment also referred by the learned Sub Judge, Chengalpattu, The Hon'ble Supreme Court examined a suit instituted in the year 2013 seeking to set aside a Sale Deed of the year 1996. An application had been filed under Or. VII Rule 11 (d) CPC to reject the plaint as being barred by the law of Limitation. The application had been dismissed by the Trial Court, holding, on a reading of the pleadings in the plaint, that issues of facts and law arise. That order was set aside by the High Court. Challenging the order of the High Court, a further appeal was filed before the Hon'ble Supreme Court. The Order of the Trial Court was upheld and affirmed by the Hon'ble Supreme Court, since it was found on a reading of the plaint, that the plaintiffs had alleged that they had no knowledge of the Sale Deed which they sought to set aside

and infact denied the thumb impressions and alleged fraud and impersonation. It was observed and held as follows :

*“14. After having cogitated over the averments in the plaint and the reasons recorded by the trial court as well as the High Court, we have no manner of doubt that the High Court committed manifest error in reversing the view taken by the trial court that **the factum of suit being barred by limitation, was a triable issue in the fact situation of the present case.** We say so because the appellant-plaintiffs have asserted that until 2013 they had no knowledge whatsoever about the execution of the registered sale deed concerning their ancestral property. Further, they have denied the thumb impressions on the registered sale deed as belonging to them and have alleged forgery and impersonation. In the context of totality of averments in the plaint and the reliefs claimed, which of the articles from amongst Articles 56, 58, 59, 65 or 110 or any other article of the Limitation Act will apply to the facts of the present case, may have to be considered at the appropriate stage.*

15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18-10-1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellant-plaintiffs is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers, original Defendants 1 and 2, in favour of Jaikrishnabhai Prabhudas Thakkar or Defendants 3 to 6. They acquired that knowledge on 26-12-2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the

suit, had approached their brothers (original Defendants 1 and 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (½) portion of the land so designated towards their share. However, when they realised that the original Defendants 1 and 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the trial court opined that it was a triable issue and declined to accept the application filed by Respondent 1-Defendant 5 for rejection of the plaint under Order 7 Rule 11(d). That view commends to us.”

42. If the facts in the plaint in the instant case are read in conjunction with the documents filed, it is seen that though notices indicating cancellation of the Sale Deeds had been issued to the plaintiffs on 16.05.1998, proceedings before the Special Commissioner and Commissioner for Land Reforms and before the Tahshildar were ongoing,

and the title of the plaintiffs were recognized by grant of patta by order dated 29.09.1997. Till that date, the plaintiffs were actively and diligently involved before the concerned Revenue authorities with only aim to perfect title, mutate revenue records and to assert possession. The Cancellation deeds had been executed by the 1st and 3rd to 11th defendants unilaterally, and the plaintiffs have alleged fraud and that such cancellation deeds are neither lawful, nor binding on them. However, when public notices had been issued challenging the title of the plaintiffs, a cause of action arose to claim recognition of their title and possession, and hence they had immediately filed the suit. Similarly, the compromise decree was a settlement among the defendants, without reference to the plaintiffs, though proceedings were pending regarding grant or otherwise of patta. The plaintiffs have also claimed that the said decree has to be set aside on the question of collusion.

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43. Issues of fraud, collusion have to be decided on the basis of evidence adduced. A prima facie finding can never be given. The plaintiffs must be given an opportunity to graze the witness box, present their

evidence and to invite the defendants to test the same during cross examination.

44. In so far as the revision petitioner/35th defendant is concerned, he had entered the into the picture pending the suit. Questions have to be put to him whether in his suit, he disclosed the pendency of the suit instituted by the plaintiffs, and whether he disclosed that their possession had been recognized by the revenue authorities, His bonafide requires examination. All this requires the process of trial to be undertaken.

45. The Judgment in ***Dr. L. Ramachandran and another –vs- K. Ramesh and others***, reported in 2015 (5) CTC 629, is clearly distinguishable on facts. It had been affirmed in the said judgment, that “*when an Application is filed to dismiss the Suit, the endeavour of the Court should be to examine the admitted facts and then to consider as to whether the parties should face trial to decide the question of limitation.*”

46. A reading of the plaint indicates that only admitted facts are the trace of title over the suit lands. The Sale Deeds, Cancellation Deeds, the

Compromise Decree and the grant of patta are all subject matter of evidence. The defendants will certainly try to justify execution of Cancellation Deeds by alleging non payment of consideration, which fact the plaintiff will deny. Evidence is required on this aspect. Grant of patta to the plaintiff is another contentious issue. The Compromise Decree is assailed on the ground of collusion. The plaintiffs claim that the Cancellation Deeds and the Compromise Decree are not binding on them. They will necessarily have to state the reasons during trial, and such reasons will have to withstand the test of cross examination.

47. The legal heirs of Kapali Pillai through his daughters have a rival claim. They are defendants in the suit with right to be heard.

48. The right and title claimed by the revision petitioner/35th defendant, and whether he was an innocent, ignorant purchaser are issues to be decided only during trial.

49. I hold that, in the totality and complexity of the facts pleaded in the plaint, the Learned Sub Judge, Chengalpattu was right in dismissing the

application seeking to reject the plaint. The issue of limitation will have to be adjudged only on analysis of evidence presented by the parties to the suit, and the plaintiffs cannot be non suited on the ground taken and alleged. In view of the above discussion, I uphold the order dated 03.07.2019 passed by the Learned Principal Sub Judge, Chengalpattu in I.A. No. 1 of 2019 in O.S. No. 7 of 2008.

50. The Civil Revision Petition is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

03.06.2021

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Index: Yes/No

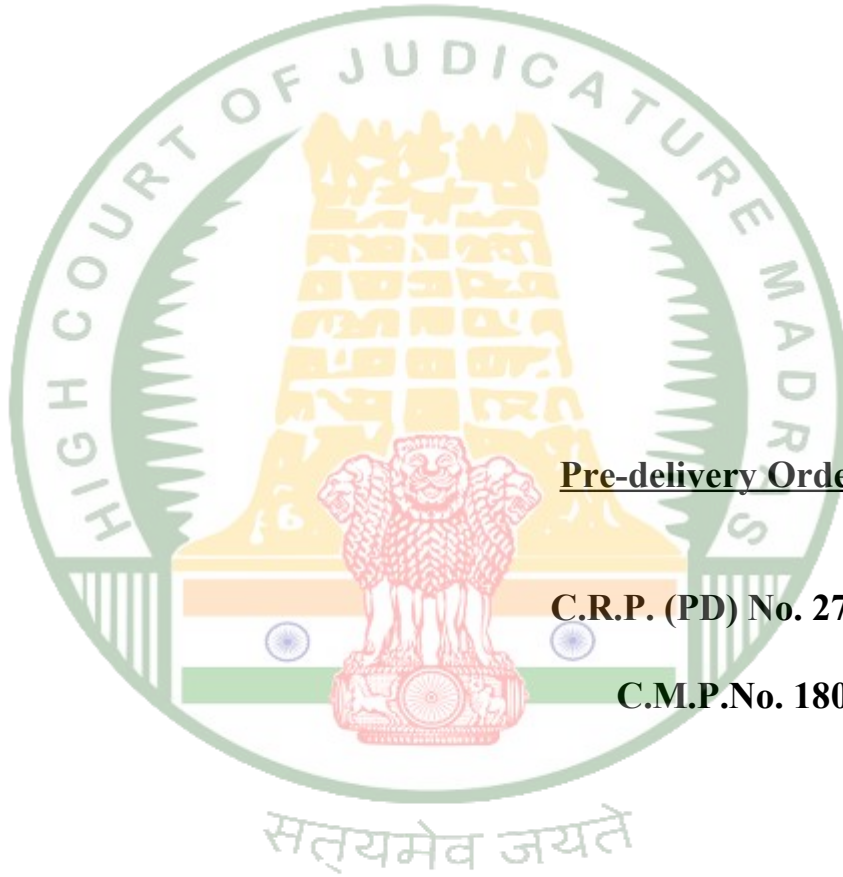
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Pre-delivery Order made in

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