IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 8.7.2021

Delivered on : 29.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(PD) No.2321 of 2017
and
CMP.No.10947 of 2017

1. P.A.R.Sahul Hameed

2. M/s.Bala Builders rep. by its
Partner I.Balasubramanian

3. Umarani
4. Sujatha Baskar ... Petitioners

Vs.

1. P.S.Jaffarnisha
2. P.H.Sakeela
3. A.Faiziya ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 20.3.2017 passed in I.A.No.6 of 2017 in O.S.No.93 of 2016 on the file of the II Additional District Judge, Salem.

For Petitioners : Mr.N.S.Amogh Simha for
Mr.M.Sricharan Rangarajan

For Respondents : Mr.T.Murugamanickam
Senior Counsel for
Ms.Zeenath Begum

O R D E R

(This case has been heard through video conference)

The civil revision petition is filed challenging the order passed by the court below in dismissing the Application in I.A.No.6 of 2017 filed by the revision petitioners/defendants 1 and 6 to 8 to reject the plaint in O.S.No.93 of 2016.

2. The said Application seeking to reject the plaint was filed on two grounds, viz., (i) the suit filed by the respondents has no cause of action and (ii) it is barred by limitation.

3. The factual background, this court could see from a perusal of the materials available on record, for filing of the present civil revision petition is as under:-

(i) The respondents and first petitioner are siblings. The respondents have filed O.S.No.93 of 2016 to pass a preliminary decree for partition dividing the suit property into 11 equal shares and allot 3 shares to the plaintiffs with possession and pass a decree at the appropriate stage by appointing an advocate commissioner for allotting the 3/11 shares by metes and bounds to the plaintiffs with possession and to declare the gift settlement deed dated 31.7.1975 said to have been executed by their father late P.K.Abdul Razak in favour of the 2nd defendant in the suit, which was registered as Document No.3215/1975 on the file of the Joint Sub Registrar No.IV, Salem as a sham and nominal and non-est and restraining the 9th defendant, the Sub Registrar, Salem (West) from in any way entertaining and registering any sale deeds in respect of the suit property till the rights and shares of the plaintiffs are finally decided and allotted to the plaintiffs.

(ii) The first petitioner/first defendant had filed the petition under Order VII Rule 11 CPC to reject the plaint on the following grounds. The suit schedule property in T.S.No.4 Ram Nagar measuring 3204 sqft of land originally belonged to one Abdul Razak, father of the petitioners by virtue of sale deed dated 29.4.1972 registered as Document No.2118 of 1992. Right from the date of purchase, Mr.Abdul Razak was in possession and enjoyment of the property. The said Abdul Razak executed a settlement deed on 31.7.1975 settling half share of the property in T.S.No.4 in Plot No.13 measuring 1062 sqft of land in favour of his minor son Sheik Dawood, who is the second defendant in the suit. The said settlement deed was registered as Document No.3215/1975. On the same day, the said Abdul Razak had executed another settlement deed in respect of the remaining half share in the same property in T.S.No.4 measuring 1602 sqft in favour of the first petitioner. The said document has been registered as Document No.3214/1975. Thereafter, the first petitioner and his brother Sheik Dawood were in possession and enjoyment of the property.

(iii) Whileso, the second defendant Sheik Dawood had executed a settlement deed on 13.5.2004 in favour of his mother Fathakani in respect of his half share and the document has been registered as Document No.1399/2004. Later, the mother of the petitioner Fathakani executed a settlement deed in favour of the first petitioner by a settlement deed dated 17.5.2004 in respect of the half share in T.S.No.4 measuring 1602 sqft of land in Plot No.13 and the document has been registered as Document No.1418/2004. Thus, the first petitioner became entitled to the entire suit property in T.S.No.4 measuring 3204 sqft of land under the settlement deed dated 31.7.1975 executed by his father and the settlement deed dated 17.5.2004 executed by by his mother. Thereafter, the first petitioner has been in possession and enjoyment of the property absolutely. The TSLR of the property stands in the name of the first petitioner in respect of T.S.No.4 which indicates that the settlement deeds executed in favour of the first petitioner was acted upon.

(iv) The father of the first petitioner Abdul Razak died on 10.12.1977 and before his death, he settled substantial things in favour of the first and second respondent and the plaintiffs and got them married and settled them comfortably. During the lifetime of his father Abdul Razak, he had settled the property in respect of his sons and thereafter, the respondents/plaintiffs are not entitled to any share in the property as alleged.

(v) The first petitioner's father Abdul Razak purchased another property in the year 1966 which was situated adjacent to the suit property and has not settled this property to anybody and died intestate and after his death, the same was jointly owned and enjoyed by the plaintiffs and defendants 1 to 5.

(vi) Subsequently, on 16.8.1996, Fathakani, mother of the plaintiffs and another sister Parisa Begum (fourth defendant in the suit) have executed a general release deed in favour of the first petitioner and his two brothers relinquishing their share in the family property. The document relinquishing their share has been registered as Document No.496/1996.

(vii) Thereafter, on 22.8.1996, the fifth defendant Noorjahan (sister of the first petitioner) executed a release deed in favour of defendants 1 to 3 and relinquished her share in the family property and the document has been registered as Document No.507/1996. Thereafter, defendants 1 to 3 became entitled to the entire property absolutely and they had been in possession and enjoyment of the property without any interference.

(viii) In the release deed executed by the plaintiffs and other sisters, it has been clearly mentioned that all the sisters were already married and settled comfortably and that there is no feasibility of division of the family property and they executed the release deeds in favour of the first petitioner and his brothers.

(ix) In or about 2004, defendants 1 to 3 sold the property to the father-in-law of the fourth defendant and now, the third plaintiff and the third defendant are in occupation of the property. The plaintiffs, knowing about the settlement deed executed by the father, have not made any claim in respect of the property in the year 1996 since they know very well that they do not have any right in the property.

(x) The father of the first petitioner Abdul Razak died on 10.2.1977 and the succession opened on the same day and the first petitioner is in possession and enjoyment of the suit property since 1975 in his own right in exclusion of others.

(xi) Whileso, the respondents/plaintiffs, who are very well aware of the settlement deeds and that the suit schedule property exclusively and absolutely being enjoyed by the first petitioner from the year 1975, had filed a suit for partition and to declare the settlement deeds as null and void after lapse of 40 years, which is not maintainable as no cause of action arose for the suit during the second week of 2016 as alleged in the plaint and the suit is barred by limitation.

(xii) The respondents/plaintiffs filed a counter contending that while considering an application under Order VII Rule 11 CPC, the court has to examine the averments made in the plaint and the pleas taken by the defendants in their written statement would be irrelevant and the plaint cannot be rejected at the threshold on the ground of false cause of action, fraud, misrepresentation as well as on limitation point. It was further contended that the gift settlement deed in question dated

31.7.1975 said to have been executed by P.A.Abdul Razak in favour of the second defendant is only a sham and nominal one and it was not acted upon.

(xiii) It was further contended therein that P.A.Abdul Razak was intending to go for the Holy Pilgrimage to Macca at the relevant point of time and therefore, as per Islamic principles, the said gift settlement deed dated 31.7.1975 was executed, however, he could not proceed to pilgrimage and he died within a short span of time, but, defendants 1 and 2 taking advantage of the situation, colluded with their mother Fathakani and created some self serving documents with the intention to defeat the rights of the plaintiffs in the suit property and therefore, such documents will not confer any title to the first defendant over the suit property.

(xiv) It was further contended that the said Abdul Razak had purchased another property bearing Plot No.14 situate on the southern side of the suit property and he died later without making any arrangement in respect of the said property and the plaintiffs have relinquished their rights only in respect of that property and not in respect of the suit property.

(xv) All the above aspects could be decided only after conducting the trial and therefore, the plaint cannot be rejected at the threshold even on the ground of limitation as it is a mixed question of law and facts.

(xvi) The Trial Court, after hearing the petitioners had dismissed the petition against which the present revision has been filed.

4. The learned counsel Mr.N.S.Amogh Simha appearing for the revision petitioners would submit that the plaintiffs, who are the sisters of the first petitioner, have filed the suit in O.S.No.93 of 2016 after a lapse of 40 years with a prayer to pass a preliminary decree for partition dividing the suit property and to pass a final decree at the appropriate stage by appointing an Advocate Commissioner for allotting the shares and to declare that the gift deed dated 31.7.1975 executed by the father of the first petitioner in favour of his brother which was registered as Document No.3215/1975 on the file of the Joint Sub Registrar, Salem as sham, nominal and non-est, which is not maintainable as no cause of action arose in the second week of June 2016 as alleged in the plaint. He would further submit that the suit claim is absolutely barred under the law of limitation as admittedly, the plaintiffs have knowledge of their father executing a settlement deed in favour of the first petitioner and his brother and that they have also waived their rights by executing release deeds giving up their rights in the family properties and after having kept quiet for nearly about 40 years after the succession had opened, they have filed the suit without there being any cause of action and they are not entitled to maintain

the suit for partition. He would also submit that since the suit did not disclose any cause of action and it was barred under the law of limitation, the revision petitioners filed a petition under Order VII Rule 11 CPC to reject the plaint whereas the Trial Court, without appreciating the above facts and without properly considering the fact that the suit is barred by limitation, had dismissed the Application against which the present revision has been filed.

5. The learned counsel for the petitioners would rely on the documents filed by the plaintiff alongwith the plaint viz., the settlement deed dated 31.7.1975 executed by the father Abdul Razak in favour of the second defendant Sheik Dawood and the gift settlement deed dated 13.5.2004 executed by the second defendant in favour of Fathakani, mother of the first petitioner and the gift deed settlement deed dated 17.5.2004 executed by Fathakani in favour of the first petitioner and also the release deeds dated 16.8.1996 executed by the sisters of the first petitioner relinquishing their rights in the family properties. Therefore, he would submit that the plaint does not disclose cause of action and there is no cause of action for the respondents/plaintiffs to file the suit, however, the Trial Court, without conducting proper enquiry, dismissed the petition seeking to reject the plaint.

6. The learned counsel would further submit that the object of Order VII Rule 11 CPC is that if a court satisfies that the suit is

manifestly vexatious and not disclosing any right to sue, the court has to exercise its power to reject the plaint at the initial stage and the court has to read the averments in conjunction with the plaint as a whole without addition or subtraction of any words and in this case if the averments made in the plaint are taken into consideration, they do not disclose any cause of action and the suit is barred by limitation.

7. The learned counsel would submit that the powers under Order VII Rule 11 are mandatory in nature and if any of the grounds specified in clause (a) to (e) are made out, the court is bound to reject the plaint and the court has to find whether the plaint discloses a real cause of action or illusory cause of action created by clever drafting and the court must be vigilant against any camouflage or suppression and if the suit is found to be vexatious and abuse of process of court, it should exercise its drastic power under Order VII Rule 11 to reject the plaint. He would also submit that the plaint should be rejected at the threshold as the averments in the plaint discloses that the suit is hopelessly barred by limitation.

8. The learned counsel would also bring to the notice of the court that in this case, the prayer is to declare the gift settlement deed dated 31.7.1975 executed by the father of the first petitioner as sham and nominal and non-est and as per Article 58 of the Limitation Act, a suit for declaration must be instituted within a period of three years from

the date of the instrument or three years from the date on which right to sue accrues and the plaintiffs, being well aware of the settlement deed dated 31.7.1975 and having also executed release deeds relinquishing their rights in respect of the family properties in favour of the first petitioner and his brothers, have filed the suit very belatedly and the Trial Court, without properly looking into the same, had dismissed the petition.

9. In support of his contention, the learned counsel for the petitioners has relied upon the following decisions:-

i) Dahiben v. Arvindhbai Kalyanji Bhanusali (Gajra) (D) thro. LRS and others ((2020) 7 SCC 366).

ii) Raghavendra Sharan Singh v. Ram Prasanna Singh (Dead) by LRS (2020) 16 SCC 601.

10. Per contra, the learned Senior Counsel Mr.T.Murugamanickam appearing for the respondents would submit that the respondents are the plaintiffs in the suit and they are sisters of the first defendant and that the father of the plaintiffs Abdul Razak died intestate and therefore, the plaintiffs are collectively entitled to 3/11 share whereas defendants 4 and 5 are entitled to 1/11 share each and defendants 1 to 3 are collectively entitled to get 6/11 shares in the property left out by P.K.Abdul Razak.

11. The learned Senior Counsel for the respondents/plaintiffs

would also submit that defendants 1 and 2 have colluded with their mother Fathakani and created several instruments among themselves to defeat the rights and shares of the plaintiffs over the suit property. Defendants 6 to 8 had entered into a mutual agreement with the first defendant and started constructing an apartment in the suit property and when the first plaintiff had questioned the same, she was pacified by them that they would allot a house in the said apartment towards her share, but, later, she came to know that they are going to sell away all the houses to third parties and when it was questioned, the first defendant had stated that he is the absolute owner of the entire suit property as per the gift settlement deeds and the release deeds. He would, therefore, submit that all such documents on dispute can be decided only during the trial and the suit cannot be nipped in the bud.

12. The learned Senior Counsel for the respondents/plaintiffs would seek to enlighten the court on the factual aspects as under:-

(i) The father of the plaintiffs Abdul Razak was the original owner of the suit property and the gift settlement deed dated 31.7.1975 executed by him in favour of the second defendant in respect of the undivided half share in the suit property was only a sham and nominal as the second defendant was then only a minor and therefore, the mother of the petitioners Fathakani has been appointed as guardian to the second defendant. The gift settlement deed dated 31.7.1975 has not been acted upon and no separate, physical and actual possession has been given to the second defendant.

(ii) Later, due to the health problems, the father of the respondents/plaintiffs was not able to go for pilgrimage and that he died within a short span of time. Thereafter, there was no partition in respect of the suit property by metes and bounds.

(iii) The respondents/plaintiffs and the petitioners/defendants 1 to 5 enjoyed the property commonly and that as per Mohemmedan Law, the sons are entitled to get 2/11 shares and therefore, defendants 1 to 3 are collectively entitled to 6/11 share in the property left out by their father and similarly, the plaintiffs and defendants 4 and 5 who are their sisters are entitled to 1/11 share each and accordingly, the plaintiffs are collectively entitled to 3/11 shares since their father P.K.Abdul Razak should be construed to have died intestate in respect of the suit schedule property since the alleged gift settlement deed dated 31.7.1975 is a sham and nominal one in character.

13. The learned Senior Counsel for the respondents/plaintiffs would, therefore, submit that the character of the gift settlement deed in question can be decided only during trial. He would further submit that the alleged registered release deeds dated 16.8.1976 and 16.8.1996, said to have been executed by the plaintiffs, are in respect

of another property belonging to their father, which is plot No.14 situated on the southern side of the property and the suit property is situated on the northern side of the suit property bearing Plot No.13 and thereby the said release deeds have no bearing on the suit property.

14. The learned Senior Counsel for the respondents/plaintiffs would also submit that the first respondent/first plaintiff issued notice to the remaining children calling to effect amicable partition by metes and bounds and to allot their shares in the property and though the notice had been acknowledged by the parties, they have not sent any reply to the notice and therefore, the cause of action arose during the second week of February 2016 when the first respondent/first plaintiff sent a notice calling upon the defendants for an amicable partition and the defendants refused to comply with the demand of the plaintiff and therefore, the suit cannot be rejected at the threshold neither on the ground that there is no cause of action nor by holding that it is barred by limitation and the Trial Court has not committed any error in dismissing the petition seeking to reject the plaint.

15. The learned Senior Counsel for the respondents/plaintiffs would further submit that if the parent document viz., the settlement deed dated 31.7.1995 is declared as invalid, all the consequential transactions also cannot be valid. Further, the release deeds executed

on 16.8.1996 and 22.8.1996 refer to neither the impugned settlement nor any specific immovable property for which the release is made and thereby, the petitioners/defendants cannot take advantage that the release deeds cover the entire properties. The learned Senior Counsel would further submit that the decision in *Raghavendra Sharan Singh's* case relied on by the learned counsel for the petitioners would not be applicable to the facts of the present case since in that case, the relief sought for is to declare the document as not valid after the prescribed period of limitation which is not so in this case. He would also submit that the law has been settled by the Apex Court in various decisions that while considering an Application under Order VII Rule 11 CPC, the court has to examine the averments in the plaint and the pleas taken by the defendant in the written statement would be irrelevant. He would further submit that the issues relating to the settlement deeds being sham and nominal are contagious issues, which are matter for trial and the plaint cannot be rejected at the outset. The learned Senior Counsel would further reiterate that Order VII Rule 11(d) applies where a statement as made in the plaint without any doubt or dispute shows that the suit is barred by any law in force and it is not applicable to the facts of the present case. In support of his contention, he would rely upon the decision in ***Popat and Kotecha Property v. State Bank of India Staff Association ((2005) 7 SCC 510).***

16. In reply, the learned counsel for the petitioners/defendants would submit that the defendants have relied only on the plaint and the documents filed alongwith the plaint and they have not relied on any other extraneous materials while filing the Application under Order VII Rule 11 CPC.

17. Heard the learned counsel appearing for the parties and perused the materials available on record.

18. This revision petition is filed under Article 227 of the Constitution of India against the dismissal of the petition filed by the defendants seeking to set aside the impugned order dismissing the petition filed by them under Order VII Rule 11 CPC.

19. Before adverting further, this court deems it apposite to refer to the judgments of the Apex Court regarding the principles surrounding Order VII Rule 11 CPC.

20. The Hon'ble Apex Court in ***Raghawendra Sharan Singh v. Ram Prasanna Sigh ((2020) 16 SCC 601)***, has held as under:-

> *" 6.3 While considering the scope and ambit of the application under Order 7 Rule 11 of the CPC, few decisions of this Court on Order 7 Rule 11 of the CPC are required to be referred to and considered.*
>
> *6.4 In **T. Arivandandam v. T.V.Satyapal (1977) 4 SCC 467** 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."

*6.5 In **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust (2012) 8 SCC 706** 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."

*6.6 In **A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem (1989) 2 SCC 163**, 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."

6.7 In ***Sopan Sukhdeo Sable v. Charity Commissioner*** *(2004) 3 SCC 137, 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.*
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> *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 (1977) 4 SCC 467.**"*

6.8 In ***Madanuri Sri Rama Chandra Murthy v.***

Syed Jalal (2017) 13 SCC 147), *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."

*6.9 In **Ram Singh v. Gram Panchayat Mehal Kalan (1986) 4 SCC 364**, 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."*

21. Further in ***Dahiben v. Arvindhbai Kalyanji Bhanusali (Gajra) (D) thro. LRS and others ((2020) 7 SCC 366),*** it has been held as under:-

> *" 23.2. The remedy under Order VII 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.*
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> *23.3. The underlying object of Order VII 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 (1986 Supp. SCC 315), 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 :

> *"12. …The whole purpose of conferment of such power 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 if 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 VII Rule 11 are required to be strictly adhered to.*

23.6. Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint2, read in conjunction with the documents relied upon, or whether the suit is barred by any law."

22. In ***Popat and Kotecha Property v. State Bank of India Staff Association ((2005) 7 SCC 510),*** the Hon'ble Apex court held that the disputed questions cannot be decided at the time of considering the Application under Order VII Rule 11 CPC and Clause (d) of Order VII Rule 11 applies to the cases where the statement, as made in the plaint, without any doubt or dispute, shows that the suit is barred by any law in force.

23. Applying the law laid down in the aforesaid decisions, on exercise of powers under Order VII Rule 11 CPC to the facts of the case in hand and the averments in the plaint, it is seen that it is the case of the plaintiffs that they have filed the suit against the petitioners herein and the other defendants for partition to divide the suit property into 7 equal shares and allot 3 such shares to them and separate possession thereof. They have also sought for the relief of declaration that the gift

settlement deed dated 31.7.1975 said to have been executed by their father P.K.Abdul Razak in favour of the second defendant is sham and nominal and non est. The plaintiffs have also sought for permanent injunction restraining the 9th defendant Sub Registrar from in any manner registering any document in respect of the suit property till final partition is effected.

24. According to the respondents/plaintiffs, the suit property consists of 3204 sqft with superstructure in T.S.No.4/2019 in Ward B, Block 15 of Kumarasamypatti Village within the Salem Corporation limits and belonged to their father P.K.Abdul Razak as per the sale deed dated 29.4.1972 and since their father P.K.Abdul Razak intended to go for pilgrimage, he had executed a sham and nominal gift settlement deed dated 31.7.1975 in favour of his son, the second defendant, who was then minor, in respect of half share in the said property. It is the further case of the respondents/plaintiffs that the said gift settlement deed has not been acted upon and their father P.K.Abdul Razak did not go for pilgrimage as scheduled and later, he died within a few days. It is the further case of the plaintiffs that there was no partition by metes and bounds and thereby, the plaintiffs and defendants 1 to 4 were entitled to the suit property and as per the Mohameddan law, the petitioners/defendants 1 to 3 are entitled to 2/11 shares each and defendants 4 and 5 are entitled to 1/11 shares each and the plaintiffs

are entitled to 3/11 share collectively, however, defendants 1 and 2 have colluded with their mother Fathakani and created several instruments without the knowledge of the plaintiffs.

25. However, it is the case of the petitioners/defendants that their father P.K.Abdul Razak purchased the land by way of sale deed dated 29.4.1972 and he has executed an irrevocable gift settlement deeds dated 31.7.1975 in favour of defendants 1 and 2 and thereby the entire suit schedule property was settled in the name of defendants 1 and 2. It is the further case of the respondents/defendants that in the year 2004, the second defendant settled his share in favour of the mother of the plaintiffs and defendants 1 to 5 vide a registered settlement deed dated 13.5.2004 and in turn, the mother had settled the said share in favour of the first defendant vide another registered settlement deed dated 17.5.2004 and by virtue of the same, the first defendant became the sole and absolute owner of the suit schedule property. It is the further case of the defendants that in the year 1966, the plaintiffs, defendants 4 and 5 and the mother of the plaintiffs and defendants had executed two general release deeds in favour of defendants 1 and 3 and relinquished their rights over the movable and immovable properties of the family. The above general release deeds had been executed on 16.8.1996 and 22.8.1996. However, the plaintiffs had filed the suit after lapse of 40 years from the date of execution of

the settlement deeds in the year 1975 and 20 years after the release deeds in the year 1996. The petitioners/defendants have filed the petition under Order VII Rule 11 (a) and (d) stating that there is no cause of action and the suit is barred by limitation. It is the case of the petitioners/defendants that the suit schedule property was settled in favour of the first and second defendant by way of registered settlement deeds dated 31.7.1975 and thereby, by virtue of the settlement deeds executed on 13.5.2004 and 17.5.2004, the first defendant became the absolute owner of the entire suit schedule property and further, the plaintiffs have relinquished their rights over the family properties including the suit schedule property in the year 1996 itself vide the general release deeds dated 16.8.1996 and 22.81.996.

26. Though the plaintiffs have averred that the settlement deed executed by their father in the year 1975 is a sham and nominal, a reading of the evidence discloses that the settlement deeds executed are unconditional and irrevocable and as such title and possession over the suit properties were conveyed to the first and second defendants without any condition. Further, even as per the averments in the plaint, the suit schedule property was settled by way of gift settlement deed dated 13.5.2004 executed by the second defendant by which the share of the second defendant was settled in favour of the mother of the

plaintiffs and defendants and the mother, in turn, settled the share in favour of the first defendant vide the settlement deed 17.8.2004 and thereby the first defendant became the sole and absolute owner of the suit schedule property by virtue of the abovementioned settlement deeds and thereby, there is no cause of action whatsoever shown by the plaintiffs to maintain the present suit.

27. Further, the plaintiffs have also executed general release deeds in favour of defendants 1 to 3 as early as in the year 1996 relinquishing their rights over all the movable and immovable properties of the family. The settlement deeds and the release deeds have been enclosed alongwith the plaint. In the release deeds, it has been clearly stated that the plaintiffs and defendants 4 and 5 have relinquished their respective rights over the properties of the family after receiving a sum of Rs.10,000/- each as consideration which goes to show that the plaintiffs have executed the release deeds as evidenced from the averments in the plaint itself. Though the plaintiffs have averred that the said release is not in respect of the suit schedule properties, the said deeds are in nature of a general release deed and it is evident from the documents annexed to the plaint.

28. A reading of the plaint shows that it does not disclose the real cause of action and an illusory cause of action has been created by the clever drafting. Further, the plaintiffs were well aware of the execution

of the settlement deeds.

29. As per Article 58 of the Limitation Act, a suit for declaration must be instituted within a period of 3 years from the date of instrument or 3 years from the date on which the right to sue accrues. The plaintiffs, being well aware of the settlement deed dated 31.7.1975 and also having executed the release deeds relinquishing their right in respect of the family properties in favour of the first petitioner and his brothers, have filed the suit very belatedly. It is the case where the suit is clearly barred by limitation and the Trial Court has erred in holding that the question with respect to limitation is a mixed question of law and facts which can be decided only after the parties lead evidence.

30. It is the settled law that while 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 VII Rule 11 (d) CPC. The decision relied on by the learned counsel for the respondents/plaintiffs in ***Popat and Kotecha Property v. State Bank of India Staff Association ((2005) 7 SCC 510) (supra)*** will not be applicable to the facts of this case. As stated above, the present case is clearly barred by the law of limitation.

31. For the foregoing reasons, this court is of the opinion that the learned Trial Judge has erred in not exercising the power under Order VII Rule 11 CPC and erred in not rejecting the plaint in exercise of

powers under Order VII Rule 11 CPC. In view of the above, the impugned order passed by the II Additional District Judge, Salem in I.A.No.6 of 2017 in O.S.No.93 of 2016 is set aside and consequently, the plaint stands rejected. The suit is dismissed. The civil revision petition is allowed. No costs. The connected Miscellaneous Petition is closed.

29.07.2021

ssk.
Index: Yes/No.
Internet: Yes/No.

To

II Additional District Judge,
Salem.

A.D.JAGADISH CHANDIRA,J.

ssk.

P.D. ORDER IN
CRP(PD) No.2321 of 2017
and
CMP.No.10947 of 2017

Delivered on
29.07.2021