IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on 17.08.2021

Order Delivered on 07.10.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

O.P.No.948 of 2018 & A.No.1849 of 2020 & A.No.909 of 2021

and

C.S.No.217 of 2020 & A.No.2445 of 2020 & O.A.Nos.388 & 389 of 2020

O.P.No.948 of 2018

Ms.Rashmi Pithavadian
Daughter of Late Mr.Anand Rajkumar Pithavadian
Old No.13, New No.14,
College Road, Nungambakkam,
Chennai – 600 006 ... Petitioner

Vs

Mrs.Edith Pithavadian
Wife of Late Mr.F.B.Pithavadian
Old No.13, New No.14,
College Road, Nungambakkam,
Chennai – 600 006 ... Respondent

Prayer:

Petition filed under Section 232 and 276 of Indian Succession Act XXXIX of 1925 for Grant of Letters of Administration read with Order XXV, Rule 5 of the Original Side Rules for grant of Letters of Administration with Will annexed of the properties and credits of deceased to the petitioner as daughter/ beneficiary under the Will of deceased Mr.Anand Rajkumar Pithavadian to have effect throughout the Union of India.

For Petitioner	:	Mr.Yashod Vardhan, Senior Counsel for Mr.R.Sunil Kumar
For Respondent	:	Mr.Sathish Parasaran, Senior Counsel for Mr.R.Parthasarathy

C.S.No.217 of 2020

1. Mrs.Edith Pithavadian,
   W/o Late Fenn Bennett Pithavadian

2. Ms.Shakunthala Pithavadian
   D/o Late. Fenn Bennett Pithavadian

Both residing at
308, Keybridge Dr.Morrisville,
NC 27560, USA. ..Plaintiffs

vs.

1. Estate of Anand Rajkumar Pithavadian
   represented by its Intermediator & Legal Heir
   Mrs.Rashmi Pithavadian,
   D/o Late Anand Rajkumar Pithavadian
   Unit No.2, 78, Lethbridge Street,

Penrith NSW, 2750 Australia

2. Ranjit Raj William
S/o Devadasan William
92, Harrington Road,
Chetpet,
Chennai - 31.03.2014

3. Badrinarayanan,
S/o Jagathrakshagan,
Flat 2-D and 3-D,
Ramaniyam Mahalakshmi,
33, Mahalakshmi Koil Street,
Besant Nagar,
Chennai - 600 090. ... Defendants

Prayer:

Plaint filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 CPC

a) To declare the Settlement Deed dated 09.01.2014 and registered as Document No.23 of 2014 in the Office of the Sub-Registrar Joint II, (District Registrar Cadre), Thousand Lights, Registration District of Chennai Central Executed by the 1st Plaintiff in favour of her deceased son Anand Rajkumar Pithavadian in respect of her half share in the suit schedule property is vitiated by fraud, undue influence, misrepresentation and coercion and declare the same as illegal, invalid, non-est in the eye of law and consequently direct the cancellation of the same;

b) Grand a decree for mandatory injunction directing the defendants to surrender the instrument caption as "Deed of Settlement" dated 09.01.2014 and registered as Document No.23 of 2014 in the office of the Sub Registrar Joint II, (District Registrar Cadre), Thousand Lights, Registration District of Chennai Central duly cancelled on a day to be fixed by this Hon'ble Court;

c) Direct partition and separate possession of the suit property into two equal shares and allocate one such share to the 1st plaintiff's daughter the 2nd plaintiff being the beneficiary of the Settlement Deed dated 06.01.2020 and registered as Document No.13 of 2020 in the Office of the Sub-Registrar Joint II, (District Registrar Cadre), Thousand Lights Registration District of Chennai Central and pass a preliminary decree for partition in favour of the plaintiffs;

d) For a declaration that the purported Sale Deed dated 06.03.2020 and registered as Document No.382 of 2020 in the Office of the Sub-Registrar Joint II, (District Registrar Cadre), Thousand Lights Registration District of Chennai Central executed by the defendants 1 and 2 in favour of the 3rd defendant is per se illegal, invalid and non-est in the eye of law and consequently not binding upon the plaintiffs and their share in the suit property;

e) Grant a decree for permanent injunction restraining the defendants, their men, agents, servants or any other person or persons claiming through them from in any manner interfering with the peaceful possession of the suit property by the plaintiffs;

f) Grant a decree for permanent injunction restraining the defendants, their man, agents, servants or any other person or persons claiming through them in any manner alienating or encumbering or dealing with the suit property either by way of sale, mortgage, lease or joint development without reference to the rights of the plaintiffs;

g) Directing the defendants to pay the plaintiffs a sum of Rs.1,00,00,000/- with future interest at 18% p.a from the date of plaint till the date of realization as damages on account of the fraudulent document/ transaction created by them in collusion and connivance in respect of suit property.

h) Grant such further or other orders as this Hon'ble Court may deem fit ad proper in the circumstances of the case and thus render justice.

i) Grant costs of the suit.

For Plaintiff	:	Mr.Sathish Parasaran, Senior Counsel for Mr.R.Parthasarathy
For Defendants	:	Mr.Yashod Vardhan,Senior Counsel for Mr.R.Sunil Kumar

COMMON ORDER

The Original Petition has been filed by the petitioner for grant of Letters of Administration with Will annexed of the properties and credits of deceased to the petitioner as daughter/ beneficiary under the Will of deceased Mr.Anand Rajkumar Pithavadian to have effect throughout the Union of India.

2. The Suit has been filed for the following relief:

a) To declare the Settlement Deed dated 09.01.2014 and registered as Document No.23 of 2014 in the Office of the Sub-Registrar Joint II, (District Registrar Cadre), Thousand Lights, Registration District of Chennai Central Executed by the 1st Plaintiff in favour of her deceased son Anand Rajkumar Pithavadian in respect of her half share in the suit schedule property is vitiated by fraud, undue influence, misrepresentation and coercion and declare the same as illegal, invalid, non-est in the eye of law and consequently direct the cancellation of the same;

b) Grand a decree for mandatory injunction directing the defendants to surrender the instrument caption as "Deed of Settlement" dated 09.01.2014 and registered as Document No.23 of 2014 in the office of the Sub Registrar Joint II, (District Registrar Cadre), Thousand Lights, Registration District of Chennai Central duly cancelled on a day to be fixed by this Hon'ble Court;

c) Direct partition and separate possession of the suit property into two equal shares and allocate one such share to the 1st plaintiff's daughter the 2nd plaintiff being the beneficiary of the Settlement Deed dated 06.01.2020 and registered as Document no.13 of 2020 in the Office of the Sub-Registrar Joint II, (District Registrar Cadre), Thousand Lights Registration District of Chennai Central and pass a preliminary decree for partition in favour of the plaintiffs;

d) For a declaration that the purported Sale Deed dated 06.03.2020 and registered as Document No.382 of 2020 in the Office of the Sub-Registrar Joint II, (District Registrar Cadre), Thousand Lights Registration District of Chennai Central executed by the defendants 1 and 2 in favour of the 3rd defendant is per se illegal, invalid and non-est in the eye of law and consequently not binding upon the plaintiffs and their share in the suit property;

e) Grant a decree for permanent injunction restraining the defendants, their men, agents, servants or any other person or persons claiming through them from in any manner interfering with the peaceful possession of the suit property by the plaintiffs;

f) Grant a decree for permanent injunction restraining the defendants, their man, agents, servants or any other person or persons claiming through them in any manner alienating or encumbering or dealing with the suit property either by way of sale, mortgage, lease or joint development without reference to the rights of the plaintiffs;

g) Directing the defendants to pay the plaintiffs a sum of Rs.1,00,00,000/- with future interest at 18% p.a from the date of plaint till the date of realization as damages on account of the fraudulent document/ transaction created by them in collusion and connivance in respect of suit property.

3. The brief facts and circumstances which gave rise to the filing of the Original Petition (O.P.), Suit and the Applications are stated hereunder.

a) The plaintiff in the suit has filed the above O.P. for grant of Letters of Administration on the basis of the unregistered Will executed by her father dated 05.07.2016. The petitioner's father Mr.Anand Rajkumar Pithavadian S/o P.B.Pithavadian died on 03.02.2017 in Australia. The petitioner's late father and his mother Mrs.Edith Pithavadian, the respondent in the O.P., purchased the schedule property jointly, bearing Old Door No.13, New No.14, College Road, Nungambakkam, Chennai – 600006 comprised in Old Re-Survey No.78/1 and presently Survey No.78/13 measuring about 5 Grounds and 1177 Square Feet bearing C.A.No.287/1973-74 within the registration District of Chennai Central and Sub Registration District of Thousand Lights, by way of Sale Deed dated 30.03.1970 registered as Document No.489 of 1970 on the file of Sub Registrar Office, T.Nagar. Subsequently, the mother of the petitioner's father, by way of Settlement Deed dated 09.01.2014, registered as Document No.23 of 2014 settled her 50% undivided share in respect of the above property in favour of her son, the petitioner's father. Thus, the late father of the petitioner has become the absolute owner and has been enjoying the said property till his death.

b) The petitioner herein is the only legal heir, as her mother had died on 27.11.2013 itself in Australia. The petitioner's father left behind a Will before his death executed by him in Chennai on 05.07.2016 in the presence of the witnesses. The O.P. was filed by the petitioner, being the only surviving legal heir of her late father Mr.Anand Rajkumar Pithavadian. In the O.P.

proceedings, the respondent has filed a Caveat raising objection to the grant of Letters of Administration. While raising objections to the grant of Letter of Administration in the above said O.P. on one hand, the respondent along with her daughter, who is none other than the sister of the petitioner's father late Anand Rajkumar Pithavadian on the other, filed C.S.No.217/2020 seeking to declare the settlement deed dated 09.01.2014 settling her one half share in favour of the petitioner's father as illegal and invalid, in respect of the property which is the subject matter of O.P. proceedings. Apart from the declaratory prayer, certain other consequential prayers have also been sought in the suit. As the dispute in the O.P. as well as the Suit related to the same property, both are posted together for joint hearing before this Court.

c) In the meanwhile, an application No.1849/2020 was filed on behalf of the petitioner in O.P. before this Court to grant permission to the petitioner to withdraw the O.P. In the affidavit filed in support of the said application, it was stated by the petitioner that she was under the bonafide impression that a Will of Christian in respect of the property in the Metropolitan City of Madras was mandatorily to be probated. However, subsequently, on being advised by the Counsels, she had come to know that there was no legal requirement for probate of the Will of Christians and being the only daughter and the only surviving legal heir of her father, she was entitled to the entire property.

d) At this, a memo was filed on behalf of the respondent in the O.P. objecting to the withdrawal of O.P. that the probate proceedings ought not be allowed to be withdrawn. Thereafter, the matter remained at that stage, without any further progress.

e) In the meanwhile, the Suit has been filed questioning the very settlement by the respondent in the O.P. who is the first plaintiff in the suit in favour of the father of the petitioner in O.P. dated 09.01.2014. The petitioner in O.P. has been arrayed as the respondent/defendant in the Suit along with two other persons.

f) On behalf of the 1st respondent/defendant, an application was filed in A.No.2445/2020 for rejection of the plaint. On behalf of the plaintiffs, counter affidavit has also been filed in response to the said application.

4. The learned Senior Counsel Mr.Yasodh Varadhan arguing the Application No.2445/2020 would at the outset, draw the attention of this

Court to the Sale Deed dated 30.03.1970, wherein the subject property was jointly purchased by the first applicant's father and the first respondent/1st plaintiff. After the purchase of the property, the respondent/ 1st plaintiff vide Settlement Deed dated 09.01.2014, settled her 50% share in the property in favour of the father of the 1st applicant herein. After 50 % of the share being settled in favour of the father of the 1st applicant herein, he has become the absolute owner of the subject property.

5. On 05.07.2016, the applicant's father executed a Will conveying the entire property in favour of her daughter, the applicant herein as his wife predeceased him and the applicant herein is the only legal heir left behind by him. The Will was executed in Chennai in the presence of witnesses.

6. After the death of the testator, the applicant was initially under the bonafide impression that the Will was to be mandatorily probated and hence, filed the above O.P. before this Court. At that point of time, an objection was raised on behalf of the respondent herein / 1st plaintiff stating that she being Class-I heir, she was also entitled to a share in the property after the death of

her son, the father of the applicant herein. According to the respondent/ 1st plaintiff, the Will was not genuine but a fabricated document. According to the learned Senior Counsel, even in the objections raised in the O.P. proceedings, it was clearly admitted by the respondent/ 1st plaintiff that she had settled her undivided 50% share in the subject property in favour of her son. However, the objections was entirely only on the basis that she being a Class-I heir was entitled to 50% share in the property, along with the applicant and the Will dated 05.07.2016 being a fabricated document.

7. The learned Senior counsel also referred to another document, namely Settlement Deed dated 06.01.2020. Even in this transaction, the respondent/1st plaintiff herein, categorically acknowledged the fact that 50% of her undivided share in the subject property had been settled in favour of the applicant's father by registered Settlement Deed dated 09.01.2014. Nonetheless, she being a Class I heir, after the death of the applicant's father, she was entitled to 50% of the share in the settled property and thus, she sought to settle that 50% undivided share in favour of her daughter, who is the 2nd plaintiff herein in the suit vide above settlement deed dated

06.01.2020.

8. The learned Senior Counsel emphasised the fact that in all the above transactions, the respondent/ 1st plaintiff in unmistakable terms has acknowledged that the subject property was settled absolutely i.e., her 50% in favour of the applicant's father, without any strings attached.

9. The learned Senior Counsel would submit that under Section 37 of the Indian Succession Act, the mother cannot claim share in the property left behind by her son and all along she had been under the mistaken impression that she was Class-I heir and therefore, was entitled to 50% of her share after the demise of her son Mr.Anand RajKumar Pithavadian, father of the applicant herein. This claim was dehors the existence of valid Will executed by the father of the applicant on 05.07.2016. After coming to know about the legal position, in order to deny any relief to the petitioner in the O.P. proceedings and with a view to illegally appropriate 50% of the share in the subject property, which in law, she is not entitled to, the suit has been filed as if the Settlement Deed dated 09.01.2014 made in favour of the applicant's

father was the result of undue influence and fraudulent act of the applicant's father. In this connection, the learned Senior Counsel referred to the plaint averment, wherein the 1st plaintiff claimed that only at the time when the Settlement Deed was registered in favour of the 2nd plaintiff, her daughter on 06.01.2020, she had come to know about the earlier Settlement Deed dated 09.01.2014. According to her, the discovery of fraud was noticed only at the time when the said settlement deed was executed in January, 2020.

10. According to the 1st plaintiff, the applicant's father exploited his fiduciary relationship had acted against the interest of his own mother and had fraudulently influenced her, who was 86 years old at that point of time and was also suffering from blindness on account of cataract surgery, got the Settlement deed executed without her knowledge. It was also pleaded in the plaint that the Settlement Deed was not acted upon and remained as a sham document. In substance, according to the first plaintiff, a fraud has been discovered by her only on 06.01.2020 when she executed the settlement deed in favour of the 2nd plaintiff which necessitated the filing of the Suit.

11. The learned Senior Counsel would submit that it is an utter falsehood to state that the Settlement Deed executed by her on 09.01.2014 was vitiated by fraud. The learned Senior Counsel would submit that the materials as made available and the facts would disclose that when the objections were raised against the grant of Letters of Administration in the O.P. proceedings, she had clearly mentioned about the Settlement Deed dated 09.01.2014 and in the objections, she had never whispered anything about the Settlement Deed being obtained by any fraudulent act on the part of the applicant's father. Even in the latest settlement deed dated 06.01.2020, she has mentioned about her settlement of her 50% undivided share in favour of her son vide settlement deed dated 09.01.2014 but nowhere whispered in the settlement deed about any fraudulent act played by her late son in execution of the said document. In the recital in both, the settlement deed dated 06.01.2020 and in the earlier objection raised by her in the O.P. proceedings, she had premised her claim only on the basis of her understanding that she being a Class-I heir and therefore, entitled to 50% of share after the death of her son, ignoring the Will dated 05.07.2016. Even assuming that the Will is not genuine, in any event, the 1st plaintiff cannot have any share in the

property as the applicant is the only legal heir of the deceased Anand Rajkumar Pithavadian, her father.

12. The learned Senior Counsel would further submit that when Application No.1849/2020 was filed in the O.P. seeking to withdraw the O.P., the applicant herein had come to know that there was no compulsory requirement under law for grant of Letters of Administration in respect of the Christian Will. An objection was raised by the 1st plaintiff, the respondent therein contending that the Will was forged, simultaneously an Application No.909/2020 was also filed on her behalf seeking to appoint an Advocate Commissioner who shall secure the original Will dated 05.07.2016 and submit the same for forensic opinion, in order to ascertain the genuineness of the Will. But the fact of the matter is that whether the Will is genuine or not, the 1st plaintiff is not entitled to any share in the first place. Therefore, she cannot have any locus standi to resist or to oppose the withdrawal application filed by the petitioner seeking to withdraw the O.P.

13. In this regard, the learned counsel would rely on the decision of

the Hon'ble Supreme Court of India reported in ***2018 (12) SCC 584 (Anil Kumar Singh v. Vijay Pal Singh)*** and he would particularly draw reference to paragraph Nos.23 and 24, which are extracted hereunder.

> ***23.****In our considered opinion, when the plaintiff files an application under Order 23 Rule 1 and prays for permission to withdraw the suit, whether in full or part, he is always at liberty to do so and in such case, the defendant has no right to raise any objection to such prayer being made by the plaintiff except to ask for payment of the costs to him by the plaintiff as provided in sub-rule (4).*
>
> ***24.****The reason is that while making a prayer to withdraw the suit under Rule 1(1), the plaintiff does not ask for any leave to file a fresh suit on the same subject-matter. A mere withdrawal of the suit without asking for anything more can, therefore, be always permitted. In other words, the defendant has no right to compel the plaintiff to prosecute the suit by opposing the withdrawal of suit sought by the plaintiff except to claim the costs for filing a suit against him.*

In the said case, the Hon'ble Supreme Court has held that the plaintiff who seek withdrawal of suit is always at liberty to do so and the defendant in case, had any objection for withdrawal of the suit can only raise objection only to the extent of seeking payment of costs to him and nothing more. In this case, the objections to the withdrawal of the O.P. is clearly a malafide attempt to entangle the property in the litigation. The objections by the respondent therein, the 1st plaintiff in the suit is absolutely without any merit or substance and also it is a malicious and vexatious opposition to the withdrawal of the O.P. The learned Senior Counsel would request this Court to order withdrawal of the O.P., overruling the objections.

14. The learned Senior counsel in regard to rejection of plaint would rely on the decision of the Hon'ble Supreme Court reported in ***1998(2) SCC 70 (I.T.C. Limited v. Debts Recovery Appellate Tribunal)*** and referred to paragraph 16 which is extracted hereunder.

> ***16.****The question 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 CPC. 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.*

The above ruling of the Hon'ble Supreme Court is with regard to the application of Order 7 Rule 11 C.P.C. In this connection, the learned Senior

Counsel would particularly emphasis that merely pleading of fraud and asserting that the fraud has come to be discovered only at the time when the Settlement Deed was executed on 06.01.2020 cannot be taken to be a valid plea for maintaining of the suit when the fact of the matter is that there was absolutely no cause of action in the first place and the 1st plaintiff was all along having knowledge of the execution of the Settlement voluntarily right from the date it was executed on 09.01.2014. The claim of the 1st plaintiff herein of her discovery of the fraud only in January, 2020 was complete falsehood and it is contrary to the records as she had on more than one occasion reaffirmed the execution of the Settlement Deed dated 09.01.2014 and at no point of time, she had said that it was the result of fraudulent act on the part of the settlee, the applicant's late father.

15. According to the learned Senior Counsel, the 1st plaintiff having realised that she cannot claim any right in the property as Class-I heir, has now filed the present Suit to claim 50% share in the property as if her Settlement Deed in favour of her son as early as on 09.01.2014 was a fraudulent transaction. It is a blatant abuse of process of the Court, as the Suit

therefore, does not disclose any cause of action and also hit by law of limitation. He would therefore, request this Court to reject the plaint by allowing Application No.2445/2020 in the circumstances of the case.

16. Per contra, the learned Senior Counsel Mr.Sathish Parasan, appearing for the respondents herein and the plaintiffs in the suit, at the outset, would draw the attention of this Court to the averments in the plaint, particularly, paragraph No.8. In the said paragraph, it has been clearly averred that the alleged settlement deed dated 09.01.2014 was not acted upon at all and remained a sham document. Even the revenue records have not been mutated after the so-called execution of the settlement deed. According to the learned Senior Counsel, the plaintiff did not have the benefit of having a copy of the settlement deed and only when the encumbrance certificate was obtained prior to the execution of the settlement dated 06.01.2020, the entire fraud had come to light and to the knowledge of the 1st plaintiff.

17. As far as the rejection of the plaint is concerned, the allegation of fraud have been clearly mentioned in the plaint and these are the inter se

dispute which cannot be decided and any findings to be rendered, one way or the other, on the basis of the averments in the affidavits alone. The matter must go to trial and evidence need to be let in, only then, the truth will emerge. Therefore, the question of falsity or otherwise would not open to be conclusively decided, at this stage. The learned Senior Counsel would also submit that in this kind of matter, it is always a mixed question of fact and law and it all depends as to how strong or weak the evidence of parties, at the time of final determination of the suit proceedings. The learned Senior Counsel would also submit that there are multiple prayers in the suit plaint and in terms of the settled legal principle, the plaint cannot be rejected partially. The learned Senior Counsel also reiterated that the plaintiffs must be given an opportunity to explain under what circumstances when the settlement was executed by the 1st plaintiff on 09.01.2014. Therefore, there cannot be any presumption of falsehood, without testing the statements made in the plaint. As far as the O.P. is concerned, the 1st plaintiff has a strong objection, as it is like filing an application under Section 92 of C.P.C. Once it is filed, the same cannot be withdrawn by the party in derogation of the right of others interested in the O.P.

18. The learned Senior counsel would rely on the following decisions in support of his contentions.

i) ***AIR 1956 SC 593 (Nagubai Ammal vs. Shama Rao)***. The learned Senior Counsel referred to paragraphs 16 which is extracted hereunder.

> ***16.****An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel. In the present case, there is no question of estoppel, as the title of Dr Nanjunda Rao arose under a purchase which was long prior to the admissions made in 1932 and in the subsequent years. It is argued for the appellants that these admissions at the least shifted the burden on to the plaintiff of proving that the proceedings were not collusive, and that as he gave no evidence worth the name that these statements were made under a mistake or for a purpose and were, in fact, not true, full effect must be given to them. Reliance was placed on the well-known observations of Baron Parke in Slatterie v.Pooley [(1840) M & W 664, 669 : 151 ER 579, 581] that "what a party himself admits to be true may reasonably be presumed to be so", and on the*

decision in Rani Chandra Kunwar v. Chaudhri Narpat Singh: Rani Chandra Kunwar v. Rajah Makund Singh [(1906-07) 34 IA 27] where this statement of the law was adopted. No exception can be taken to this proposition. But before it can be invoked, it must be shown that there is a clear and unambiguous statement by the opponent, such as will be conclusive unless explained. It has been already pointed out that the tenor of the statements made by Abdul Huq, his legal representatives and the plaintiff was to suggest that the proceedings in 0. S. No. 100 of 1919-20 were fraudulent and not collusive in character. Those statements would not, in our opinion, be sufficient, without more, to sustain a finding that the proceedings were collusive.

The observation of the Hon'ble Supreme Court, according to the learned Senior Counsel fortify his submission that the admission is not conclusive. It is only a piece of evidence and it depends on circumstances under which it is made. It can be shown to be erroneous and untrue but it must be tested with evidence for a conclusive answer. Therefore, he would submit that the 1st plaintiff ought to be provided with opportunity to explain the circumstances, her mental framework, when she executed the Settlement Deed on 09.01.2014. The settlement has to be ultimately tested at the time of trial and not at this stage.

ii) The Learned Senior Counsel relied on a decision reported in ***1989 SCC OnLine Patna 264 (Sushila Devi v. Bishwanath Ram).*** He would particularly draw reference to paragraph Nos.19 and 21 which are extracted hereunder.

> ***19.****The legal position in a contested probate proceeding may be different. In a contested case i.e. the application which has been registered as a title suit, if the propounder wants to withdraw from the case or wants to abandon it or does not take any step and if there be any defendant who claims an interest under the will, the Court may not in such a situation allow the propounder to withdraw the suit or to abandon it or dismiss the suit, for default, if the person or any of the persons claiming an interest in the property under the will applies to the Court to allow him to prosecute the case, the Court may in such a situation take recourse to Order 1 Rule 10 of the Code and transpose any such defendant as plaintiff and transpose the plaintiff as a defendant. There may be a case where the propounder having transferred his interest in the property does not take any interest in the suit or prays for withdrawing the suit or abandons it and, if any application is made by such a transferee to be added as a party, the Court should allow it by following the procedure of Order 1 Rule 10 of the Code, if a prima facie case is made out.*

....

> ***21.*** *This application is allowed, the order of the court below is set aside and the application of Bishwanath for permission to withdraw the case is rejected. The application of the petitioner for impleading her as a party is allowed. After she is so impleaded, the dispute will be between the two defendants i.e. the petitioner-intervenor and Basant Ram, opposite party no. 2. The Court in such a situation is not helpless and there are decisions of the highest Court rendered in Hulas Rai Baij Nath v. Firm K.B. Dass & Co.: AIR 1968 Supreme Court 111 :R. Rammurthi Aiyar v. Rajeshwar Rao, (1972) 2 SCC 721 : AIR 1973 Supreme Court 643 : and by this Court in Basudeb Narayan v. Shesh Narayan: AIR 1979 Patna 73 : that Court may transpose a defendant as a plaintiff. Not only this has been codified by introducing Rule 1-A in Order 23, the law laid down in the aforesaid cases has been widened as has been held in Mohd. Muzahid v.Johin Wilson Zedak: AIR 1989 Patna 2 : In the present case as the dispute is between Basant and the petitioner, the proper course is to take recourse to Order 23 Rule 1-A, transpose the petitioner as plaintiff in place of Bishwanath Ram and to transpose Bishwanath Ram as defendant no. 2. There shall be no order as to cost.*

The above case is regarding probate proceeding therein. The Patna High Court held that in case of a contested probate proceedings, even if the propounder wants to withdraw from the case or abandon it, the Court must not allow the propounder to withdraw the suit or to abandon it. The Court, in such situation, should allow any other person interested in the suit to prosecute the proceedings.

(iii) The learned Senior Counsel also relied on a decision reported in ***2019 (7) SCC 158 (Madhav Prasad Aggarwal & Anr. vs. Axis Bank Ltd.)*** and would refer to paragraph 10 which is extracted hereunder.

> ***10.****We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose*

any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.

The above is the case where the Hon'ble Supreme Court has held that under Order 7 Rule 11 CPC, the plaint has to be rejected as a whole or not at all. In this regard, the learned Senior Counsel reiterated that there are several prayers in the suit other than the declaration of the settlement deed dated 09.01.2014 as illegal and void. In such circumstances, invoking Order 7 Rule 11 of CPC by the applicant herein is thoroughly misconceived and liable to be rejected.

(iv) Another decision was also referred to by the learned Senior Counsel reported in ***2006(5) SCC 658 (Balasaria Constructions Ltd. v. Hanuman Seva Trust)***. The Court's attention has been drawn to paragraph No.8 which is extracted hereunder.

> ***8.*** *After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure.*

This is regarding the rejection of plaint on the ground of limitation which the Hon'ble Supreme Court held that it is a mixed question of law and fact.

(v) In regard to withdrawal of probate, one other decision was cited reported in ***AIR 1917 Patna 41 (Jugeshwar Nath Sahai and Anr.v. Jagatdhari Prasad)*** which is in effect would hold that in regard to legal principle as to whether the propounder to the probate proceedings has a right to withdraw or not. But the observation therein may not be significant or relevant to the issue on hand.

19. By way of reply, the learned Senior Counsel Mr.Yashod Vardhan submitted that as far as the High Court of Patna decision is concerned in paragraph No.19 which is extracted supra, it was a clear case where the defendant therein had interest in the property unlike in the present case.

20. The provisions for grant of compulsory probate or Letters of Administration under the Indian Succession Act,1925 are not applicable to Christians. The learned Counsel brought to the notice of this Court Section 37 of the Indian Succession Act,1925, to contend that even assuming that there is intestate succession, the applicant herein is entitled to succeed to the estate of her deceased father, absolutely to the exclusion of all others, as being the only surviving legal heir.

21. The learned Senior Counsel would therefore sum up saying that

the suit has been filed with oblique motive for achieving a collateral purpose and the proceedings thus, initiated by the plaintiff is abuse of process of the Court. The plaint in its entirety does not disclose any cause of action and the same is also barred by law of limitation and therefore, liable to be rejected.

22. Further, the withdrawal of O.P. sought by the petitioner cannot be opposed by the respondent therein, first plaintiff herein in the facts and circumstances, as she has no right whatsoever in the subject property. In any event, legally she is not entitled to any share, even in the absence in any Will executed by the applicant's father. From whichever, legal perspective, the first plaintiff, cannot raise any sustainable objection against the withdrawing of the O.P. by the applicant herein.

23. Heard the learned Senior Counsel Mr.Yashod Vardhan, for the petitioner in O.P. and the applicant herein/ defendant in the Suit and Mr.Sathish Parasaran, the learned Senior Counsel appearing for the respondent in the O.P. and the respondents herein/ plaintiffs in the suit. Perused the pleadings, materials and the case laws cited by the respective

parties.

24. As far as the O.P. for grant of Letters of Administration is concerned, the respondent herein namely, the plaintiff in the suit has raised objection against the grant of Letters of Administration on the ground that the annexed Will executed on 05.07.2016 by the petitioner's father was forged and therefore, the petitioner cannot be granted Letters of Administration. In fact, an Application No.909/2020 was filed on her behalf for appointment of Advocate Commissioner to subject the above said Will for forensic opinion.

25. The dispute whether the Will is forged or not would become relevant only when the objector to the grant of Letters of Administration has any interest whatsoever in the property to be bequeathed under the Will dated 05.07.2016. In this regard, the learned Senior Counsel Mr.Yashod Vardhan has pointedly drawn the attention of this Court to the objections filed by the respondent therein, the 1st plaintiff herein, wherein the objection was entirely premised on her claim being Class-I heir and therefore, was entitled to 50% of the share in the property after the demise of her son on 03.02.2017, the

father of the petitioner. If the Will is to be discarded as the same being impeached as not a genuine document, what follows from such contingency was that Mr.Anand Rajkumar Pithavadian had not left genuine Will and deemed to have died intestate. The claim of the respondent therein, the mother of the deceased Anand Rajkumar Pithavadian, therefore was, being a surviving legal heir along with the daughter, the petitioner in the O.P., she was entitled to 50% share in the property.

26. But what is to be seen in this case is that under the provisions of the Indian Succession Act,1925, mother cannot claim any right to the property as Class-I heir belonging to the deceased son. When law places prohibition on her from claiming any share as Class-I heir, the objections raised by her against the grant of Letters of Administration in favour of daughter, the only legal heir of the deceased Anand Rajkumar Pithavadian, cannot have any legal legs to stand on. In which case, the issue as to whether the Will is forged or not becomes irrelevant as between the petitioner vis-a-vis the respondent in the O.P. In the said circumstances, the only legal result of the above conclusion is that being the only legal heir of the deceased

father, the petitioner is entitled to the grant of Letters of Administration for administering the entire property. The respondent therein has no locus standi to oppose the application filed by the petitioner seeking withdrawal of the O.P. This conclusion gets solidified in the following discussion.

27. This Court's attention has been specifically drawn as to how the subject property was originally purchased as early as on 30.03.1970. The subject property was purchased jointly in the name of the petitioner's father, Anand Rajkumar Pithavadian and his mother, the respondent in the O.P. Subsequently, on 09.01.2014, the respondent in the O.P. had settled her 50% of the share in the property purchased jointly on 30.03.1970 in favour of her son, the father of the petitioner. Since 09.01.2014, admittedly, the father of the petitioner had become absolute owner of the properties. This crucial fact of settlement of 50% of the property by the respondent in the O.P. has been affirmed and reaffirmed and admitted in unmistakable terms by her in various subsequent transactions. It has been specifically brought to the knowledge of this Court that even in the objections against the grant of Letters of Administration, the respondent therein, the mother of Anand Rajkumar

Pithavadian had clearly averred that she had settled her undivided 50% share in favour of her deceased son. The affidavit was filed as late as in December 2019. Even thereafter, when the settlement deed was sought to be executed by the 1st plaintiff in favour of her daughter, the second plaintiff in the above suit on 06.01.2020, attempting to settle her 50% share in the subject property, she has clearly mentioned about the settlement of 50% share by registered document dated 09.01.2014 in favour of her deceased son.

28. Despite the legal position that she had no share in the property whatsoever, still she attempted to settle her 50% of the subject property in favour of her daughter. Once again, on the mistaken impression or on a wrong guidance, she executed the settlement deed settling her non-existing 50% share in the property. This registered document has been craftily used by the 1st plaintiff in the above suit as a starting point of her discovery of alleged fraud by her late son in getting 50% of her share settled in his favour by document dated 09.01.2014. According to her, she had come to know about the fraud, at the time of registration of this document, which led to the filing of the present suit seeking to declare the settlement deed dated 09.01.2014,

as null and void. Whether the prayer is maintainable or not shall be dealt with hereunder.

29. Be that as it may, the petitioner in the O.P. is the resident of Australia, was possibly not aware of the legal requirement in India. When the O.P. was pending and the objections by the respondent was also placed on record, later on, she had come to know that as per the provisions of Indian Succession Act, a Christian Will is not compulsorily to be probated. At that point of time, she felt that there was no purpose of pursuing the O.P in the absence of any legal requirement for grant of Letters of Administration. On learning of the correct legal position, the application was filed in A.No.1849/2020 seeking permission to withdraw the O.P. Opposing the application, the objections have been filed on behalf of the respondent therein contending that the petitioner had produced a fabricated document and committed certain offences under Indian Penal Code and an enquiry must be ordered into the conduct of this petitioner. As stated above, simultaneously, the application was also taken out in A.No.909/2020 for appointment of Advocate Commissioner to subject the Will to investigation.

30. In regard to the withdrawal of right to withdraw the O.P., the learned Senior Counsel Mr.Yashod Vardhan has relied on the decision reported in ***2018 (12) SCC 584 (Anil Kumar Singh v. Vijay Pal Singh)***. The relevant paragraphs 23 and 24 have already been extracted supra. The Hon'ble Supreme Court has held that right to withdraw the suit by the plaintiff cannot be resisted except to ask for payment of costs for the party who is resisting the withdrawal. The Court, has particularly held that the mere withdrawal of the suit without asking for anything more can always be permitted and the defendant has no right to compel the plaintiff to prosecute the suit by opposing the withdrawal of the suit.

31. On the other hand, on behalf of the respondent in the O.P, the learned Senior counsel Mr.Sathish Parasaran has relied on the decision reported in ***1989 SCC OnLine Patna 264 ((Sushila Devi v. Bishwanath Ram)***. The relevant paragraphs 19 and 21 referred to by him have been extracted supra. The Patna High Court in that case had held that the propounder of the probate proceedings would not be allowed to withdraw the

suit or abandon it, as the Court found there were other claimants claiming interest in the property. The facts in that case are completely irrelevant to the consideration of this Court. As, in this case, the respondent cannot claim any interest legally in the property and therefore, she has no right to oppose the withdrawal of the O.P. by the petitioner.

32. Learned Senior Counsel referred to ***AIR 1917 Patna 41 (Jugeshwar Nath Sahai and Anr.v. Jagatdhari Prasad)***. In that case, the Patna High Court has held that simple withdrawal of the suit under Order 23 Rule 1 may not be applicable to withdrawal of the probate proceedings and before seeking permission to withdraw, the opinion of the Court is to be obtained upon genuineness or otherwise of the Will. In this case, as stated earlier, whether the Will was forged or not, is immaterial. As far as the claim of the petitioner herein is concerned, when the respondent becomes non-entity in terms of her claim to the property, any objection regarding the genuineness of the Will, cannot be the basis, on which, the application seeking permission to withdraw could be negatived. The right of the petitioner to maintain the O.P., assuming she wanted to pursue the matter to

its logical end, she being the only legal heir of her deceased father, it is still open to her to obtain the Letters of Administration from this Court. In any event, when there is no requirement in law for grant the Letters of Administration, it is certainly not within the right of the respondent to compel the petitioner to prosecute the O.P.

33. The above decisions cited in support of their opposition to the withdrawal of the O.P. cannot have any modicum of application in the present facts and circumstances of the case. Moreover, when the very basis of the respondent's claim namely that she is Class-I heir and hence, entitled to 50% of the share, ignoring the Will dated 05.07.2016, is found to be invalid and unfounded, the objection against the withdrawal of the O.P. is to be rejected outright. Such objections are raised by the respondent for malicious purpose and intended to derive unfair, unjust advantage to her. Any opposition to withdrawal of the probate proceedings would have to be considered only in the context of any other possible claimant is interested in the property. In this case, except the respondent, no one else is interested in the property and the respondent having premised her claim only on the basis of her status as

Class-I heir to the property and such status does not give her any share in the property in terms of the scheme of the Indian Succession Act, the entire probate proceedings is to be treated as uncontested and in such event, there is absolutely no reason for keeping the probate proceedings pending. In such view of the matter, this Court has no hesitation in accepting the Application No.1849/2020 seeking withdrawal of the proceedings and the same is allowed and the O.P. stands dismissed as withdrawn.

34. As far as the suit prayers are concerned, on behalf of the first defendant in the suit, the petitioner in the O.P., an application has been preferred in A.No.2445/2020 seeking to reject the plaint. On behalf of the respondent/plaintiff, counter affidavit has also been filed in response to the application. Arguments were advanced on this application by the learned Senior Counsel Mr.Yashod Vardhan for the applicant/1st defendant and Mr.Sathish Parasaran for the respondent/plaintiff.

35. According to the learned Senior Counsel Mr.Yashod Vardhan, the suit has been laid on a vexatious plea that the Settlement Deed executed by

the 1st plaintiff in favour of the applicant's father dated 09.01.2014 to be declared as non-est and invalid. According to the 1st plaintiff the document had been obtained by fraud exercise of undue influence and mis-representation etc. by the deceased son, the father of the applicant. The learned Senior Counsel has drawn the attention of this Court to the same documents which this Court had referred to in its findings while concluding in favour of the petitioner in the O.P. proceedings.

36. This Court has to once again refer to few documents which are very vital and crucial in deciding the present application. The settlement deed dated 09.01.2014 is a registered document wherein, admittedly 50% of the undivided share of the settlor namely, the respondent herein, the 1st plaintiff in the suit had been settled in favour of the settlee, her deceased son, the father of the applicant herein. Since then, the father of the applicant herein had become the absolute owner of the subject property.

37. After the execution of the settlement deed as early as on 09.01.2014, there was absolutely no whisper from the respondent/1st plaintiff

about any act of fraud or coercion played upon her by the deceased father of the applicant herein. On the other hand, even in the objections filed by the respondent/1st plaintiff herein to the O.P. in December 2019, she has merrily accepted that she had divested of her 50% undivided share in favour of her son and the son, since deceased, she is entitled to get 50% share in the property as being Class-I heir. Not a word has been stated in the objection about any fraudulent act by the deceased, father of the applicant herein. The 1st respondent/ 1st plaintiff's claim and her stand in the O.P. proceedings was that though she had settled her 50% of undivided share in favour of her son on 09.01.2014 ,yet after her son's demise, she was entitled to 50% share in the property as being Class I heir. From this, it could be very clearly deduced that as a matter of fact, she had conceded that the deceased father of the applicant was the absolute owner and on his death, she being a Class-I heir is entitled to 50% share in the property along with the applicant herein.

38. Further, even in the settlement deed dated 06.01.2020 executed in favour of her daughter, the respondent/ 1st plaintiff has clearly and categorically acknowledged the fact of settling her proportionate 50%

undivided share by settlement deed dated 09.01.2014 in favour of her deceased son, father of the applicant herein. Here again, nothing has been whispered about any act of fraud or coercion or undue influence. In fact, even in the said settlement deed, in the recital, she claimed her right of 50% of undivided share by calling herself as one of the two legal heirs entitled to succeed to the subject property. Till January 2020, her case was that no valid Will was executed and hence, was entitled to 50% of the share in the subject property after the death of her son on 03.02.2017.

39. While the matter stood thus, the respondent/1st plaintiff presumably later on realising that her 50% share in the property on the basis of her Class-I heir status is not legally permissible or valid, she appeared to have changed her entire game plan and come up with a story of fraud, coercion, undue influence etc. in order to provide basis for laying the suit in 2020 seeking to declare the settlement deed dated 09.01.2014 as null and void. She appeared to have invented an unbelievable mendacious explanation as if she has discovered the fraud only at the time when the Settlement Deed was executed in January,2020. There is nothing in the plaint which could

even remotely lay any credence to the theory of fraud being unearthed in 2020 in the execution of the settlement deed dated 09.10.2014. No materials are found in support of the averments at all. As held by Courts, mere pleading of fraud coercion etc., cannot be the basis for entertaining the suit, if it is otherwise, time barred.

40. This is a classic case where the document was executed on 09.01.2014 and not a shred of material has been shown since 2014 till the laying of the suit alleging any fraud in the transaction. On the other hand, the 1st plaintiff here has affirmed the execution of the document on her own volition in her objections raised in the O.P. proceedings in December, 2019 and also in the subsequent settlement deed dated 06.01.2020. In the teeth of her own acknowledgement and admission of the execution of document on her own volition, the sudden turn around by her in filing the suit and seeking to declare the document as illegal non-est etc. is a vile and a malicious attempt to lay claim in the subject property through dubious means.

41. It is too glaring and open for the Court to conclude that the

present suit has been premised on utter falsehood. The theory of fraud or coercion is a wicked invention in the minds of the plaintiffs in order to entangle the subject property into the litigation and to deviously enrich themselves in the bargain. The statement, the 1st plaintiff has come to know about the fraudulent nature of the transaction only in January, 2020, in the face of the 1st applicant/plaintiff herein admission in the earlier documents referred to above, appears to this Court, an unalloyed lie and the manner and the circumstances in which such allegations are hurled at the deceased father of the applicant herein have only exposed how vexatious the conduct of the parties, when it comes to property dispute.

42. It is unfortunate that the plaintiffs have come up with the allegation of fraud, coercion and undue influence and have even gone to the extent of questioning the Will executed by the applicant's father dated 05.07.2016, in which, the 1st plaintiff cannot have any claim or interest, after the death of the applicant's father. The suit has been laid as a counter blast with a view to pave an alternative avenue to prosecute their malicious agenda of grabbing the property. Ostensibly, the first plaintiff might have

realised that her claim in the O.P. proceedings as a class-I heir could hit the legal road block in terms of the Indian Succession Act and hence, the plaintiffs, particularly, 1st plaintiff has wily come up with the present scheme of assailing the very execution of the settlement deed itself on 09.01.2014, voluntarily.

43. Having referred to the factual matrix as above, the decisions cited on behalf of the parties need to be referred to. On behalf of the applicant, the learned Senior Counsel Mr.Yashod Vardhan, relied on the decision of the Hon'ble Supreme Court reported in ***1998(2) SCC 70 (I.T.C. Limited v. Debts Recovery Appellate Tribunal)*** wherein paragraph 16 has been extracted supra. In that case, the Hon'ble Supreme Court has held that clear drafting, creating illusions of cause of action are not permitted in law, invariably without any exception, such drafting was intended to get around the law of limitation.

44. On behalf of the respondents/plaintiffs, three decisions have been cited.

i) ***AIR 1956 SC 593 (Nagubai Ammal vs. Shama Rao)*** paragraph 16 has been extracted supra.

This was relied on by the learned Senior Counsel, Mr.Sathish Parasaran that any admission made is not conclusive and it is only a piece of evidence. The 1st plaintiff need to be given an opportunity to explain the circumstances, under which, the Settlement Deed dated 09.01.2014 was executed. These issues cannot be conclusively held one way or the other and therefore, this Court cannot take a final call in allowing the application under Order 7 Rule 11 C.P.C.

ii) The second decision relied on by the learned Senior Counsel is ***2019 (7) SCC 158 (Madhav Prasad Aggarwal & Anr. vs. Axis Bank Ltd.)*** wherein paragraph 10 has been extracted supra. In that paragraph, the Hon'ble Supreme Court has held that under Order 7 Rule 11(d) C.P.C., there cannot be any rejection of plaint in part meaning that the plaint has to be rejected as a whole or not at all. In this connection, the learned Senior Counsel has already argued that there are several other prayers in the suit apart from the prayer seeking to declare the settlement deed dated 09.01.2014 as null and void. Therefore, even if this Court were to come to the conclusion in favour of the applicant herein in regard to the dispute relating to the execution of the Settlement deed dated 09.01.2014, yet the suit cannot be rejected on that basis.

iii) The third decision relied on by the learned Senior Counsel is ***2006(5) SCC 658 (Balasaria Constructions Ltd. v. Hanuman Seva Trust)***. In the said decision in paragraph No.8 which has been extracted supra, the Hon'ble Supreme Court has held that the issue of limitation is always a mixed question of law and facts. The Hon'ble Supreme Court has held that a suit cannot be dismissed on the ground of limitation without proper pleading, framing of an issue and taking of evidence. In this case, unless an opportunity is afforded to the plaintiffs to explain the circumstances leading to the execution of the settlement deed dated 09.01.2014 and the discovery of the fraud in 2020, the issue cannot be decided by this Court, at this stage.

45. This Court has considered the case laws as cited above, yet, the facts disclosed in the plaint and the materials that are made available for consideration of this Court are extremely clear, leaving no scope for any doubt in deciding the present application. This Court, going by the very own

averments in the plaint and their own documents filed in support of the plaint, cannot come to any other conclusion, except to hold that the suit is very much barred by limitation. This Court, once again has, to reiterate that the averments relating to discovery of fraud, coercion, undue influence etc. only at the time of execution of settlement deed dated 06.01.2020, do not carry an iota of conviction with this Court. At the risk of repetition, it must be emphasised that in the face of the 1st plaintiff's own affidavit namely, objections filed in the O.P. in December 2019 and also her settlement deed dated 06.01.2020, wherein there was a clear acknowledgement and unqualified admission of execution of settlement deed dated 09.01.2014 by her, thereby reducing the contest into an open and shut case for the applicant herein.

46. The fact of devious conduct of the 1st plaintiff would further get bolstered when referred to her own claim before the O.P. proceedings that she was entitled to 50% share in the property, as being Class-I heir and till that time she had no ruse to plead fraud, coercion or undue influence, maligning the execution of the settlement deed dated 09.01.2014. She, at that point of

time, felt that she could impeach the Will and then appropriate 50% of the share in the property. Later on, when she realised that her claim was legally not admissible, she appeared to have made a U turn, reversed her game plan and conceived the filing of the suit on time worn, clichéd and hackneyed plea of fraud with a view to wriggle out the law of limitation and to remain in contention in the 'lis'. The expressions fraud, undue influence, coercion would have no semantic essence or value if these expressions are perfunctorily and cursorily pleaded unsupported by any shred of material. As observed by the Hon'ble Supreme Court, these are all empty expressions born out of clever and crafty drafting skills and the courts might not attach too much credence at all. This Court is particularly aghast at the plea of fraud, undue influence, coercion etc. stemming from none other than the mother and the sister of the deceased father of the applicant, after his death in 2017. On the whole, this Court is of the view that the suit in its entirety being premised on unrighteous claim is to be discountenanced both in law and on fact and is liable to be rejected lock, stock and barrel.

47. In regard to the contention that the suit cannot be partially

rejected, this Court is unable to countenance such arguments in view of the nature of prayers that is sought in the plaint. The prayers (b) to (g) are nothing but the fall out of main prayer, namely declaration of the settlement deed dated 09.11.2014 as null and void. The relief claimed in para (b) to (g) cannot independently stand for the judicial scrutiny and provide any scope for framing any triable issue in the suit if the main prayer is rejected on the ground pleaded in terms of Order 7 Rule 11. All the so-called other prayers completely hinge upon the main prayer (a) and when the main prayer stands rejected, the other prayers corelated to the same would by itself fail to survive for consideration by this Court. Therefore, the arguments advanced on this aspect amounted to misreading the nature of the prayers and therefore, the same is rejected, as being without any merits and substance.

48. In the conspectus of the above judicial discourse and in nutshell, this Court has absolutely no hesitation in holding that the present suit is a vexatious proceedings initiated by the plaintiffs, deviously aimed at entangling the subject property into the litigation for serving their own ends. This Court finds that there is no cause of action at all for laying the suit as the

plaintiffs have no right whatsoever in the suit property. Further, the plaint is also to be rejected on the ground of limitation as the pleas of fraud, coercion, undue influence etc. are too concocted and contrived, incapable of passing the test of its veracity.

1.

49. Accordingly, Application No.1849 of 2020 is allowed and O.P.No.948 of 2018 is ordered to be dismissed as withdrawn. Application No.2445 of 2020 is allowed and the Suit is dismissed. The parties shall bear their own costs. Consequently, A.Nos.388 and 389/2020 and A.No.909/2021 are closed.

07.10.2021

vsi
Index:Yes/No
Speaking/Non-speaking order

V.PARTHIBAN.J.,

vsi

O.P.No.948 of 2018
& A.No.1849 of 2020
& A.No.909 of 2021
and
C.S.No.217 of 2020 &
A.No.2445 of 2020 &
O.A.Nos.388 & 389 of 2020

07.10.2021