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C.R.P.Nos.2225 of 2021 & 464 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.Nos.2225 of 2021 & 464 of 2022

and

C.M.P.No.2435 of 2022

C.R.P.No.2225 of 2021:

- 1.Smt. Saraswathy Bhuvarahan
- 2.Smt. Uma Ravi
- 3.Smt. T.Srilatha
- 4.Smt. Sri Sudha Ganana Prakasam

... Petitioners /
Defendants

Vs.

Smt.Akila Vijayakumar

... Respondent /
Plaintiff

Prayer: Petition filed under Article 227 of the Constitution of India praying to set aside the Judgment and Decree dated 23.03.2021 passed in the I.A.No.1 of 2019 in O.S.No.4120 of 2014 pending on the file of VIII Assistant Judge (FAC) I Assistant Court at Chennai.

For Petitioners

: Mr.R.Viduthalai,
Senior Counsel
For Mr.N.Duraikannan

For Respondent

: Mr.N.L.Rajah
Senior Counsel
For Mrs.Vidya Chetan



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C.R.P.No.464 of 2022:

Smt.Akila Vijayakumar

... Petitioner /
Plaintiff

Vs.

1.Smt. Saraswathy Bhuvarahan
2.Smt. Uma Ravishankar
3.Smt. T.Srilatha Tamilselvam
4.Smt. Srisudha Gnanaprakasam

... Respondents /
Defendants

Prayer: Petition filed under Article 227 of the Constitution of India praying to set aside the fair order and decretal order dated 26.10.2021 passed by the 1st Asst. Judge City Civil Court, Chennai, in I.A.No.2 of 2021 in O.S.No.4120 of 2014, pending on the file of the 1st Asst. City Civil Court, Chennai.

For Petitioner : Mr.N.L.Rajah
Senior Counsel
For Mrs.Vidya Chetan

For Respondents : Mr.R.Viduthalai,
Senior Counsel
For Mr.N.Duraikannan

COMMON ORDER

The Civil Revision Petition in C.R.P.No.2225 of 2021 is filed, challenging the fair and decretal order dated 23.03.2021 passed in I.A.No.01 of 2019 in O.S.No.4120 of 2014.



1.1. The Civil Revision Petition in C.R.P.No.464 of 2022 is filed to set aside the fair and decretal order dated 26.10.2021 passed by the I Asst. Judge, City Civil Court, Chennai, in I.A.No.2 of 2021 in O.S.No.4120 of 2014, pending on the file of the I Assistant City Civil Court, Chennai.

2. The parties are referred as per the ranking in the Trial Court.

Facts of the case:

3. The revision petitioners in C.R.P.No.2225 of 2021 are the mother and three sisters of the revision petitioner in C.R.P.No.464 of 2022. The Suit was instituted to declare the Settlement Deed registered as document No.17 of 2008 dated 10.01.2008 as null and void and for permanent injunction. The Suit was instituted by the revision petitioner in C.R.P.No.464 of 2022, Smt.Akila Vijayakumar.

4. The defendants in the Suit filed I.A.No.01 of 2019 for rejection of plaint under Order VII Rule 11 of Code of Civil Procedure, 1908. The rejection of plaint was filed mainly on the ground that there is a bar created by Statute against the institution of Suit, premature presentation of Suit renders in presentation itself is blatantly void and Suit does not disclose any



cause of action or lack of cause of action and thus, the plaint is to be rejected.

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5. Another Interlocutory Application in I.A.No.02 of 2021 was filed by the defendants under Section 151 of Code of Civil Procedure, not to permit the plaintiff to mark the document of Unprobated 'Will' as evidence in the present Suit. The Trial Court considered the claim of the defendants and allowed the Interlocutory Application filed by the defendants in I.A.No.02 of 2021. Thus, the plaintiff filed C.R.P.No.464 of 2022 and the defendants filed C.R.P.No.2225 of 2021.

6. The Suit schedule property is situated within Chennai City and the 'Will' relied upon by the plaintiff is not entertainable, since it was not probated. An Unregistered and Unprobated 'Will' is the basis for presentation of the Suit without any cause of action and thus, the plaint is to be rejected. That apart, the Suit is barred by limitation since the alleged 'Will' was executed on 27.11.2007, which is Unregistered and Unprobated. The 'Will' ought to have been probated prior to the institution of the Suit.

7. The plaintiff filed a counter affidavit in the Interlocutory



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Application, objecting that the plaintiff is not claiming any title based on the 'Will' dated 27.11.2007. Marking of the 'Will' cannot be prevented, since it is marked for collateral purposes and the plaintiff is not claiming as a legatee. The plaintiff filed O.P.No.882 of 2017 for probate of the 'Will' before the High Court of Judicature at Madras and the said O.P was converted into T.O.S.No.01 of 2018 and it is pending. The plaintiff is the absolute owner in possession and enjoyment of the Suit Schedule Property. Her father executed the 'Will' dated 27.11.2007, while in sound disposing state of mind and that is the last 'Will' and testament of her father, which was disinherited all other heirs of her father and she had taken over the physical possession of the Suit Scheduled Property uninterruptedly after the death of her father. As per the 'Will' dated 27.11.2007, after demise of her father on 23.02.2014, the plaintiff was entitled to the Suit Schedule Property as a sole beneficiary and accordingly her mother/the 1st defendant, who had in fact was possession of the 'Will' referred to above left by her father, who had handed over the same to the plaintiff to take possession of the property after the expiry of three months due to the Hindu Customs, after demise of her father. The first defendant/mother of the plaintiff subsequently refused to hand over possession of the property after vacating it at the instigation of the other defendants and jointly claiming the immovable property. The



Settlement Deed dated 10.01.2008 executed by the deceased father of the plaintiff was gained illegally and thus, the plaintiff was forced to file the Suit. Thus, the trial is imminent and the Interlocutory Application is to be rejected.

8. The learned Senior Counsel appearing on behalf of the plaintiff mainly contended that the suit is for declaration that the Settlement Deed registered as Document No.17 of 2008 dated 10.01.2008, alleged to have been executed in favour of the defendants 2 to 4 in respect of the Suit Schedule Property by the father of the plaintiff Late.Shri.G.Bhuvarahan as sham and got up document as null and void and for permanent injunction along with five documents on 18.07.2014. The probate proceedings are in progress on the date of filing of O.S.No.4120 of 2014 and at present, it is pending before the High Court of Madras in T.O.S.No.01 of 2018 and posted for cross-examination. The 'Will' dated 27.11.2007 was executed by the father of the plaintiff and cannot be construed as a forged 'Will' and the contentions in this regard by the defendants are incorrect. The plaintiff has got right over the Suit Schedule Property.



9. The learned Senior Counsel appearing on behalf of the plaintiff mainly contended that the 'Will' by itself is a document and therefore, there is no bar for the plaintiff to mark it for collateral purposes and the plaintiff is not claiming any title merely based on the 'Will', since it is yet to be probated and more so, the probate proceedings are now pending. The Suit is instituted for the relief of declaration and even in the absence of 'Will', the plaintiff in O.S.No.4120 of 2014 as a Class I legal heir of the deceased Late.Shri.G.Bhuvarahan is entitled to maintain the Suit and she will have to establish that the Settlement Deed dated 10.01.2008 is vitiated and to that it is a sham document. The plaintiff has got every right to question the Settlement Deed dated 10.01.2008, since she being a Class I legal heir of the deceased Late.Shri.G.Bhuvarahan was excluded in the Settlement Deed.

10. Interlocutory Application filed in I.A.No.01 of 2019 by the defendants to reject the plaint was dismissed on 23.03.2021 and another Interlocutory Application filed in I.A.No.2 of 2019 by the defendants, not to permit the plaintiff to mark the 'Unprobated Will' as document was allowed on 26.10.2021. The 'Will' being a document by itself. Its validity or sanctity or otherwise are to be tested only during the course of trial and the Trial Court has erroneously allowed the Interlocutory Application in I.A.No.2 of



2019 filed by the defendants by not permitting the plaintiff to mark the 'Will' as document.

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11. The learned Senior Counsel appearing on behalf of the plaintiff relied on the judgment in the case of ***P.Thillai Selvan Vs. Shyna Paul*** reported in ***[MANU/TN/1508/2014]*** and the relevant paragraphs are extracted here under:

14. Learned counsel for the petitioner/second defendant relied on the decision of the Honourable Supreme Court reported in MANU/C/2832/2006 : 2006 (10) SCC 442 (cited supra) to contend that the suit ought to have been filed within three years from the date of execution of the gift deed. In paragraphs 4 and 5 of the said decision, the Honourable Supreme Court observed as follows:

4. Section 213 of the Indian Succession Act ("Act" for short) provides as to when the right of the executor or legatee is established. Sub-section (1) thereof provides that no right as executor or legatee can be established in any court unless a court of competent jurisdiction in India, has granted probate of the Will under which the right is



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claimed (or has granted letters of administration with the Will or with a copy of the Will annexed.) It is not in dispute that the said Section applies in the case of Wills made by a Hindu who is a resident of Calcutta. The trial court and the High Court have proceeded on the basis that having regard to [section 213](#) of the Act, the suit cannot be decided unless the executor of the Will produces the probate. [Section 213](#) clearly creates a bar to the establishment of any right under a Will by the executor or legatee unless probate or letters of administration of the Will have been obtained. This Court in [Mrs.Hem Nolini Judah v. Mrs.Isolyne Sarojbashini Bose](#) (MANU/SC/0399/1962 : 1962 Supp (3) SCR 294 : AIR 1962 SC 1471), held as follows :

“The words of S.213 are not restricted only to those cases where the claim is made by a person directly claiming as a legatee. The section does not say that no person can claim as a legatee or as an executor unless he obtains probate or letters of administration of the will under which he claims. What it says is that no right as an executor or legatee can be established in any Court of Justice, unless probate or letters of administration have been obtained of the will under which



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the right is claimed, and therefore, it is immaterial who wishes to establish the right as a legatee or an executor. Whosoever wishes to establish that right whether it be a legatee or an executor himself or somebody else who might find it necessary in order to establish his right to establish the right of some legatee or executor from whom he might have derived title, he cannot do so unless the Will under which the right as a legatee or executor is claimed has resulted in the grant of a probate or letters of administration.”

5. Therefore, where the right of either an executor or a legatee under a Will is in issue, such right can be established only where probate (where an executor has been appointed under the Will) or letters of administration (where no executor is appointed under a Will) have been granted by a competent court. [Section 213](#) does not come in the way of a suit or action being instituted or presented by the executor or the legatee claiming under a Will. [Section 213](#), however, bars a decree or final order being made in such suit or action which involves a claim as an executor or a legatee, in the absence of a Probate or Letters of Administration in regard to such a will. Where the testator had himself filed a



*suit (seeking a declaration and consequential reliefs) and he dies during the pendency of the suit, the executor or legatee under his will, can come on record as the legal representative of the deceased plaintiff under Order 22 Rule 3 CPC and prosecute the suit. **Section 213** does not come in the way of an executor or legatee being so substituted in place of the deceased plaintiff, even though at the stage of such substitution, probate or letters of administration has not been granted by a competent court.”*

15. A perusal of the abovesaid decision would show that an executor or a legatee claiming under a Will can file a suit or initiate action and however, the Court cannot pass a decree or final order in such suit or action in the absence of a probate or a Letters of Administration in regard to such a Will. In this case, the question as to whether the action initiated by the plaintiff is an action which can be initiated only when he gets a right or otherwise, is purely a question of fact that has to be gone into by the Court below during the time of trial to decide the question as to whether the suit was filed within the period of limitation. The abovesaid decision of the Apex Court does not deal



with the application filed under Order 7 Rule 11 CPC and on the other hand, it has dealt with the issue as to whether [Section 213](#) of the Indian Succession Act, 1925, bars an executor or a legatee under a Will from establishing any right under a Will, unless probate or Letters of Administration is obtained. Therefore, to apply the said decision to the present case, the facts and circumstances of the case supported by material evidence, have to be gone into by the Court below at the time of trial. Therefore, in my considered view, the said decision cannot be applied while deciding an application under Order 7 Rule 11 CPC seeking for rejection of the plaint itself and hence, the abovesaid decision will not help the petitioner herein, at this stage, in any manner. However, it is open for the petitioner/second defendant to canvass the said issue by filing written statement and substantiate his stand during the time of trial. It is needless to say that the trial Court will consider all those issues including the issue of payment of Court fee as well as the question of limitation, and give its finding on merits and in accordance with law, in all those issues.”

12. Relying on the above judgment the learned Senior Counsel appearing on behalf of the plaintiff contended that it is a settled principle



that no right as an executor or legatee can be established in any Court of Justice, unless probate or letters of administration have been obtained for the 'Will' under which the right is claimed. The plaintiff is very much aware of the settled principles and they have not intended to claim any right of title merely based on the Unprobated Will, which is yet to be probated, since the probate proceedings are pending. However, there is no impediment for the plaintiff to mark the 'Will' for collateral purposes Section 213 of the Indian Succession Act creates a bar to the establishment of any right under the 'Will' executed by law i.e., 'unless probate or letters of administration have been obtained'.

13. Thus, the principles are not disputed. The plaintiff is not claiming any title over the Suit Schedule property merely based on the 'Will'. Even in the absence of the 'Will', the plaintiff as a Class I legal heir of Late.Shri.G.Bhuvarahan, is entitled to institute a Suit for declaration against the Settlement Deed allegedly executed by her deceased father.

14. In the case of *Umapathy Vs. S.Omprakash and Others* reported in **[2017 SCC ONLINE MAD 5892]**, this Court reiterated the principles as follows:



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“6.....the plaint is wholly immaterial. Unless the defendant prove that there is no cause of action and what is stated in the plaint is something illusory, with a view to get out of the clutches of Order 7 Rule 11 CPC, the application cannot be entertained. Unless the Court comes to a conclusion that if on a meaningful and not formal-reading of the plaint it is manifestly vexatious, and merit-less, in the sense of not disclosing a clear right to sue, the Court would exercise its power under Order VII Rule 11 C.P.C.

7..... A plaint cannot be rejected in part, if there is no cause of action. Therefore, there cannot be any compartmentalization, declination, configuration of the language in various paragraphs contained in a plaint. If that is to be done, it will run against the cardinal principle that the plaint has to be read as a whole. The pleading has to be construed as it stands, without any addition or subtraction and only the substance that has to be looked into.

8..... Merely because, the Will has not been probated, the suit has to be rejected, is a baseless allegation. The cause of action of being a bundle of facts, it is required to be proved in the course of the trial.”

15. In the above judgment, it is held that merely because the ‘Will’



has not been probated, the Suit has to be rejected is the baseless allegation.

The cause of action of being a bundle of facts, it is required to be proved in the course of trial.

16. The Full Bench judgment of the High Court of Madras in the case of ***Ganshamdoss Narayandoss Vs. Gulab Bi Bai*** decided on ***12th September, 1927*** in ***Original Side Appeal No.16 of 1925***, the Three Judges Bench of Sir Williams Phillips, Kt., Offg. C.J., Beasley, and Ananthakrishna Aiyar, JJ., answered the question referred before the Full Bench. The question referred to the Full Bench was that “*Can a defendant resisting a claim made by the plaintiff as heir-at-law rely in defence on a will executed in his favour at Madras in respect of property situate in Madras when the will is not probated and no letters of administration with the will annexed to have been granted?*”

“*The answer, therefore, to the question referred to us must be that a defendant can rely on an unprobated will provided that he does not do so in order to establish a right under the will*”.



17. Relying on the Full Bench judgment, the learned Senior Counsel appearing on behalf of the plaintiff reiterated that there is no impediment for relying on an Unprobated Will provided that she does not do so in order to establish a right of title under the 'Will'.

18. The learned Senior Counsel appearing on behalf of the plaintiff is of an opinion that there is no impediment for the plaintiff to mark the 'Will' as a document, since the 'Will' itself being a document, which can be relied on for collateral purposes, but the plaintiff is not claiming any title over the property merely based on the 'Will'. She has to establish the intention expressed in the 'Will' executed by her deceased father in favour of the plaintiff. Thus, the 'Will' needs to be marked only to read the mind of the deceased father of the plaintiff and for no other purpose. Thus, marking of the 'Will' as document in the Suit would not cause any prejudice to the defendants and more so, it is a triable issue and the defendants are at liberty to rebut the contentions during the course of trial.

19. The learned Senior Counsel appearing on behalf of the defendants objected the contentions raised on behalf of the plaintiff by stating that the Suit is barred by limitation. The cause of action in the Suit is insufficient to



entertain the Suit. The alleged 'Will' was executed on 27.11.2007 in favour of the plaintiff and the father of the plaintiff and the defendants 2 to 4 died on 23.02.2014. However, the Settlement Deed was executed by the deceased father Late.Shri.G.Bhuvarahan on 10.01.2008, which would supersede the 'Will' and therefore, the 'Will' lost its significance and thus, marking of the 'Will' as document in the Suit is impermissible.

20. The learned Senior Counsel appearing on behalf of the defendants further contended that beyond the ground of limitation, cause of action has also not been established in the plaint. In paragraph 10 of the plaint, the cause of action has been raised merely based on the 'Will' dated 27.11.2007, which was found to be forged in other proceedings. Thus, the 'Will', which is unacceptable and found to be fabricated, cannot be allowed to be marked as a document in the Suit even for collateral purposes. When the Settlement was executed by the deceased father of the plaintiff and the defendants 2 to 4 on 10.01.2008, question of marking of the forged 'Will' in the Suit would not arise at all.

21. The learned Senior Counsel appearing on behalf of the defendants drew the attention this Court with reference to the averments in the plaint,



more specifically, in the paragraphs 7 and 8, and contended that there is no cause of action even after complete reading of the plaint and therefore, the dismissal of the Interlocutory Application filed by the defendants for rejection of plaint is perverse and the other Interlocutory Application filed by the defendants, not to permit the plaintiff to mark the 'Will' as a Document in the Suit is in consonance with the settled principles.

22. The learned Senior Counsel appearing on behalf of the defendants relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Bijendra Nath Srivastava Vs. Mayank Srivastava and others***, reported in ***[1994 SCC (6) 117]***, wherein, the Apex Court held as follows:

“13.....The High Court appears to have lost sight of the well recognised distinction between statement of material facts which is required under Order 6 Rule 2 CPC and particulars which are required to be stated under Order 6 Rule 4 CPC. In the context of Section 83(1)(a) and (b) of the Representation of the People Act, 1951, which contains provisions similar to Order 6 Rules 2 and 4 CPC, this Court, after posing the question, what is the difference between material facts and particulars, has observed [Samant N. Balkrishna v. George Fernandez, (1969) 3 SCC 238, 250-51 : (1969) 3 SCR 603, 622 and 623] : (SCC pp. 250-51, para 29)



“The word ‘material’ shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct.”

23. In the case of **Antony Chelliah Vs. Mariyal and Three Others** reported in **[1997 (1) CTC 144]**, this Court held as follows:

“6. I have carefully considered the submissions of the learned counsel for the appellant Sec. 213 of the Indian Succession Act mandates that no right as executor or legatee can be established in any Court of Justice, unless a court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the Will annexed. There is no controversy that this provision applied to the parties in this case.

24. In the case of **Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others** reported in **[(2004) 3 Supreme Court**



Cases 137], the Hon'ble Supreme Court of India held as follows:

“13. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487] only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

14. In Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.

15. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-



splitting technicalities.”

WEB COPY 25. In the case of **Sridarlal Vs. Nirdosh** reported in **[2009 (2) CTC**

157], this Court held as follows:

“8. On perusal of the materials available on record and hearing the arguments advanced by learned counsel appearing for the revision petitioner this Court is of the view that the respondent/plaintiff cannot rely on an un-probated Will to establish his title for the simple reason that the property in question is situated within Chennai City. As per the provisions of Hindu Succession Act, a Will has got to be probated. In these circumstances, even though the Will was registered, when it was not probated, it ought not have been permitted to be marked as evidence. The decisions relied on by the learned counsel for the petitioner can be applied to the facts of this case. It is open to the respondent to take appropriate steps to get the Will probated and then approach the Court below for permission to mark the same. The order passed by the XV Assistant City Civil Judge, Chennai in I.A. No. 3636 of 2002 in O.S. No. 7913 of 1997 dated 3.4.2002 is set aside and the Civil Revision Petition is allowed. Consequently the connected C.M.P. No. 20488 of 2003 is closed. No costs.”

26. Relying on the above judgement the learned Senior Counsel



appearing on behalf of the defendants reiterated that an Unprobated Will cannot be allowed to be marked to establish title. The Court held in the above judgment that when the 'Will' is not probated, it ought not to have been marked as evidence. Thus, in the present case, order passed by the Trial Court, allowing the Interlocutory Application filed by the defendants in I.A.No.2 of 2021 dated 26.10.2021 is in accordance with the principles settled.

27. In the case of ***Placido Francisco Pinto (D) by LRs and Another Vs. Jose Francisco Pinto and Another*** passed in ***Civil Appeal No.1491 of 2007 dated 30.09.2021***, the Apex Court held as follows:

“23. Order VI Rule 2 of the Code of Civil Procedure, 1908 is to the effect that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies upon for his claim or defence as the case may be, but not the evidence by which they are supposed to be proved. Appellant No.1 has relied upon the sale deed which contains the recital of payment of Rs.3,000/- as the sale consideration. The evidence in support of such sale deed was not required to be pleaded in the plaint filed by the appellant. Still further, in terms of Order VI Rule 4 of the Code, in all cases in which the party pleading relies



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on any misrepresentation, fraud, or undue influence shall state in the pleadings the particulars with dates and items in the pleadings.”

28. In the case of ***Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs*** made in ***Civil Appeal No.2960 of 2019*** on ***13.03.2019***, the Hon’ble Supreme Court of India ruled as follows:

“4.2. It is further submitted by the learned counsel appearing on behalf of the appellant original defendant that the High Court as well as the trial Court ought to have appreciated the fact that by mere clever drafting, the plaintiff cannot bring the suit within the period of limitation, if otherwise the same is barred by law of limitation. It is submitted that, in the present case, as such, the original plaintiff deliberately did not specifically pray to set aside the registered gift deed dated 06.03.1981. It is submitted that if the plaintiff would have asked for such a relief, in that case, the plaintiff was aware that the suit would be dismissed at the threshold being barred by law of limitation. It is submitted that, therefore, deliberately the plaintiff specifically did not ask for the relief of quashing and setting aside the registered gift deed.”

6.3. In the case of *T. Arivandandam (supra)*, while considering the very same provision i.e. Order 7 Rule 11 of



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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 unrepentantly 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 complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint 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....”

29. In the case of **C.S.Ramaswamy Vs. V.K.Senthil and Others made**



in Civil Appeal No.500 of 2022 dated 30.09.2022, the Hon'ble Supreme Court of India held as follows:

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“7.9 Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order VII Rule 11 CPC to the facts of the case on hand and the averments in the complaints, we are of the opinion that both the Courts below have materially erred in not rejecting the complaints in exercise of powers under Order VII Rule 11(d) CPC. The respective suits have been filed after a period of 10 years from the date of execution of the registered sale deeds. It is to be noted that one suit was filed by the minor, which was filed in the year 2006, in which some of the plaintiffs herein were also party to the said suit and in the said suit, there was a specific reference to the Sale Deed dated 19.09.2005 and the said suit came to be dismissed in the year 2014 and immediately thereafter the present suits have been filed. Thus, from the averments in the complaint and the bundle of facts stated in the complaint, we are of the opinion that by clever drafting, the plaintiffs have tried to bring the suits within the period of limitation, which otherwise are barred by limitation. Therefore, considering the decisions of this Court in the case of T. Arivandandam (supra) and other decision of Raghwendra Sharan Singh (supra), and as the respective suits are barred by the law of limitation, the respective



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plaints are required to be rejected in exercise of powers under Order VII Rule 11 CPC.”

30. Relying on the above judgments, the learned Senior Counsel appearing on behalf of the defendants is of an opinion that the Interlocutory Application filed by the defendants, which was dismissed is improper. The plaintiff has no cause of action and further, barred by limitation. Marking of an Unprobated Will is impermissible, since it would not confer any right on the plaintiff and for all these reasons, the Civil Revision Petition in C.R.P.No.2225 of 2021 is to be allowed and the Civil Revision Petition in C.R.P.No.464 of 2022 is to be dismissed.

31. Considering the arguments as advanced by the respective learned Senior Counsels appearing on behalf of the parties to the *lis* on hand, the Suit was instituted by Smt.Akila Vijaykumar to declare that the Settlement Deed, registered as Document No.17 of 2008 dated 10.01.2008, alleged to have been executed in favour of defendants 2 to 4 in respect of the Suit Schedule Property by Late.Sri.G.Bhuvarahan is sham and got up document as null and void. The relief of permanent injunction is also sought for.



32. Two Interlocutory Applications were filed by the defendants 2 to 4 in I.A.Nos.1 of 2019 and 2 of 2021. The Interlocutory Application in I.A.No.1 of 2019 was filed under Order VII Rule 11 to reject the plaintiff with costs. Another Interlocutory Application in I.A.No.2 of 2021 was filed under Section 151 of C.P.C., not to permit the plaintiff from marking the document i.e., Unprobated 'Will' as evidence in the Suit.

33. In respect of I.A.No.1 of 2019 for rejection of plaint, the Trial Court made a finding that the father of the plaintiff and defendants 2 to 4 Late.Sri.G.Bhuvarahan was the absolute owner in possession of the Suit Schedule immovable and movable, which more fully described in the Suit Schedule Property. The father of the plaintiff in his life time, had bequeath the said property in favour of the plaintiff by a 'Will' dated 27.11.2007. As per the said Will, the plaintiff is entitled for the Suit Schedule Property, after the demise of her father as she became the sole beneficiary. The plaintiff instituted the Suit, challenging the validity of the Settlement Deed, registered as Document No.17 of 2008 dated 10.01.2008 created in favour of the defendants 2 to 4 mainly on the ground that it is sham document, which otherwise could have been obtained by coercion or fraud, because the Settlement Deed dated 10.01.2008, which is in suppression of the plaintiff



being existence being the only daughter and who is none other than the eldest daughter and she being one of the legal heirs of the Late.Sri.G.Bhuvarahan.

34. The Trial Court found that the plaintiff cannot rely on an Unprobated 'Will' to establish her title for the simple reason that the property in question situate within Chennai City. Further, the alleged Settlement Deed came to be executed on 10.01.2008. There was no embargo on the testator to execute the Settlement Deed.

35. As far as 'Will' is concerned, the plaintiff filed O.P.No.882 of 2017 for probate of the 'Will' before the High Court of Madras and it has been converted into T.O.S.No.1 of 2018, which is pending as of now. Finally, the Trial Court arrived a conclusion that the plaintiff is none other than the elder daughter and one of the legal heirs of the Late.Shri.G.Bhuvarahan. Thus, even in the absence of being a legatee under the 'Will', the plaintiff has every right to question the Settlement Deed as a Class I legal heir of the deceased Shri.G.Bhuvarahan. Thus, there is a cause of action in the plaint and consequently, it cannot be rejected.

36. This Court is of the considered opinion that the arguments



advanced on behalf of the defendants that an Unprobated 'Will' cannot be relied upon, is not disputable since the subject property situates within the limits of Chennai City. However, the plaintiff being the Class I legal heir of the deceased Shri.G.Bhuvarahan, she has every right to question the validity of the Settlement Deed executed by the deceased Shri.G.Bhuvarahan in favour of the defendants 2 to 4, excluding the plaintiff, who is the eldest daughter of the deceased Shri.G.Bhuvarahan. Thus, she has instituted a Suit to declare the Settlement Deed as null and void on the ground that it is a sham and got up document. When the plaintiff has established a definite cause of action in her capacity as Class I legal heir of the deceased Shri.G.Bhuvarahan, the Suit requires adjudication of issues. Thus, there is a cause of action as the Settlement Deed was executed, excluding the plaintiff, who is the eldest daughter of the deceased Shri.G.Bhuvarahan.

37. Thus, this Court concur with the findings of the Trial Court that the plaintiff established cause of action and thus, the Suit is to be tried by following the procedures as contemplated under law.

38. For invoking Order VII Rule 11 of C.P.C., the plaint as a whole to be read for the purpose of understanding, whether the plaint disclosed a



cause of action or the suit is barred under any law. The stand of the defendants in the written statement is immaterial and such issues are to be adjudicated. Unless, the defendant prove that there is absolutely no cause of action and what is stated in the plaint is something illusory, the Court is not expected to invoke Order VII Rule 11 of C.P.C., for rejection of plaint. Once, the plaintiff could able to establish that there is a cause of action and triable issues have involved in the suit, then the Court would not reject the plaint under Order VII Rule 11 of C.P.C., A plaint cannot be rejected in part. The cardinal principle that the plaint has been read as a whole, is to be seen, while considering the application for rejection of plaint. Merely because the 'Will' has not been probated, the suit has to be rejected is a baseless allegation, since the cause of action is bundle of facts and the same requires to be proved only during the course of trial.

39. In the present case, even in the absence of a 'Will', the plaintiff being a Class I Legal heir of the deceased Late.Shri.G.Bhuvarahan, has got every right to challenge the Settlement Deed, which was subsequently executed by the deceased Late.Shri.G.Bhuvarahan, excluding the plaintiff. Thus, such a right to institute a suit cannot be taken away and more so, triable issues are involved in the suit.



40. In view of the fact that the plaintiff has established the cause of action for institution of Suit and the issues raised are triable and the Trial Court has rightly dismissed the Interlocutory Application filed under Order VII Rule 11 C.P.C., in I.A.No.1 of 2019.

41. In respect of I.A.No.02 of 2021, the learned Senior Counsel for the revision petitioner mainly contended that Section 211 of the Indian Succession Act shows that the property vests in the executors by virtue of the 'Will' and not by virtue of the probate. 'Will' gives property to the executor, the grant of probate only a method by which the law provides for establishing the 'Will'. In the case of ***Meyappa Chetty Vs. Supramanian Chetty reported in [43 Indian Appeal 113]***, the Privy Council has held that an executor derives his title from the 'Will' and not from probate.

42. Section 213 acts as a bar to the establishment of rights under the 'Will' by an executor or a legatee unless probate or letters of administration have been obtained. This bar comes into play only when a right as an



executor or a legatee under 'Will' is sought to be established. However, an Unprobated 'Will' can be admitted in evidence for collateral purposes in any other proceedings apart from a probate proceedings.

43. The learned Senior Counsel appearing on behalf of the plaintiff/ Smt.Akila Vijaykumar reiterated that the plaintiff has every right to mark the document 'Will' for collateral purposes, more specifically, to establish the intention of the testator. The plaintiff is not attempting to establish her right through 'Will' and for the purpose of establishing the subsequent Settlement Deed as a sham and got up document, the intention of the testator in the 'Will' is to be relied upon and only for the limited collateral purposes, the plaintiff is to be permitted to mark the 'Will' as a document.

44. Admittedly, the probate proceedings are pending before the High Court of Madras and as of now, the plaintiff cannot derive any right from the 'Will', since it is not probated. However, the 'Will' being the document by itself, can be considered for marking, only for collateral purposes by the plaintiff in the present case.

45. Section 213 of the Indian Succession Act clearly creates a bar to



the establishment of any right under the 'Will' by the executor or legatee unless probate or letters of administration of the 'Will' have been obtained.

However, the plaintiff is not precluded by Section 213 of the Indian Succession Act from relying upon a 'Will' as she is not seeking to establish a right as executor of legatee. But she is trying to establish certain contentions in the 'Will' for the purpose of establishing her case with reference to the relief sought for in the Suit to declare the subsequent Settlement Deed executed by the deceased Shri.G.Bhuvarahan as null and void.

46. Thus, the plaintiff can rely on an Unprobated 'Will', provided that she does not do so in order to establish a right under the 'Will'. In the present case, the plaintiff has clearly stated that she is not attempting to establish the right on title based on the 'Will' and she is trying to establish her contentions in the Suit only by relying on certain contentions in the 'Will' for collateral purposes.

47. The findings of the Trial Court in this regard is that an Unprobated 'Will' cannot be marked as document and more so, the probate proceedings in T.O.S.No.1 of 2018 is pending before the High Court of Madras and therefore, the plaintiff cannot be permitted to mark the 'Will' as



document. The Trial Court formed an opinion that the plaintiff cannot rely on an Unprobated 'Will' to establish her case. The plaintiff has got an opportunity to mark the 'Will' after the 'Will' is probated and accordingly, the Interlocutory Application filed by the defendants in I.A.No.2 of 2021 was allowed.

48. The Trial Court mainly carried away with Section 213 of the Indian Succession Act. It is not the case of the plaintiff that the 'Will' is to be marked for establishing her title or right. The plaintiff has repeatedly emphasised that they are marking the 'Will' as document only for collateral purposes, knowingly she cannot rely on the 'Will' for establishing her right as an executor, since the 'Will' is yet to be probated and the proceedings are pending before the High Court of Madras. Therefore, there is no dispute regarding claiming of title by the plaintiff through the 'Will' allegedly executed by Shri.G.Bhuvarahan. However, the plaintiff is trying to establish her Suit for the declaration by relying on certain observations in the 'Will', so as to impress the Court that the alleged Settlement Deed subsequently executed is a sham and got up document. Such an opportunity need not to be denied to the plaintiff in the present case.



49. All Suits are to be decided on merits and by affording opportunity to the parties to establish their case. Nibbing the bud at all circumstances are impermissible. When the plaintiff contends that she is not claiming any right or title through the 'Will', there is no reason to deny the opportunity of establishing her case by marking the 'Will' as a document for collateral purposes.

50. Preventing the parties to the litigation from marking the documents must be slowly exercised since such denial would lead to deprivation of rights and on some occasions, the parties may not be in a position to establish their cases in the absence of such documents, which all are to be relied on for certain purposes. There is no prohibition in marking the 'Will' as a document for collateral purposes. However, Unprobated 'Will' in the present case cannot be marked as a document for the purpose of claiming title or right since the 'Will' remains as Unprobated. Therefore, the Trial Court though held rightly that an Unprobated 'Will' cannot be relied upon for the purpose of establishing the right, failed to consider the fact that the plaintiff is not relying the 'Will' for claiming right, but marking the 'Will' only for collateral purposes, for, which there is no impediment. The Trial



Court has carried away the mainly with Section 213 of the Indian Succession Act, but failed to consider the fact that the plaintiff is not claiming any right or title based on an Unprobated 'Will', which is sought to be marked as document for collateral purposes.

51. The learned counsel appearing on behalf of the revision petitioners in C.R.P.No.2225 of 2021, at the time of delivering judgment, furnished the copy of the report of Forensics Science Department and contended that the 'Will' to be marked in the suit by the plaintiff is a forged one.

52. The learned counsel for the plaintiff objected the said contention by stating that the report was marked to the Assistant Registrar (Original Side), High Court, Madras and this report cannot be now placed before this Court for consideration.

53. Be that as it may. This Court is of the considered opinion that all such documents and its original or otherwise are to be marked before the trial Court by following the procedures as contemplated. As far as the Civil Revision Petitions are concerned, the issues raised are considered on merits.

54. In view of the facts and circumstances, the conclusion of the Trial



Court in the fair order passed in I.A.No.2 of 2021 is perverse and accordingly, the fair and decretal order dated 26.10.2021 passed in I.A.No.2 of 2021 in O.S.No.4120 of 2014 on the file of the I Assistant City Civil Court, Chennai is set aside and consequently, the Civil Revision Petition in C.R.P.No.464 of 2022 stands allowed.

55. The Judgment and Decree dated 23.03.2021 passed in I.A.No.1 of 2019 in O.S.No.4120 of 2014 on the file of VIII Assistant Judge (FAC), I Assistant Court, Chennai, stands confirmed and consequently, C.R.P.No.2225 of 2021 is dismissed.

56. However, there shall be no order as to costs. Connected miscellaneous petition is closed.

22.12.2022

Jeni/Kak

Index : Yes / No

Speaking order / Non-speaking order

To

1. The Judge,



I Assistant City Civil Court,
Chennai.

2. The VIII Assistant Judge (FAC),
I Assistant Court,
Chennai.



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C.R.P.Nos.2225 of 2021 & 464 of 2

S.M.SUBRAMANIAM, J.

Jeni/Kak

C.R.P.Nos.2225 of 2021 & 464 of 2022

22.12.2022