IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.10.2022

Pronounced on : 04.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

A.Nos.3215 & 3533 of 2022
in
C.S.No.76 of 2022

Gunasekaran Victor Devasahayam ...Applicant/1st Defendant
(in A.No.3215 of 2022)

Vs.

1.Anand Pradeepkumar Fredrick ...1st Respondent / Plaintiff
2.Minnie R Fredrick
3.Reena Jebamoni
4.Aruna Ezekiel
5.Bennet Ezekiel ... 2nd to 4th Respondent / 2nd to 4th Defendant
(in A.No.3215 of 2022)

Minnie R Fredrick ...Applicant / 2nd Defendant
(in A.No.3533 of 2022)

Vs.

1.Anand Pradeepkumar Fredrick ...1st Respondent / Plaintiff
2.Gunasekaran Victor Devasahayam
3.Reena Jebamoni
4.Aruna Ezekiel
5.Bennet Ezekiel ...Respondents/Defendants
(in A.No.3533 of 2022)

Prayer in A.Nos.3215 & 3533 of 2022:- These applications filed under Order XIV Rule 8 of the O.S Rules R/w. Order VII Rule 11(A) & (B) and Section 151 of the CPC., prayed to reject the plaint in C.S.No.76 of 2022.

For Applicant in A.No.3215 of 2022	: Mr.A.R.Karunakaran
For Applicant in A.No.3533 of 2022	: Mr.C.R.Prasanan
For Respondent	: Mr.S.R.Rajagopal for Mr.K.S.Ilangovan

COMMON ORDER

A.No.3215 of 2022 had been filed by the 1st defendant and A.No.3533 of 2022 had been filed by the 2nd defendant in the suit seeking to reject the plaint in C.S.No.76 of 2022.

2.C.S.No.76 of 2022 had been filed by the plaintiff, Anand Pradeepkumar Fredrick, son of the 2nd defendant, Minnie R.Fredrick and the nephew of the 1st defendant, Gunasekaran Victor Devasahayam and also of the 3rd defendant. The 4th and 5th defendants are his nephew and niece. The plaintiff had sought a preliminary decree of partition to allot

1/3rd share which, according to him, had fallen to the share of his grandmother Martha Devasahayam, in the suit schedule property at New No.28, Old No.54, Ormes Road, Kilpauk, Chennai - 600 010, as described in the schedule to the plaint and also to declare a registered Will dated 29.06.1989 and an unregistered Will dated 11.12.1989 as null and void and to further declare a Memorandum of Compromise dated 14.07.2020 entered among the defendants in TOS No.8 of 2015 and TOS.No.9 of 2014 and the consequential orders in the two Testamentary Original Suits dated 07.08.2020 as collusive and not binding on him and as null and void and for costs of the suit.

3.In the plaint, it had been stated that the suit schedule property had been purchased by his grandfather J.A.Devasahayam in the name of his grandmother Martha Devasahayam. The grandfather predeceased the grandmother. The 1st, 2nd and 3rd defendants are her son and two daughters. Another daughter had predeceased leaving behind the 4th and 5th defendants as her legal representatives. The plaintiff claimed that his grand parents were living in San Antonio, Texas, USA and their deceased daughter / mother of the 4th and 5th defendants was also residing there, but in a separate residence. The plaintiff claimed that he studied in an

University close to the grant parents' house and visited them every fortnight. He further stated that he spent time with his grandmother till her death. He stated that after the death of his grandfather, he and his grandmother lived together. He claimed that the grandmother intended to transfer her 1/3rd share, which had fallen as her share in the property under Section 33(a) of the Indian Succession Act, 1925 to him.

4.It was stated that in this connection there were talks among the family members in USA and in India during the years 1987 and 1988 and finally, the defendants had agreed to allot the 1/3rd share of the grandmother to him and to share the balance among themselves. The plaintiff also stated that the grandmother slowly lost her memory and eye sight and was bedridden due to old age.

5.The plaintiff did not have a happy relationship with the 2nd defendant / his mother and it was claimed that the 1st, 2nd and 3rd defendants without his knowledge had created a forged Will dated 29.06.1989. It was also registered as Document No.80 of 1989 in the office of the Sub-Registrar, Purasawalkam. It was further stated that the 1st defendant independently obtained another forged Will dated

11.12.1991.

6.The plaintiff stated that he came to know about all these facts only on 29.04.2022. On 20.04.2022, though the plaintiff was normally residing in Delhi, he had come down to Chennai and was staying in the suit schedule property, when a few persons calling themselves brokers and buyers came to the suit schedule property. They informed him that the property was for sale. On 28.04.2022, one of the persons again came and stated that he had a purchaser for the property. The plaintiff stated that the property was not for sale. The plaintiff was informed that he has no rights over the property. The plaintiff was also forced to partake with Rs.25,000/- as fees and the said person handed over a copy of the order dated 07.08.2020 in TOS.No. 8 of 2015 and TOS No.9 of 2014 along with the documents filed and the Memorandum of Compromise. The plaintiff then came to understand about the Wills mentioned. He sent them for forensic expert opinion. The forensic and biometric investigation service gave a report dated 18.01.2017 stating that the signatures vary and had not signed by the same person. The plaintiff therefore stated that the defendants had colluded and created forged documents.

7.It was stated that in the Memorandum of Compromise they had agreed to sell the property within a period of 12 months. It was stated that the Wills have been created only, not to give effect to the oral partition by which the plaintiff was promised 1/3rd share in the property. It was specifically stated that the property was purchased from the individual income of the grandfather of the plaintiff. It was under these circumstances that the suit had been filed seeking the reliefs as stated.

8.Along with the plaint, the plaintiff had also filed copies of the two Wills of his grandmother, Martha Devasahayam, the copies of the petitions and order dated 07.08.2020 in TOS.No.8 of 2015 and TOS No.9 of 2014 and also the forensic export opinion dated 18.01.2017 and the copy of the Memorandum of Compromise dated 14.07.2020 and also a genealogy table.

9.On receipt of suit summons, the 1st and 2nd defendants had filed the applications now under consideration.

10.A.No.3215 of 2022 had been filed taking advantage of Order VII Rule 11 (a) and (b) of CPC, 1908. The 1st defendant in his affidavit had stated that the basis of the suit was that the property was purchased by J.A.Devasahayam, the grandfather of the plaintiff / the father of the 1st defendant with his earnings in the name of his wife Martha Devasahayam, the grandmother of the plaintiff / the mother of the 1st defendant. It was stated in the affidavit that the sale deed had not been filed as a document to the plaint to reveal that the nature of the consideration which had flowed at the time of purchase of the property.

11.It was also stated that the plaintiff relied on an oral partition that his grandmother's alleged share would devolve on him after her demise. It was specifically stated that there was no oral partition at all. It was stated that the grandmother / mother of the 1st defendants had executed two separate Wills. Both were subject matter of probate proceedings which were subsequently, converted to Testamentary Originally Suits. The only legal representatives namely, the defendants had entered into a compromise accepting that everybody has a share in the property.

12.The further contentions about unnamed persons having come over to the house on 20.04.2022 and that the plaintiff paid Rs.25,000/- cash for obtaining the documents were denied. It was also stated that the plaintiff has no caveatable interest since his mother was alive and he was not a necessary party either in the Original Petition seeking probate or in the Testamentary Original Suits. It was also stated that the suit is vexatious. It was stated that the suit does not disclose a cause of action and it was also under valued and had to suffer under Order VII Rule 11 (a) and (b) of CPC.

13.In A.No.3533 of 2022, the 2nd defendant / mother of the plaintiff in her affidavit had stated that the plaintiff has no locus to question the compromise decree in TOS.No.8 of 2015 and TOS.No.9 of 2014 which had been entered into among the children of late Martha Devasahayam. It had been stated that the plaintiff had not produced the title deed of the property and that the suit is to be rejected on that one ground itself. It was specifically stated that Martha Devasahayam was a State Government employee and the Board of Trustees for improvement of the City of Madras represented by its Chairman had executed a mortgage -cum- sale deed in her favour.

14.The sale price was to be paid in instalments. The sale -cummortgage deed was dated 04.11.1954. It was registered as Document No.2496 of 1954. It was therefore stated that the contention of the plaintiff that the property was purchased by his grandfather was false. It was stated that the oral statement of the plaintiff cannot be taken into consideration in view of Section 92 of the Indian Evidence Act, 1872. The document is very clear that the property was purchased only out of the funds of Martha Devasahayam. It was also stated that the claim of the plaintiff that his grandmother Martha Devasahayam orally agreed that she would handover her 1/3rd share to the plaintiff on her death is totally false and there has been no oral partition among any of the members. It was stated that Martha Devasahayam passed away on 27.11.1996 and any right to claim would be barred from 26.11.1999. It was stated that the plaintiff being a stranger cannot question the lawfulness of the compromise decree, which was tested and approved by an order of the Court. It was also stated that the plaintiff was not in a possession and therefore, even the Court fees paid by him is not proper and that the suit has to be rejected on the above grounds.

15.A common counter affidavit has been filed by the plaintiff in both the applications. It was stated that the issues should be relegated to the trial process and the true facts can be determined only after the parties tender evidence. It was also stated that if the claim based on admitted oral partition is proved, then a decree will have to follow in this suit. It was stated that an expert had also given an opinion that the signatures in the Wills were forged. It was also stated that the capacity of Martha Devasahayam to purchase the property in the year 1954 can be examined only during the course of trial.

16.It was stated that the grandfather, J.A.Devasahayam was the sole breadwinner and he was employed as a professor and also as Secretary and the Head of the Automobile Association of India for South India and was having good income. It was stated that the grandmother Martha Devasahayam was a school teacher with a meagre income. The statement regarding the period for limitation was specifically disputed and it was stated that the period commenced only from the date of judgment affirming the compromise between the parties in the two Testamentary Original Suits. It was stated that he was also in joint possession of the suit property and therefore, the Court fees paid was proper. It was finally stated that the backbone for the confusion in the family was his own brother Arun Pradeep Kumar Fredrick who was not a party to the suit. It was stated that the applications should be dismissed.

17.Heard arguments advanced by Mr.A.R.Karunakaran, learned counsel for the applicant in A.No.3215 of 2022 / 1st defendant in C.S.No.76 of 2022 and C.R.Prasanan, learned counsel for the applicant in A.No.3533 of 2022 / 2nd defendant in C.S.No.76 of 2022 and Mr.S.R.Rajagopal for Mr.K.S.Ilangovan, learned counsel for the 1st respondent / plaintiff in the suit.

18.Order VII Rule 11 (a) (b) and (d) are as follows:-

*"**11.Rejection of Plaint.-** The plaint shall be rejected in the following cases:-*

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

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

(c) ....

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

19.The 1st and 2nd defendants seek to reject the plaint taking recourse to the above provisions. It is stated that the suit does not disclose any cause of action and still worse discloses an illusory cause of action. It is also contended that the plaintiff was not in possession and had not valued the suit properly. It is also stated that the suit is barred by law of limitation.

20.It is trite in law to state that to consider any application under Order VII Rule 11 of CPC, the plaint and the documents filed along with the plaint will have to be read as whole to determine whether there is disclosure of cause of action to institute a suit and whether the suit had been properly valued and whether the suit is barred by any law.

21.In the instant case, the plaintiff, son of the 2nd defendant had stated that his maternal grant parents were staying in USA and having extreme affection for them he did his degree in USA and stayed with them. He stated that he lived with his grandmother till her death. The relevant portions in the plaint by which he claimed a share in the suit schedule property are as follows:-

> *"3. ...... Since the property was purchased by the plaintiff's grandfather J.A.Devasahayam, it was intention of the plaintiff's grandmother Martha Devasahayam to transfer her 1/3rd share to the plaintiff as he was her eldest grandson. There were various talks among family members both in USA and in India in the year 1987 and 1988 in the plaintiff family with respect to the allotment of share to the plaintiff and other members. Finally, all the defendants have agreed to allot 1/3rd share of Martha Devasahayam to the plaintiff and the balance was agreed to be shared among themselves. As per the orally agreed terms of partition the share of the plaintiff's grandmother Martha Devasahayam will devolve upon the plaintiff after the death of Martha Devasahayam. The plaintiff grandmother is entitled for 1/3rd share in the property purchased by the plaintiff grandfather*

J.A.Devasahayam as per Section 33 (a) of the Indian Succession Act, 1925."

22.To establish that the property was purchased by his grandfather which would also mean that the grandmother had no means to purchase the property, though it was purchased in her name, it was necessary that the plaintiff should produce a copy of the sale deed and file it as a document. He had not done so. The sale sale deed was a registered document.

23.In this connection, Section 3 of the Transfer of Property Act, 1882, is as follows:-

> *"**3.Interpretation Clause.-***
>
> ....
>
> ***A person is said to have notice,** of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.*
>
> *Explanation 1.—Whereany transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person*

acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated.

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian. Registration Act, 1908 (16 of 1908) and the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

24.Thus, since the sale deed by which the property was purchased was through a registered document and registration had been completed in manner prescribed by the Indian Registration Act, 1908 and the instrument had been duly entered in the books kept under Section 51 of the Indian Registration Act, 1908 and correctly entered in the indexes kept under Section 55 of the Indian Registration Act, 1908 the plaintiff is deemed to have notice of the title and the manner in which the consideration was stated to have been paid as stated in the recitals of the said document. Even though it may not be proper for this Court to refer to the affidavit filed in support of the applications filed by the defendants still the fact had been admitted by the plaintiff in the counter filed to these applications that the grandmother was employed as a teacher, having income may be meagre, according to the plaintiff, but still income, at the relevant point of time. He had not disclosed the Sale Deed and had not filed a copy along with the plaint. More importantly, he had also not stated the dates of death of his grandfather and grandmother.

25.From the affidavit filed in support of the application No.3215 of 2022, it is seen that J.A.Devasahayam, father / grandfather of the plaintiff died on 24.09.1992 and Mrs.Martha Devasahayam, the grandmother died on 27.11.1996. It is also seen that the grandmother was a senior teacher in Presidency Girls High School, Egmore, from 1949 till her retirement. The grand parents went to USA in 1972 and returned in 1986. These dates alone are referred, since they are germane but not been disclosed by the plaintiff. The property was purchased in the year 1954. The consideration was paid in instalments. It was purchased in the name of the grandmother, since she had income to purchase the same. The plaintiff having notice of the registration should have produced the certified copy of the sale deed and having failed to do so, he must suffer the consequences there of.

26.In ***(2012) 8 SCC 706*, *Church of Christ Charitable Trust and Educational Charitable Society, Represented by its Chairman Vs. Ponniamman Educational Trust, Represented by its Chairperson/Managing Trustee***, the Hon'ble Supreme Court was faced with an appeal filed by the plaintiff against an order of a Division Bench of the Madras High Court in ***Ponniamman Educational Trust, Represented by its Chairperson/Managing Trustee Vs. Church of Christ Charitable Trust and Educational Charitable Society, Represented by its Chairman*** reported in ***(2011) 3 MWN (Civil) 297,*** whereby, the Division Bench of the Madras High Court had reversed and set aside an order dated 25.01.2006 passed by a learned Single Judge rejecting the plaint among other grounds on the ground of non-production of a document relied on in the plaint.

27.That was a suit for specific performance for sale of immovable property. It was based on a Power of Attorney. It was claimed by the defendant that the Power of Attorney was only for the limited purpose to permit representation before the statutory authorities and to obtain clearance for the sale. That particular Power of Attorney which was registered, was not produced by the plaintiff before the Court. The Hon'ble Supreme Court stated as follows with respect to the term '*cause of action*':-

> *"**13.** While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.*

14. *In* ***A.B.C. Laminart (P) Ltd. v. A.P. Agencies [(1989) 2 SCC 163]*** *, this Court explained the meaning of "cause of action" as follows: (SCC p. 170, para 12)*

> *"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does*

it depend upon the character of the relief prayed for by the plaintiff.”

15. *It is useful to refer the judgment in* ***Bloom Dekor Ltd. v. Subhash Himatlal Desai [(1994) 6 SCC 322]*** *, wherein a three-Judge Bench of this Court held as under: (SCC p. 328, para 28)*

> *“28. By ‘cause of action’ it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court,* ***(Cooke v. Gill [(1873) LR 8 CP 107])****; in other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit.”*
>
> *It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.”*

(Emphasis Supplied)

28.Thereafter, the Hon'ble Supreme Court examined the necessity to produce the document on which the cause of action is based.

> *“**17.** In the case on hand, the respondent-plaintiff to get a decree for specific performance has to*

prove that there is a subsisting agreement in his favour and the second defendant has the necessary authority under the power of attorney. ***Order 7 Rule 14 mandates that the plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the power of attorney when the plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is****. In the case on hand, only the agreement between the plaintiff and the second defendant has been filed along with the plaint under Order 7 Rule 14(1).* ***As rightly pointed out by the learned Senior Counsel for the appellant, if he is not in possession of the power of attorney, it being a registered document, he should have filed a registration copy of the same. There is no such explanation even for not filing the registration copy of the power of attorney.*** *Under Order 7 Rule 14(2) instead of explaining in whose custody the power of attorney is, the plaintiff has simply stated "nil". It clearly shows non-compliance with Order 7 Rule 14(2)."*

(Emphasis Supplied)

29.Since the crucial document namely, the Power of Attorney had not been produced, the Hon'ble Supreme Court concluded as follows:

*"**30.** In the light of the above discussion, in view of the shortfall in the plaint averments and statutory provisions, namely, Order 7 Rule 11, Rule 14(1) and Rule 14(2), Forms 47 and 48 in Appendix A of the Code which are statutory in nature, **we hold that the learned Single Judge of the High Court has correctly concluded that in the absence of any cause of action shown as against the first defendant, the suit cannot be proceeded either for specific performance or for the recovery of money advanced which according to the plaintiff was given to the second defendant in the suit and rightly rejected the plaint as against the first defendant.** Unfortunately, the Division Bench failed to consider all those relevant aspects and erroneously reversed the decision of the learned Single Judge. We are unable to agree with the reasoning of the Division Bench of the High Court.*

31.** In the light of the above discussion, the judgment and order dated 16-8-2011 passed by the Division Bench of the High Court in **Ponniamman Educational Trust v. Church of Christ Charitable Trust [(2011) 3 MWN (Civil) 297]** is set aside and the* *order dated 25-1-2006 passed by the learned Single Judge in* ***Church of Christ Charitable Trust v. Ponniamman Educational Trust [Church of Christ Charitable Trust v. Ponniamman Educational Trust, Application No. 3560 of 2005, order dated 25-1-2006 (Mad)] *is restored. The civil appeal is allowed with costs."*

(Emphasis Supplied)

30.In the instant case, there was an obligation on the part of the plaintiff to produce at least the registration copy of the sale deed, so that the recitals can be examined to determine the flow of consideration. He had not even disclosed that his grandmother was actually working at the time when the property was purchased. As a fact, the property was purchased on 04.11.1954 under a Sale -cum- Mortgage Deed, which document was registered as Document No.2496 of 1954 in the office of the Sub-Registrar, West Madras.

31.Section 92 of the Indian Evidence Act, 1872 is as follows:-

*"**92. Exclusion of evidence of oral agreement. —** When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:*

....

........."

32.The plaintiff's oral assertion that the grandfather paid the consideration cannot be countenanced in the teeth of the registered document, which he had deliberately suppressed.

33.The plaintiff had further placed reliance on Section 33 (a) of the Indian Succession Act, 1925. The said provision is as follows:-

"33. ***Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred****.—Where the intestate has left a widow—*

(a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained.

(b) ....

(c) ...."

34.This provision can come into effect only when the deceased left behind a property, which property stood in his name. The property in the instant case, stood in the name of Mrs.Martha Devasahayam, the grandmother. Therefore, the provision can never be invoked at all.

35.Even otherwise, in the plaint it had been stated that there were talks of oral partition in the year 1987 and 1988. In those years, both the grandfather and the grandmother were alive. They could never have predicted that the grandfather would die first and the grandmother would die later, for the provision to be applicable even it is to be assumed that it would be applicable. It is for that reason that the plaintiff had suppressed the dates of their death.

36.Suppression of a vital information and vital document amounts to fraud.

37.In ***S.P.Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) By LRs*** and others reported in ***(1994) 1 SCC 1***, the Hon'ble Supreme Court held as follows:

> *"6. .... A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. ....* ***A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.****"*

(emphasis supplied)

38.Thus the plaintiff had come to Court with an illusion that in the year 1987 and 1988, the grand parents had decided that the grandfather would die first and that the grandfather had purchased the property and therefore, his wife / the grandmother would get 1/3rd share and that the said 1/3rd share should devolve on to the plaintiff. The entire case is false to the knowledge of the plaintiff.

39.In ***(1998) 2 SCC 70, I.T.C. Ltd. v. Debts Recovery Appellate Tribunal***, it had been held as follows:-

> ***"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. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467] .)***

27. As stated above, non-movement of goods by the seller could be due to a variety of tenable or untenable reasons, the seller may be in breach of the contract but that by itself does not permit a plaintiff to use the word "fraud" in the plaint and get over any objections that may be raised by way of filing an application under Order 7 Rule 11 CPC. As pointed out by ***Krishna Iyer, J. in T. Arivandandam case [(1977) 4 SCC 467]****, the ritual of repeating a word or* ***creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order*** *7* ***Rule 11(a).*** *Inasmuch as the mere allegation of drawal of monies without movement of goods does not amount to a cause of action based on "fraud", the Bank cannot take shelter under the words "fraud" or "misrepresentation" used in the plaint."*

(Emphasis Supplied)

40.In ***A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, *(2012) 6 SCC 430***, it had been held as follows:-

> ***"27. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the court must carefully look into it while deciding a case and insist that those who approach the court must approach it with clean hands***.
>
> ***43.*** *On the facts of the present case, the following principles emerge:*
>
> ***43.1.*** *It is the bounden duty of the court to uphold the truth and do justice.*
>
> ***43.2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or***

evidence. Dishonest and unscrupulous litigants have no place in law courts.

43.3. *The ultimate object of the judicial proceedings is to discern the truth and do justice.* ***It is imperative that pleadings and all other presentations before the court should be truthful.***

43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose *appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice.* ***Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.***

43.5. *It is the bounden obligation of the court to neutralise any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process."*

(Emphasis Supplied)

41.In the instant case also the plaintiff has only caused an illusion. The learned counsel for the plaintiff, then shifted the case to one of questioning the compromise entered in the Testamentary and Original Suits by the parties. That compromise had been presented before Court. The Court by its judgment had examined the compromise and had come to a conclusion to put the compromise into effect.

42.The learned counsel placed reliance on a judgment of the Division Bench of the Calcutta High Court reported in ***AIR 2006 Cal 200, Uma Addhya Vs. Biren Mondal.*** It had been held as follows:-

> ***"9.*** *It is now settled law that the Probate Court is a Court of conscience and the duty of the Probate Court is only to adjudicate whether the Will in question was the last Will and testament of the deceased, whether the same was duly executed and attested, whether the same was executed without being vitiated by force, fraud, undue influence, etc. and whether the testator had the required mental capacity to execute the Will. Apart from those questions, a Probate Court cannot go into the question of title of the testator nor can the Court grant a*

probate which is at variance with the terms of the Will.

11. *In the case before us, the Probate Court after initial grant of probate being satisfied that there was just cause of revocation revoked the same and the Appellate Court, if satisfied that there was no such just cause, could set aside the order of revocation and in that case, the original probate would have revived. We have already pointed out that there was no argument on the merit but parties came to compromise and on the basis of compromise alone, the Court set aside the order of revocation without being satisfied whether the order of revocation was right or wrong. The procedure followed by the Division Bench was beyond the province of the Court dealing with an appeal against the order of revocation of grant."*

43.It had been held that the probate Court cannot go into the question of title and must give a finding on the genuinty or otherwise of the Will. Here while recording the compromise, a learned Single Judge of this Court had come to a conclusion that the property is divisible among all the legal heirs. I would affirm that particular finding.

44.The plaintiff is a stranger to the Memorandum of Compromise.

He has no caveatable interest to the property. He has no right over the property. The only right he has is an illusory right. Unless he establishes that right over the property, he cannot come forward and question any other act.

45.The document produced by the plaintiff about the alleged fingerprint expert is of the year 2017. The plaintiff claimed that he was handed over documents only in April 2022. The said opinion is not binding on any Court. It is a self-serving opinion. It has to be proved in manner known to law, but the parties can be put to trial only if the plaintiff has a right over the property. Even if both the Wills are fraudulent in nature, still the property will devolve only according to natural succession among the legal heirs of the grandmother of the plaintiff and the plaintiff is not a legal heir.

46.It is for that reason, he had caused an illusion by placing reliance under Section 33(a) of the Indian Succession Act, 1925. Such claim is false. He has not produced the Sale Deed of the property. He has not even disclosed the dates of the death of his grand parents. He had stated that in the year 1987 and 1988 there was an oral partition. On that date, both the grand parents were alive. Nobody in the world would have known who would die first. The entire case of the plaintiff is based on falsity. The plaintiff does not deserve any consideration from this Court.

47.In the result,

(i) A.No.3215 of 2022 stands allowed.

(ii)A.No.3533 of 2022 stands allowed.

(iii)The suit is rejected against all the defendants since it does not disclose any cause of action.

(iv)With the hope that the relationship among the parties would mend for the better in future, I refrain from granting costs.

04.11.2022

smv
Index : Yes / No
Internet : Yes / No
Speaking order : Yes / No

C.V.KARTHIKEYAN, J.,

smv

Pre-delivery order made in

A.Nos.3215 & 3533 of 2022
in
C.S.No.76 of 2022

04.11.2022