



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	07.02.2022
DELIVERED ON	16.02.2022

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No.1763 of 2017

and

C.M.P. (MD)No.9493 of 2017

1.Puspha Devi
2.Prakash Kumar
3.Bharath
4.Bhagchand

...Petitioners/Petitioners/Defendants

Vs.

Suresh C Jain

...Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order, dated 10.08.2017 passed in I.A.No.68 of 2016 in O.S.No.2 of 2016 on the file of the learned III Additional District Judge, Tirunelveli.

For Petitioners :Mr.G.Rajagopalan, Senior Advocate
for Mr.A.Thiruvadikumar

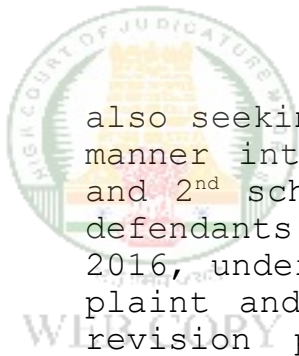
For Respondent :Mr.S.Meenakshi Sundaram,
Senior Advocate, for
Mr.S.Mani

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 10.08.2017 in I.A.No.68 of 2016 in O.S.No.2 of 2016 passed by the learned III Additional District Judge, Tirunelveli.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The respondent/plaintiff has filed a suit in O.S.No.2 of 2016 against the defendants on the file of the III Additional District Judge, Tirunelveli, to declare that the settlement deed, dated 07.07.2019 regarding the 1st schedule property executed by the plaintiff in favour of 1st defendant is a sham and nominal one and



also seeking permanent injunction restraining the defendant from any manner interfering in peaceful possession and enjoyment of the 1st and 2nd schedule properties. During the pendency of the suit, the defendants have filed a petition in I.A.No.68 of 2016 in O.S.No.2 of 2016, under Order VII Rule 11 of Civil Procedure Code, to reject the plaint and the same was dismissed. Aggrieved over the same, the revision petitioners/defendants have filed this Civil Revision Petition.

4.Heard on either side. Perused the material documents available on record.

5.This Civil Revision Petition is filed on the ground that the order passed by the learned III Additional District Judge, Tirunelveli in I.A.No.68 of 2016 in O.S.No.2 of 2016, dated 10.08.2017, is hit by Section 92 of Indian Evidence Act. The Court below ought to held that mere holding possession of the suit property will not invalidate due execution of the subject matter of settlement deed, dated 07.07.2010. The order passed by the Court below is against the settled principle of law and violation of statue. The impugned order passed by the Court below is termed as failure to exercise the jurisdiction conferred on it by following principles of law.

6.The revision petitioners/defendants have filed a petition in I.A.No.68 of 2016 under Order 7 Rule 11 of Civil Procedure Code, to reject the plaint in O.S.No.2 of 2016.

7.Since the settlement deed is irrevocable, the suit is barred by law.

8.The settlement deed was executed on 07.07.2010. The suit was filed in the year 2016 for declaration and permanent injunction. Hence, the declaration relief sought for by the plaintiff is barred by limitation. There is no cause of action to file the suit.

9.The revision petitioners have also raised additional grounds and to pray to struck off the plaint on two grounds.

10.This Civil Revision Petition filed against the order, dated 10.08.2017 in I.A.No.68 of 2016 in O.S.No.2 of 2016. The petitioners have not raised any of the ground as stated in the additional grounds. This Civil Revision Petition is filed only against the order passed in I.A.No.68 of 2016 in O.S.No.2 of 2016 by the Court below. Therefore, the revision petitioners cannot raised any additional grounds to struck off the plaint.

11.The only issue to be decided in this Civil Revision Petition is whether the order, dated 10.08.2017 passed in I.A.No.68 of 2016 in O.S.No.2 of 2016 is liable to be set aside?



12.At the time of deciding the petition under Order 7 Rule 11 of Civil Procedure Code only pleadings in the plaint has to be considered. As per plaint, the settlement deed not acted upon and it is only sham and nominal. The plaintiff did not plead Benami transactions.

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13.The paragraph Nos.19 & 29 of the Judgment passed by this Court **in A.No.2996 of 2015 in C.S.No.837 of 2014, in the case of V.Ambalavanan Vs. B.Murugeswaran and Ors.,** are extracted hereunder:

"19. The Judgment passed by the Division Bench judgment of this Court in *Dr.L.Ramachandran v. K.Ramesh and others*, reported in 2015 (5) CTC 629, wherein it was held that a suit which is exfacie barred by limitation can be rejected invoking Order 7 Rule 11 of the Code of Civil Procedure, while doing so, the Division Bench has observed as follows:

"26. In terms of Order 7 Rule 11 (d) CPC, the Plaint shall be rejected where the suit appears from the statement in the Plaint to be barred by any law. The scope of Rule 11 of Order 7 CPC has been explained in various decisions and the legal principle deducible are that, if the Plaint does not disclose the cause of action or is bared by law; can be rejected where the litigation was utterly vexatious and abuse of process of Court; if any one of the conditions mentioned under the Rule were found to exist, thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation and where the suit was instituted without proper authority. Thus, the provision of Order 7 Rule 11 PC being procedural is designed and aimed to prevent vexatious and frivolous litigation. The plaint is liable to be rejected on the ground of limitation only where the suit appears from the statements in the plaint to be barred by any law and the law within the meaning of clause (d) of Order 7 Rule 11 CPC, shall include law of limitation as well. "(2) *N.A.Chinasami, C.Sethupathy v. S.Vellingirinathan*, reported in 2013 (5) LW 350, wherein a Single Judge of this Court had held as follows:



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"53. Having considered the plaint averments and in the admitted documents, copy of the notice issued by the respondent/plaintiff and the other public document, namely G.O.(2D) No.19, Municipal Administration and Water Supply (T.P.II) Department, dated 25.03.2010, it has been made crystal clear that the suit itself is a clear abuse of process of law and court. There is no legally acceptable cause of action available to the respondent/plaintiff, for the relief sought for in the plaint, the suit is also barred by statute, namely the Limitation Act, hence, this Court is of the view that there is no chance of the suit succeeding and accordingly, to meet the ends of justice and to prevent abuse of process of court, this revision has to be allowed and pass orders to struck off the plaint, invoking Article 227 of the Constitution." (3) Church of Christ Charitable Trust and Educational Charitable Society v. Ponniammam Educational Trust, reported in 2012 (8) SCC 706, wherein the Hon'ble Supreme Court had held as follows:

"25. The stand taken by the appellant, who has filed the application for rejection of the plaint, is sustainable and acceptable. We have already adverted to the averments in the plaint and we have held that the plaint has not shown a complete cause of action of privity of contract between the plaintiff and the first defendant or on behalf of the 1st defendant. To reject the plaint even before registration of the plaint on one or more grounds in Order VII Rule 11 of the Code, the other defendants need not necessarily be heard at all as it does not affect their rights. As a matter of fact, this Court in Saleem Bhai (supra) held that the plaint can be rejected even before the issuance of summons. This Court has taken a view that the trial Court can exercise its power under Order VII Rule 11 of the Code at any stage of the suit i.e. before registering the plaint or after issuance of summons to



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the defendants or at any time before the conclusion of the trial. We respectfully agree with the said view and reiterate the same." (4)Hardesh Ores (P) Ltd. V. Hede and Company, reported in 2007 (5) SCC 614, wherein the Hon'ble Supreme Court had observed that a suit which is ex facie barred by limitation can be rejected invoking the provisions of Order 7 Rule 11 (d). While doing so, the Hon'ble Supreme court has observed as follows:

"25. The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. 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 of words or change of its apparent grammatical sense.

(5) Sopan Sukhdeo Sable and Others v. Assistant Charity Commissioner and Others, reported in 2004 (3) SCC 137, wherein the Hon'ble Supreme Court had considered the nature and scope of Order 7 Rule 11, the stage at which an application seeking rejection of plaint could be filed and



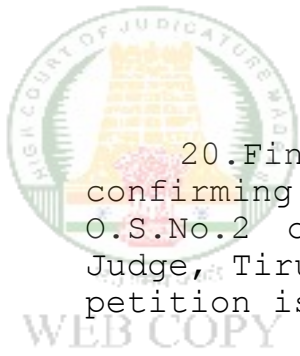
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entertained. In para 12 of the said judgment, the Hon'ble Supreme Court has after referring to *T.Arivandandam v. T.V. Satyapal*, reported in 1977 (4) SCC 467 had observed as follows:

"12. The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code.

17. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised."

29. **In 2018 (6) SCC 422**, referred to supra, the three Bench of the Hon'ble Supreme Court had again reiterated that the defence available to the defendants or a plea taken by them in the written statement or any application filed by them, cannot be used to decide the application under Order 7 Rule 11(d). Only the plaint averments will have to be looked into. If we are to look into the plaint averments in the case on hand, the plaintiff has specifically pleaded that he is entitled to the benefits of exclusion on the period taken by the proceedings launched by him under the Arbitration and Conciliation Act, 1996. It is one thing to say that the



20.Finally, this Civil Revision Petition stands dismissed by confirming the order, dated 10.08.2017 in I.A.No.68 of 2016 in O.S.No.2 of 2016 passed by the learned III Additional District Judge, Tirunelveli. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (CA7MC)

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/ /2022

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The III Additional District Judge,
Tirunelveli.

+1 CC to M/s.A.THIRUVADIKUMAR, Advocate (SR-6381[F] dated
16/02/2022)

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