



A.No.2740 of 2022 and A.No.5093 of 2022 in C.S.No.54 of 2022 & OA.No.170 of 2022,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
13~10~2023	19~10~2023

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.No.2740 of 2022 and A.No.5093 of 2022
in C.S.No.54 of 2022 & OA.No.170 of 2022

A.No.2740 of 2022

1. A. Ramanathan,
2. RM.Avadiappan
3. Parimala Ramanathan

.. Applicants/Defendants 1, 2 & 8

vs.

1. Sethulakshmi
2. Aru Meenakshi A.K.A. @ A.R.Meenakshi
3. RM. Thiurpathi
4. R. Visalakshi
5. RM. Karpagambal
6. R. Sivakami
7. T. Vallinayagi
8. Nagammal

.. Respondents/Plaintiffs 1 & 2

.. Respondents/Defendants 3 to 7 & 9

A.No.5093 of 2022

1. RM. Thirupathi
2. R.Vishalakshi
3. RM.Karpagambal
4. R. Sivagami



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5. T.Vallinayagi

6. Nagammal

.. Applicants/Defendants 3 to 7 & 9

.Vs.

1. Sethulakshmi

2. Aru Meenakshi A.K.A. @ A.R.Meenakshi .. Respondents/Plaintiffs 1 & 2

3. A. Ramanathan

4. RM.Avadiappan

5. Parimala Ramanathan

.. Respondents/Defendants 1,2 & 8

Prayer in both Applications: Applications are filed to reject the Complaint filed in

C.S.No.54 of 2023.

A.No.2740 of 2022

For Applicants : Mr.S. Parthasarathy
Senior Counsel for

Mr. K.S.Navin Balaji

For Respondents : Mr.C. Uma Shankar for
Mr.A.M.Amudha Ganesh

A.No.5093 of 2022

For Applicants : No appearance

For Respondents 1 & 2 : Mr.C. Uma Shankar for
Mr.A.M.Amudha Ganesh

For Respondents 3 to 5 : Mr.S. Parthasarathy



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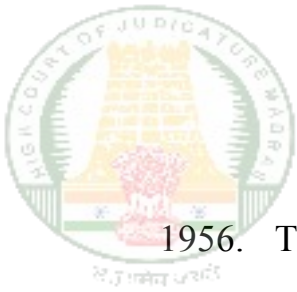
Senior Counsel for
Mr. K.S.Navin Balaji

COMMON ORDER

These Applications have been filed by the Respondents/Defendants to Reject the Plaint on the grounds of “Suit is Barred by Limitation” and also “Abuse of Process of Court”. Application No.2740 of 2022 has been filed by Defendant Nos.1,2 and 8; and Application No.5093 of 2022 has been filed by Defendant Nos.3 to 7 and 9. Since both the Applications are challenging the plaint in C.S.No.54 of 2022 in a similar prayer, the same are disposed of by way of this Common Order.

2. It is the case of the Applicants/Defendants that the suit property was originally purchased by Late Mr.Avadiappa Cheittar, Father of Plaintiffs and D1 and Grandfather of D2 to D8. The said Mr.Avadiappa Chettiar passed away on 15.05.1970. The Plaintiffs along with Defendant No.1 and their grandmother Mrs.Alagammal Achi were the only legal heirs of Mr.Avaidappa Chettiar. The Plaintiffs are the daughters of Late Mr.Avadiappa Chettiar through his second wife one Mrs. Lakshmi Ammal, who predeceased Mr.Avadiappa Chettiyar in the year

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1956. The present suit is filed by the Plaintiffs for Partition also to declare the

Deed of Partition dated 27.12.1973 entered into between the Plaintiffs and Defendant No.1 and Mrs. Alagammai Achi W/o Mr.Avadiappa Chettiar as void, illegal and clearly barred by limitation. It is the contention of the Applicants that the Plaintiffs are parties to the document of the Partition Deed dated 27.12.1973 who received the amount relinquished their respective shares. Hence the suit is barred by limitation.

3. It is the further contention of the Applicants that the Plaintiff's children have initiated a similar suit in C.S.No.535 of 2014. The said suit was rejected on the Application made by the 1st Defendant. The Rejection Order was confirmed by the Apex Court. Hence the present plaint is also the result of abuse process of Court. Hence seeks to reject the Plaint.

4. In the counter it is the contention of the Respondents/Plaintiffs 1 & 2 that the Application to reject the Plaint on the ground of Limitation will have to be put to the test of judicial scrutiny and the plea of limitation can be decided only after the trial. The Plaintiffs claim the right to the suit property on the ground that their



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mother Lakshmi Ammal was the absolute owner of the property and they have been deprived of their due share in the property. Hence it is the contention that so called Settlement Deed of the year 1964 executed by the father of the Plaintiffs is not void and at the most it can at best be a Will and not a Settlement. Hence, father has no right to settle the property as it was not his property. Hence it is the contention that the Partition Deed is fraudulent one. The Plaintiffs came to know about the Partition Deed only in the year 2013 when the 2nd Respondent planned to purchase a new flat and in the process of raising funds on the strength of the suit property, they found that their signatures had been obtained by fraud. Hence it is the contention that the documents came into existence on the ground of fraud suit cannot be rejected on the ground of limitation.

5. Learned Senior Counsel Mr. S. Parthasarathi appearing for the Petitioners/ Defendants submitted that the suit has been filed to declare the Partition Deed executed by the Plaintiffs in the year 1973 is clearly barred by limitation. It is his further contention that the so called Settlement Deed left by the father is of the year 1964, which is also referred in the Partition Deed wherein the Plaintiffs are also parties in the Partition Deed. After four decades, the Plaintiffs



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filed the suit to avoid the partition deed executed by them, which is clearly barred under law. It is his further contention that earlier, the Plaintiffs children filed a suit in C.S.No.535 of 2014 for a declaration that the Partition Deed executed by the Plaintiffs as null and void. The said suit was rejected and the orders have been confirmed by the Apex Court. While rejecting the suit there was no liberty whatsoever given to the Plaintiffs to file a fresh suit. Therefore, now the Plaintiffs cannot seek a similar relief in the suit filed by them, which is not only barred by limitation but also clear abuse of process of court. Hence prayed to reject the Plaint.

6. In support of his contention he relied upon the following Judgments:

- 1. *C.S. Ramaswamy vs. V.K. Senthil and Ors. [AIR 2022 SC 4724]***
- 2. *Dr.L. Ramachandran and another vs. K. Ramesh and others [2015-4-L.W.585]***

7. Whereas Mr.C. Umashankar appearing for the Respondents/Plaintiffs submitted that earlier suit filed by the children of the Plaintiffs has been rejected mainly on the ground that the Plaintiffs have not challenged the Partition Deed.



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Therefore there was no cause of action for the children to challenge the Partition Deed executed by the respective mothers. Hence, the present suit has been filed.

According to him, entire averments in the Complaint has to be seen while deciding the application to reject the plaint. The plaint averments itself clearly show that the Partition Deed executed in the year 1973 came into existence by playing fraud on the plaintiffs. One of the Plaintiffs as Power Agent has signed the documents. Therefore his contention is that as the fraud vitiates all the solemn Act, therefore question of limitation will not apply. Hence it is his contention that the suit cannot be rejected at threshold on the mere defence set up by the defendants. The Limitation issue is a mixed question of law and facts. The same has to be tested only in trial. Hence, the applications are liable to be dismissed.

8. It is his further contention that the entire plaint pleadings clearly show that the amount said to have been paid to the Plaintiffs have not been proved and there is no documents available on the record. Hence it is his contention that at this stage the suit cannot be rejected.

9. In support of his contention he relied upon the following Judgments:



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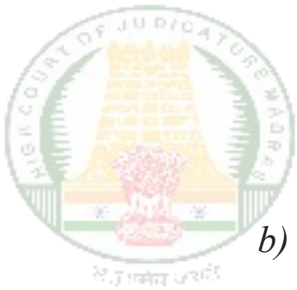
1. *S.P. Chengalvaraya Naidu (Dead) by L.Rs. vs. Jagannath (Dead) by L.Rs. And others [AIR 1994 SC 853]*

2. *Indiabulls Housing Finance Limited vs. Uma Maheswari [CDJ 2014 MHC 2193]*

10. In the light of the above submissions, now the point arises for consideration in these Applications is whether the suit is barred by Limitation and liable to be rejected on the ground of Limitation as well as the abuse of process of law.

11. It is well settled while dealing with the Application under Order 7 Rule 11 averments in the plaint entirety should be read to find out whether there is a cause of action to maintain the suit or averments itself makes clear that the suit is barred by law. In the suit the following reliefs have been sought:

“a) To declare the settlement deed executed by the 1st defendant to the 8th Defendant in Document No: 1322 of 2020 as null and void;



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b) To declare the Family arrangement made by the 1st, 2nd Defendant, 3rd Defendant, 4th Defendant and 5th Defendant in Document No: 915 of 2014 as null and void;

c) To declare the settlement deed executed by the 19th defendant to 2nd Defendant in Document No: 3451 of 2013 as null and void;

d) To declare the settlement deed executed by the 6th Defendant to 1st defendant in Document No: 3452 of 2013 as null and void;

e) To declare the settlement deed executed by the 7th Defendant to 3rd defendant in Document No: 3453 of 2013 as null and void;

f) To declare the partition deed dated 27.12.1973 (Doc. No. 2303/1973 SRO Mylapore) between the 1st defendant, 1st and 2nd plaintiff and Late. A.Alagammai Achi as void, illegal and invalid and not binding on the plaintiffs so far as the suit schedule property is concerned.



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g) To divide the Schedule properties into 3 shares by metes and bounds and allotting 1/3 to each of the plaintiffs and constructive possession, by taking into consideration good and bad qualities and pass a preliminary decree to that effect.

h) To direct the defendants 1 to 9 to render accounts and profits from suit schedule property;

i) For permanent injunction restraining defendants 1 to 9 or any one claiming through or under them from in any manner alienating, encumbering or otherwise disposing of the suit schedule property.

j. To pass such further or other orders or orders as this Hon'ble Court may deem fit and proper and thus render justice.”

12. The suit proceeded on the premise that the suit property was originally belonged to the mother of the Plaintiffs one Lakshmiammal. However, after her death the property devolved on her husband Mr.Avadiappa Chettiar and the Plaintiffs. Thus the Plaintiffs entitled to 2/3rd share by operation of law. However, the said Avadiappa Chettiar executed a Settlement Deed dated 16.09.1964



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proclaiming himself to be the absolute owner of the property and settled the

property in 3 equal shares between the Plaintiffs who are the daughters of Avadiapp Chettiar through Lakshmi Ammal and the 1st Defendant who is the son of Avaidappa Chettiar through his first wife Mrs.A. Alagammai. Hence it is the contention that the Settlement Deed did not convey any title. Thereafter, the Partition Deed was created by the 1st Defendant wherein it is stated that the property was originally purchased by the 1st Defendant and Avadiappa Chettiar together. Hence it is the contention that the Partition Deed has been created with suppression of certain material facts in the document by incorporating the clause in the partition deed that the Plaintiffs had transferred their interest in favour of the 1st defendant for a consideration of Rs.12,500/- each, while the market value of the property was more than Rs.20 lakhs. The Partition Deed also makes yet another false statement that Deed of Settlement dated 16.09.1964 was not acted upon. Hence it is the contention that the 1st Defendant has executed the Partition Deed by the Power Agent of the 1st Plaintiff as the 2nd Plaintiff has not educated enough to understand the nature of the transaction. Therefore, he signed the documents. Hence it is the contention that the signatures were obtained by fraud; the Partition Deed is void instrument and cannot be enforced in any court of law. Hence it is



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the contention that the Plaintiffs are entitled to shares in the property. Therefore various reliefs have been claimed in the Plaint.

13. The relationship of parties from the averment is not disputed. One Avadiappa Chettiar is the father of the Plaintiffs. He had two wives namely one Alagammai and Lakshmi Ammal. The Plaintiffs are the children of the 2nd wife Lakshmi Ammal. 1st Defendant is the son born through the 1st wife Alagammai. The other Defendants are children and mother of the 1st Defendant. These facts are not disputed. Though the plaintiffs proceeded as if the property is absolutely belonged to their mother, however, the Settlement Deed executed by the father claiming to be a owner, same is not valid and thereafter the Partition Deed executed by them is also result of fraud.

14. It is relevant to note that execution of the Partition Deed is of the year 1973 and Settlement Deed is of the year 1964 is not disputed by the Plaintiff. However, only contention in the entire plaint that since the 2nd Plaintiff has not studied English she could not understand the contents and the signature was obtained by fraud. Whereas the 1st Plaintiff's execution was made through Power



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Agent. According to the Plaintiffs the entire Partition Deed of the year 1973 is void

since it is the result of fraud played by the Defendants. However, it is relevant to note that except stating that the document is fabricated and fraudulent, there is no material facts have been pleaded to constitute the nature of the fraud played by the Defendants at the time of the execution of the documents by the Plaintiffs.

15. It is not disputed by the 1st Defendant that his father-in-law was Power Agent at the relevant point of time when the documents came into existence on 27.12.1973 by way of Partition Deed. 2nd Plaintiff was also signed the document; this fact is not disputed. However, the only contention of the Plaintiffs is that since the 2nd Plaintiff could not understand the contents the document is fraudulent one. It is not the case of the Plaintiff that the document is result of impersonation or forgery etc., but merely contending that the partition deed is result of fraud and without any material facts constituting the fraud this Court is of the view that the Plaintiffs cannot assail those documents after four decades. The averments in the plaint itself clearly shows that they came to know about the partition deed which came into existence by playing a fraud in the year 2013. Even such case the Plaintiffs ought to have challenged the same by filing a suit within a period of three



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years from the date of knowledge, which has not been done so. Admittedly, the

execution of the partition deed is admitted. Mere contenting that the document is

result of fraud, this Court is of the view that the Plaintiffs cannot get over the

period of limitation to challenge the document after the lapse of 40 years. The

Partition Deed filed along with the plaint itself makes it very clear that the 2nd

plaintiff has signed herself in the document and the 1st Plaintiff has executed the

deed through her power Agent. The Power Agent is the father in law of the 1st

Defendant Even assuming that the document is the result of fraud as stated by the

Plaintiff, when the Plaintiffs came to know about the document in the year 2013,

they ought to have filed the suit within the period of three years which has not been

done so. Therefore, from the Plaint averment itself makes it clear that the suit is

barred by limitation. It is also to be noted that earlier, the Plaintiffs children have

filed similar suit in C.S.No.535 of 2014 for declaring the Partition Deed daed

27.12.1973 is void, illegal and not binding on the parties. The said plaint had

already been rejected by the Division Bench of this Court on 28.04.2018 in

O.S.A.No.303 of 2017 and the same has been confirmed in SLP.(C)No.15044 of

2019 on 18.10.2019. while rejecting the suit the Division Bench of this Court has

clearly held that the Plaintiffs have not challenged the said Partition Deed their



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children have no right to maintain the suit. After dismissal of the above said suit,

the present suit is filed by the Plaintiff challenging the same Partition Deed that itself clearly indicates that the suit is nothing but abuse of process of law. The Plaintiffs are trying to reagitate the issue by way of this suit, which has already decided in the previous suit filed by the Plaintiffs children.

16. The Judgment referred by the learned Senior Counsel for the Applicants/Defendants in ***C.S.Ramaswamy vs. V.K. Senthil and Others. [AIR 2022 SC 4724]*** the Honourable Apex Court it is held as follows:

“7. Even the averments and allegations in the plaint with respect to fraud are not supported by any further averments and allegations how the fraud has been committed/played. Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word “fraud”, the plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. Therefore, even if the submission on behalf of the respondents – original plaintiffs that only the averments and allegations in



*the complaints are required to be considered at the time of deciding the application under Order VII Rule 11 CPC is accepted, in that case also by such vague allegations with respect to the date of knowledge, the plaintiffs cannot be permitted to challenge the documents after a period of 10 years. By such a clever drafting and using the word “fraud”, the plaintiffs have tried to bring the suits within the period of limitation invoking Section 17 of the limitation Act. The plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation. At this stage, a recent decision of this Court in the case of **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by Legal Representatives, (2020) 16 SCC 601** is required to be referred to. In the said decision, this Court had occasion to consider all earlier decisions on exercise of powers under Order VII Rule 11 CPC, which are considered by this Court in paragraphs 6.4 to 6.9 as under:-*

*“6.4. In **T. Arivandandam [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467]**, while considering the very same provision i.e. Order 7 Rule 11 CPC and the decree of the trial court in considering such application, this Court in para 5 has observed and*



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held as under: (SCC p. 470)

“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



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law suits.”

6.5. *In Church of Christ Charitable Trust & Educational Charitable Society [Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706], this Court in para 13 has observed and held as under: (SCC p. 715)*

“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 7 some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”



6.6. In *ABC 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



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immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

6.7. In *Sopan Sukhdeo Sable* [*Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137*] in paras 11 and 12, this Court has observed as under: (SCC p. 146)

“11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint



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it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467].)”

6.8. In *Madanuri Sri Rama Chandra Murthy* [*Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, (2017) 13 SCC 174], this Court has observed and held as under: (SCC pp. 17879, para 7)

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked



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into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to



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be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

6.9. In *Ram Singh [Ram Singh v. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364]*, this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.”

The judgements cited by the learned counsel for the Respondents/Plaintiffs are not relevant to the facts of the present case.

17. Even assuming that only in the result of fraud and forgery the Partition



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Deed came into existence in the year 1973 and the knowledge about the fraud came to the Plaintiffs only in the year 2013, they ought to have challenged the said document within a period of three years from the date of their knowledge, which has not been done so. Therefore, merely on the clever drafting and using the word “fraud” the plaintiffs cannot be permitted to bring the suit after lapse of forty years. Accordingly, the Applications filed to reject the Plaint are ordered and the Plaint is rejected.

18. In the result, Application Nos.2740 and 5093 of 2022 are Ordered. Plaint in C.S.No.54 of 2022 is rejected. Consequently O.A.No.170 of 2022 is closed. There is no order as to costs.

19.10.2023

Index : Yes / No
Internet: Yes
Speaking/Non-speaking order
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Pre-delivery common order in:
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