



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.No.669 of 2023
and
C.M.P.No.21368 of 2023

L.Philomina Nathan

... Appellant

Vs.

1. P.Shivakumar
2. V.Pandurangan
3. G.Manonmani
4. K.H.Francis Xavier
5. K.H.Kennedy
6. K.H. Franklin
7. K.H.Arun Kumar

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleaded set aside the Decree and Judgement in A.S.No.29 of 2022 dated 29.03.2023 passed by the Additional District Judge, Krishnagiri, confirming the Fair and Decreetal Order in I.A.No.3 of 2021 in O.S.No.128 of 2019 dated 04.12.2021 passed by the Additional Special Judge, Krishnagiri.

For Appellant : Mr.C.Samivel



WEB COPY



JUDGMENT

The plaintiff, who suffered an order of rejection of plaint passed by the Trial Court and the same having been confirmed by the appellate court, has come up with the present Second Appeal challenging the concurrent findings of the courts below.

2. Factual background of the case is as under:-

i) The plaintiff, wife of one K.H.Nathan filed the suit alleging that her husband had executed a general power of attorney in favour of the first defendant on 18.1.2005 and subsequently, on finding that the first defendant had executed a sale deed dated 11.4.2005 in favour of the second defendant, who is none other than his father, and having come to the conclusion that the first defendant had indulged in swindling activities, had cancelled the general power of attorney and issued notice to the first defendant.

ii) The further contention of the plaintiff is that on receipt of notice, the first defendant had approached the husband of the plaintiff for an amicable settlement requesting him not to take any legal action. She further contended that subsequently, her husband expired on 3.1.2015 and



thereafter, only in the year 2019, when she wanted to sell the suit property, she came to know about the subsequent sale made by the second defendant in favour of the third defendant and filed the suit to cancel the sale deed executed by the first defendant in favour of the second defendant, to declare the sale deed executed by the second defendant in favour of the third defendant and to declare her title to the suit property.

iii) The third defendant, a subsequent purchaser of the suit property from the second defendant, apart from filing a detailed written statement denying the allegations in the plaint, has filed an Application in I.A.No.3 of 2021 under Order 7 Rule 11(a) and (d) of Section 151 of the Code of Civil Procedure contending as under:-

After the purchase of the suit property, the 3rd defendant had been in possession and enjoyment of the suit property and she had sold the same to one Badri Narayanan for a good and valuable consideration. The plaintiff's husband K.H.Nathan had knowledge about the execution of Sale Deed by the 1st defendant in favour of 2nd defendant and on 12.09.2006 the Power of Attorney was cancelled by the K.H.Nathan. So, from the date of knowledge i.e. on 12.09.2006 the plaintiff's husband has got knowledge about the Sale Deed and he ought to have challenged the same within three years from the



date of knowledge but the same was not done and subsequently when the 2nd defendant sold the property to the 3rd defendant on 2015 in Doc.No.3669/2015 that was taken into consideration and the suit has been filed with false cause of action and hence, the 3rd defendant is constrained to come out with the present petition.

iv) The plaintiff filed counter reiterating the plaint pleadings and thereby justifying the long delay in approaching the court on the ground of negotiation alleged to have taken place between her husband and the first defendant and thereby craving indulgence of the court.

3. The Trial Court, on appreciating the factual aspects pleaded in the plaint, allowed the Application filed by the third defendant for rejection of plaint and thereby rejected the plaint. The findings of the Trial Court came to be confirmed by the Appellate Court in the Appeal Suit preferred by the plaintiff. Challenging the concurrent findings of the courts below, the present Second Appeal has been filed.

4. The core submission of the learned counsel Mr.C.Samivel appearing for the appellant is that the courts below have erred in rejecting the



suit solely on the ground of limitation without looking into the facts and circumstances of the case pleaded in the plaint.

5. What is to be determined in this Second Appeal is whether the courts below are right in rejecting the suit at the pre-trial stage and whether any substantial question of law is involved in the Appeal.

6. Having heard the learned counsel appearing for the appellant and perused the materials available on record including the judgments rendered by the courts below, this court finds that the plaintiff claims to be the successor of her husband in respect of the suit property. Her husband himself had knowledge about the sale deed dated 11.4.2005, executed by the first defendant in favour of the second defendant. The subsequent sale deed dated 30.10.2015 came to be executed by the second defendant in favour of the third defendant. It is relevant to note that the husband of the plaintiff died on 3.1.2015 and till then, he had not raised even his little finger in the manner known to law.

7. Though the plaintiff claims that they kept quiet since her husband was pacified by the first defendant on receipt of notice legal notice



WEB COPY

and cancellation of power of attorney in the year 2006, no documentary evidence has been produced by the plaintiff to prove her contention about the pacification done, however, she pleads in the plaint about such pacification talks which probabalises that she was also aware of the events that had taken place at the relevant time viz., in the year 2005 and 2006 and it is peculiar to note that the husband of the plaintiff had not taken any legal action till his death on 3.1.2015 and the plaintiff had also remained silent without taking any legal action even after the death of her husband and she had not cared about the aftermath of the pacification talks alleged to have taken place between her husband and the first defendant in the year 2006. It is highly unbelievable that the plaintiff, who had chosen to fight with tooth and nail on the cause of action that arose in the year 2006 by filing a suit in the year 2019 could have forgotten about the issue and remained silent for all those thirteen long years.

8. When her predecessor-in-title, viz., her husband had not pursued the matter till his death on 3.1.2015, the plaintiff cannot claim to have acquired title excluding the alienations made by the power of attorney holder and the subsequent purchasers. When the husband of the plaintiff had



wilfully missed the boat though he had knowledge about the alienation made by the first defendant in the year 2005 or 2006 itself, the plaintiff, subsequent to the death of her husband in the year 2015, had chosen to kick the can down the road and soon after the suit property was further alienated by the second defendant in favour of the third defendant by a sale deed dated 30.10.2015 viz., after nearly ten months after the death of her husband, had filed the present suit clubbing the further alienation with the old cause of action to gain extension of limitation period, rather to make an illusion as if the suit has been filed within the period of limitation under the guise of having acquired knowledge about the alienations only at a later stage. If such vague pleas and vexatious suits are entertained, this court is of the view that the lis between the parties could become an eternal one and no bona fide purchaser, who purchased the property with their hard earned money, can enjoy the same with peace of mind, rather they could be running from pillar to post to protect their property.

9. Protecting such right of a subsequent purchaser, viz., the third defendant in the suit, the courts below have rightly rejected the plaint at the threshold, which, in view of this court, does not require any interference as it



does not suffer any infirmity. The suit being a vexatious one, this court is of the view that it needs to be scraped. In this regard, it is useful to refer to the judgment of the Apex Court in ***Ramisetty Venkatanna and another vs. Nasyam Jamal Saheb and others*** reported in 2023 SCC OnLine SC 521, wherein it has been held as under:-

"21. It is further submitted that as such while considering the application under Order VII Rule XI and the prayer for rejection of the plaint, only averments of plaint are material and can be taken into consideration and any evidence or averments made in the written statement cannot be considered. Reliance is placed on the decision of this Court in the case of Nusli Neville Wadia v. Ivory Properties, [\(2020\) 6 SCC 557](#).

22. Making the above submissions it is prayed to dismiss the present appeal.

23. We have heard learned counsel appearing on behalf of the respective parties at length. We have also gone through the averments made in the plaint. On going through the averments, it appears that the suit is



WEB COPY



essentially based upon the premise that there was an error in partition deed dated 11.03.1953 and in partition deed survey number 706/A9 was wrongly mentioned. Therefore, it is the case on behalf of the plaintiffs that Sarambee and other descendants including the vendors of the appellants never had any right to effect transactions in respect of the land in survey number 706/A9. However, it is required to be noted that despite the above, very cleverly the plaintiffs have not sought any relief with respect to partition deed dated 11.03.1953. Deliberately and purposely, the plaintiffs have not prayed any relief with respect to partition deed dated 11.03.1953 though it is the case on behalf of the plaintiffs that there was an error in partition deed dated 11.03.1953. It is to be noted that pursuant to the partition deed dated 11.03.1953, after the demise of the original land owner Nasyam Jamal Saheb, his five children namely, 1)Nasyam Jafar Saheb; 2)Nasyam Dasthagiri Saheb; 3)Nasyam



WEB COPY



Ibrahim Saheb; 4)Sarambee; and 5)Jainabee got partitioned the properties under a registered partition deed dated 11.03.1953. Under the registered partition deed, predecessor in interest of plaintiffs, N. Ibrahim Saheb got 1 acre and predecessor in interest of vendors of the appellants Sarambee got 1 acre 16 cents. All the parties to the registered partition deed acted upon the said partition deed. That thereafter, further transaction took place and Sarambee executed a registered gift deed dated 24.01.1968 in favour of her eldest daughter Kareembee - mother of the vendors of the appellants to an extent of lands measuring 58 cents. That thereafter, two sons of Kareebbee who became co-owner on the death of Kareembee executed the registered sale deed dated 24.08.2010 in favour of the appellants in Survey No. 706/A9 to an extent of land measuring 58 cents for a valid sale consideration. Since 2010, the appellants are in possession of the land purchased vide registered sale



deed dated 24.08.2010. Without challenging partition deed dated 11.03.1953 and even subsequent gift deed dated 24.01.1968, the plaintiffs have instituted the present suit with the aforesaid prayers which is nothing but a clever drafting to get out of the limitation. If partition deed dated 11.03.1953 was to be challenged which as such, the plaintiffs are attempting to do virtually, the suit would be hopelessly barred by limitation having being instituted after lapse of 61 years from the partition deed.

24. In the case of T. Arivandandam (supra) in paragraph 5 while considering the provision of Order VII Rule XI, this Court has observed 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.”

25. *In the case of Sopan Sukhdeo Sable v. Charity Commr., [\(2004\) 3 SCC 137](#) in paras 11 and 12, this Court has observed and held as under:*

“11. In ITC Ltd. v. Debts Recovery Appellate



WEB COPY



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 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



WEB COPY



v. T.V. Satyapal [(1977) 4 SCC 467].)”

26. In the case of Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174, this Court observed and held as under:

“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 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 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.”

27. In the case of Ram Singh v. Gram Panchayat Mehal Kalan, [\(1986\) 4 SCC 364](#), this Court 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. Similar view has been expressed by this Court in the case of Raj Narain Sarin (supra).

28. Applying the law laid down by this Court in the aforesaid decisions on the applicability of Order VII Rule XI to the facts of the case on hand, we are of the opinion that the plaint ought to have been rejected in exercise of powers under Order [VII Rule XI\(a\) and \(d\)](#) of [CPC](#) being vexatious, illusory cause of action and barred by limitation. By clever drafting and not asking any relief



with respect to partition deed dated 11.03.1953, the plaintiffs have tried to circumvent the provision of limitation act and have tried to maintain the suit which is nothing but abuse of process of court and the law.

29. Now, so far as the reliance placed on the decision of the Privy Council referred to hereinabove and on the decision of this Court in the case of Subhaga (supra) are concerned, there cannot be any dispute with respect to the proposition of law laid down in the aforesaid two decisions. However, the question is the suit being barred by limitation and the illusory cause of action.

30. Now so far as the reliance placed upon the decision of this Court in the case of Nusli Neville Wadia (supra) is concerned, again there cannot be any dispute with respect to the proposition of law laid down by this Court that while deciding the application under Order VII Rule XI, mainly the averments in the plaint only are required to be considered and not the averments in the written



WEB COPY



statement. However, on considering the averments in the plaint as they are, we are of the opinion that the plaint is ought to have been rejected being vexatious, illusory cause of action and barred by limitation and it is a clear case of clever drafting."

10. The Trial Court, finding that the suit being vexatious based on illusory cause of action, and barred by limitation and being a case of clever drafting, had rightly dismissed the same and the appellate court had rightly dismissed the appeal.

11. Having carefully analysed the materials available on record including the judgments of both the Courts below, this Court is of the view that no substantial question of law is involved to admit this second appeal in the light of the decision in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** wherein, the Apex Court has held as under:-

"23. Sub-section (1) of [Section 100](#) of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial



question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of [Section 100](#) of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re- formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

12. In view of the above, this court finds that no question of law, much less substantial question of law arises for consideration, the Second



Appeal fails and the same is dismissed at the admission stage itself, by confirming the concurrent findings rendered by the Courts below. No costs.

The connected Miscellaneous Petition is closed.

20.09.2023

ham/ssk.

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1. Additional Special Court, Krishnagiri.
2. Additional District Court, Krishnagiri.
3. The Section Officer, VR Section, High Court of Madras.



WEB COPY



A.D.JAGADISH CHANDIRA.,J.

ham/ssk.

***S.A.No.669 of 2023 and
C.M.P.No.21368 of 2023***

20.09.2023