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O.S.A. Nos.310 and 311 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2023

CORAM:

**THE HONOURABLE MR. JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

O.S.A. Nos.310 and 311 of 2022

and

C.M.P. No.21746 of 2022

P.S.Usha

... Appellant in both O.S.As

Vs.

1.P.S.Subramanian

2.P.S.Vijayalakshmi

3.Sharath Kumar Surendra

... Respondents in O.S.A.No.310 of 2022

1.Sharath Kumar Surendra

2.P.S.Subramanian

3.P.S.Vijayalakshmi

... Respondents in O.S.A.No.311 of 2022

Common Prayer: Original Side Appeals filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of Letters Patent against decree and judgment dated 01.11.2022 in C.S.No.207 of 2021 and Application No.2469 of 2022 in CS.No.207 of 2021.

For Appellant : Mr.R.Subramanian
in both the appeals

For Respondents : Mr.M.Ravi for Mr.J.Ramesh
in both the appeals



COMMON JUDGMENT

(Judgment of the Court was made by MOHAMMED SHAFFIQ, J.)

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Two appeals are filed challenging the common order dated 01.11.2022 passed by the learned Judge in C.S.No.207 of 2021 and A.No.2469 of 2022. While O.S.A.No.310 of 2022 is filed against the decree and judgment in C.S.No.207 of 2021, O.S.A.No.311 of 2022 is challenging the fair and decreetal order in Application No.2469 of 2022 in C.S.No.207 of 2021. By the above order, the learned Judge rejected the suit in C.S.No.207 of 2021 thereby allowing the application under Order VII Rule 11(a) and (d) of the Civil Procedure Code (hereinafter referred to as “CPC”) to reject the plaint on the premise that the litigation is vexatious and barred by limitation. The above order rejecting the plaint and the suit, which is the subject matter of challenge in these appeals.

2. Before we proceed to examine the legality and correctness of the order passed by the learned Judge and the submissions made challenging the same, it may be relevant to set out the facts briefly. For ease of reference, we shall refer to the parties in terms of their ranking in the suit in C.S.No.207 of 2021 which is as under:

- i. P.S.Usha – Plaintiff
- ii. P.S.Surendra (Deceased) - 1st Defendant



iii. P.S.Subramani - 2nd Defendant

iv. P.S.Vijayalakshmi - 3rd Defendant

v. Sharath Kumar Surendra - 4th Defendant (son of the deceased P.S.Surendra, was brought on record as his legal heir)

3. Brief facts:

(a) The suit schedule properties consisting of land and house measuring about 15440 sq.ft, were purchased by one Dhanammal, grandmother of the plaintiff, *vide* two sale deeds dated 19.10.1941 and 21.01.1943 registered as Document Nos. 2122 of 1941 and 105 of 1943 respectively in the office of the Sub Registrar, T.Nagar, Chennai.

(b) The late Dhanammal and her husband late Mr.P.Subramaniya Udayar had no issues and adopted one Ambigainathan. During the lifetime of Dhanammal, she executed a registered Will dated 06.10.1947 with regard to the immovable properties owned by her. Subsequently, the said Will was cancelled and another registered Will was executed on 24.12.1953 bequeathing the suit schedule properties in favour of the said Ambigainathan, the adopted son of Dhanammal. The said Will dated 24.12.1953 was also cancelled on 09.12.1957 and a settlement deed was executed in favour of the said Ambigainathan (father of plaintiff and defendants 1 to 3).

(c) In terms of the settlement deed executed by Dhanammal, the said

Ambigainathan was granted life interest i.e., he could enjoy the properties during his lifetime, but did not have the right of alienation. The settlement deed provided that the properties would devolve on P.S.Surendra, son of Ambigainathan, the 1st defendant in the suit, after the life time of Ambigainathan. Ambigainathan had two sons and two daughters viz.,

- i) P.S.Surendra - 1st defendant in the Suit (deceased).
- ii) P.S.Usha - Daughter/ Plaintiff in the Suit.
- iii) P.S.Subramani - Son / 2nd defendant in the Suit.
- iv) P.S.Vijayalakshmi - Daughter/ 3rd defendant in the Suit.
- v) Sharath Kumar Surendra - 4th defendant in the suit
(Son of the deceased first defendant P.S.Surendra)

(d) On the basis of the 1957 settlement deed, Mr.P.S.Surendra (deceased) /1st defendant in the suit sold a portion of land measuring about 7700 sq.ft., to Jain Builders for a sale consideration of Rs.135 Lakhs. The sale deed was stated to be executed after obtaining no objection certificate vide letter dated 22.11.2001 from all the legal heirs of late Ambigainathan.

(e) The 1st defendant in the suit viz., P.S.Surendra (deceased) was stated to have promised to pay out of the said sale consideration, the respective shares of the plaintiff and defendants 2 and 3, but failed to do so. After the sale of portion of the property, an



extent of 7755 sq.ft. comprising of a house measuring about 2250 sq.ft in the ground floor and 2250 sq.ft in the first floor remains. The plaintiff is residing in the ground floor of the said premises and the deceased P.S.Surendra resided in the first floor. It is stated that when the plaintiff and defendants 2 and 3, demanded their respective shares of the sale consideration, the deceased P.S.Surendra/ 1st defendant attempted to dispossess the plaintiff from the suit schedule properties.

(f) Hence, the suit in C.S.No.207 of 2021 was filed by the plaintiff viz., P.S.Usha, Daughter of Mr.Ambigainathan (deceased) for partition of Suit Schedule Properties viz., Schedule A and B properties into 4 equal shares and to allot 1/4th share to her and for permanent injunction restraining the 1st defendant from dispossessing the plaintiff from the suit schedule properties.

(g) The suit was filed on the premise that the settlement deed dated 09.12.1957 is void inasmuch as it contained a clause imposing absolute restriction on Ambigainathan with regard to alienation of the properties constituting the subject matter of the settlement deed. The settlement deed is hit by Section 10 of the Transfer of Property Act, 1882. Resultantly, the settlement deed under which a limited estate of life interest was to vest in Ambigainathan would get transformed into one of absolute ownership in favour of Ambigainthan. Consequently, the plaintiff and the defendants



being the legal heirs of late Ambigainathan would thus be entitled to equal share in the suit schedule properties i.e., 1/4th each of the suit schedule properties since Amigainthan had died intestate. Hence, neither the 1st defendant nor the 4th defendant through him can claim any right under the settlement deed. It was further submitted that if the settlement deed was to be construed as a Will having not been probated in terms of Section 57 of the Indian Succession Act, 1925, it would have no sanctity/legal effect.

(h) During the pendency of the suit, the 1st defendant in the suit viz., P.S.Surendra died and his son Sharath Kumar Surendra was brought on record as the 4th defendant in the suit.

(i) After filing of the suit, the plaintiff amended the plaint by adding a prayer to declare the settlement deed dated 27.02.2020 registered as Document No.690 of 2020, on the file of the SRO, T.Nagar, Chennai, executed by the 1st defendant in favour of the 4th defendant as null and void and not binding on her. The plaintiff challenged the settlement deed dated 27.02.2020 on the premise that the 1st defendant itself had no right or title over the suit schedule properties. The execution of the settlement deed by the 1st defendant in favour of the 4th defendant is without any authority and thus void. It was also submitted that the 1st defendant was admittedly bedridden and the settlement deed dated 27.02.2020 was obtained by the 4th defendant herein taking advantage of the



health condition of the 1st defendant. It was thus submitted that the settlement deed itself had been created fraudulently and in support thereof, reliance was sought to be placed on the fact that the 1st defendant had not made any reference to the said settlement deed in his reply notice dated 18.11.2020.

(j) Resisting the claim of the plaintiff, the defendants 3 and 4 filed separate written statements in the suit. During the pendency of the suit, the 4th defendant / 3rd respondent herein preferred an application in A.No.2469 of 2022 seeking to reject the plaint under Order VII Rule 11(a) and (d) of CPC.

4. Order of the learned Judge:

By the impugned order dated 01.11.2022, the learned Judge has allowed the application for rejection of the plaint and thereby, rejected the suit, on the strength of the following findings:

(a) The settlement deed dated 09.12.1957 was executed by Dhanammal making it clear that the said Ambigainathan would only have life interest, while the absolute title in the suit schedule properties would vest with the 1st defendant viz., P.S.Surendra, after the demise of Ambigainathan. The 1st defendant became the absolute owner of the suit schedule properties on the death of Ambigainathan and executed various deeds



including the settlement deed dated 27.02.2020 in his capacity as the absolute owner before he passed away.

(b) After extracting the relevant portions of the settlement deed dated 09.12.1957, it was found by the learned Judge that the said Ambigainathan was only granted life interest and not vested with the right to sell, mortgage, gift or otherwise transfer or alienate the suit schedule properties.

(c) After the lifetime of the said Ambigainathan, the suit schedule properties would in terms of the settlement deed, devolve on the 1st defendant (deceased), who would have powers to alienate / transfer the same, as its absolute owner.

(d) Reliance on Section 10 of the Transfer of Property Act to submit that transfer of property, subject to a condition or limitation restraining the 1st defendant from parting with or disposing of the property is void, was rejected as being misplaced. Section 10 of the Transfer of Property Act was found to have no application to the settlement / arrangement under which a limited estate is created. In the absence of transfer of title being contemplated in the settlement deed, Section 10 of the Transfer of Property Act, would have no application.

(e) Though the settlement deed was executed as early as on 1957, neither the



settlement deed nor any of its conditions was ever challenged, thus, the settlement deed had attained finality. Having not assailed the settlement deed dated 09.12.1957 and the plaintiff and defendants 2 and 3 having given the consent letter dated 22.11.2001 to the 1st defendant to sell the suit Schedule Properties, which recognises the title of the 1st defendant as absolute owner, the learned Judge found the suit to be vexatious and barred by limitation and therefore, allowed the application for rejection of plaint and thereby, rejected the suit.

5. Aggrieved by the order of the learned Judge, the plaintiff has preferred the present two original side appeals.

6. Submissions of the appellant:

(a) The learned Judge ought to have seen that the clause imposing absolute restriction on the right of alienation of the settlee viz., Ambigainathan, would attract Section 10 of the Transfer of Property Act, thereby rendering the settlement deed dated 09.12.1957 void.

(b) The learned Judge ought to have seen that the restriction clause under 1957 settlement deed attracts Section 10 of the Act, rendering the settlement deed void. The properties would then vest absolutely with Mr.Ambigainathan, resultantly, all the legal heirs would inherit the properties in terms of the succession laws.



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(c) The learned Judge has travelled beyond the scope of Order VII Rule 11 of CPC by interpreting the settlement deed and holding that under the settlement deed, the 1st defendant was given absolute right and his father late Ambigainathan was given only life interest.

(d) The learned Judge ought to have seen that the interpretation of the document has to be tested in trial on appreciation of evidence and the said exercise cannot and ought not to be carried out in the application under Order VII Rule 11 of CPC.

(e) The learned Judge ought not to have relied on the letter dated 22.11.2001 filed by the 4th defendant, since under Order VII Rule 11 of CPC, the Court ought to confine itself to the averments of the plaint and examine if it discloses any cause of action and cannot take into account documents of the defendants or the written statement. In this regard, reliance was placed on the decisions in *2012 (8) SCC 661*, wherein, it was held by the Hon'ble Supreme Court that no amount of evidence can be looked into under Order VII Rule 11 (d) of CPC; and in *1996 (3) SCC 377*. Thus, the Court was not justified in rejecting the plaint stating that there is no cause of action for filing the suit.

(f) The learned Judge ought to have seen that the letter dated 22.11.2001 cannot be construed as an admission of title by the other legal heirs since any admission



can be explained in evidence and the learned Judge ought to have taken into account the pleadings made by the plaintiff in the application explaining the circumstances under which the said letter came to be written by the mother and other legal heirs.

7. Submissions of the Respondents:

(a) The order of the learned Judge rejecting the plaint after finding that the failure to assail the settlement deed executed in the year 1957 for over 5 decades would show that the litigation is vexatious, is justified.

(b) The suit is barred by limitation and as found by the learned Judge, the litigation apart from being vexatious, is malicious and an abuse of process of the Court.

(c) The suit is hit by Clause (d) to Order VII Rule 11 of CPC, which provides that the plaint shall be rejected, if the suit appears to be barred by any law. The suit having been found to be barred by limitation, would clearly fall within the scope and ambit of Clause (d) to Order VII Rule 11 of CPC.

(d) The failure to disclose the communication dated 22.11.2001 would reveal that the plaintiff had not come to court with clean hands and had suppressed material particulars.

8. Heard both sides and also perused the materials available on record.

9. The order of the learned Judge rejecting the contention of the learned counsel for the plaintiff that the settlement deed dated 09.12.1957 insofar as it conveys life



interest to Ambigainathan while imposing restrictions on the right of alienation, would not attract Section 10 of the Transfer of Property Act, may not warrant interference for the following reasons:

Nature of interest conveyed to Ambigainathan under the settlement deed:

9.1. It is important to note that the genuineness of the settlement deed dated 09.12.1957 is not under challenge. In terms of the settlement deed, the settlor had conveyed life interest over the suit schedule properties to Ambigainathan, who would have the right to receive and enjoy all the income and profits of the said properties during his lifetime. The deed also imposes an obligation on Ambigainathan, the settlee to defray from the income necessary expenses for repair, maintenance and upkeep of the properties in good condition and for payment of municipal taxes, quit rent etc. It was made clear that the said Ambigainathan shall not have any power to sell, mortgage, gift or otherwise transfer the said properties during his lifetime. The Settlement Deed provides that the son of Ambigainathan, the 1st defendant P.S.Surendra (since deceased), father of the 4th defendant shall after the lifetime of Ambigainathan, possess and enjoy the suit schedule properties absolutely with full power of alienation by way of sale, gift, mortgage or otherwise transfer and alienate the same as the absolute owner. The relevant portion of the deed of settlement is extracted hereunder, for better appreciation:



“Whereas the Settlor is the truefull and absolute Beneficiary is the son of the 1st Beneficiary herein:

Whereas by reason of the natural love and affection which the said Settlor has towards the Beneficiaries herein, the Settlor is desirous of making a suitable provision for the upkeep and maintenance of the 1st Beneficiary during his lifetime and grant by way of settlement of the under mentioned property to the 2nd Beneficiary herein absolutely.

....

NOW THIS DEED OF SETTLEMENT WITNESSETH that in pursuance of the said desire and in consideration of the above premises and the natural love and affection which the Settlor has towards the Beneficiaries herein; the - Settlor, hereby revokes and cancels the said registered Will dated 24-12-1953 executed by her as aforesaid and hereby freely and voluntarily settles and transfers, grants, conveys and assigns, the house ground and premises bearing door No.2.Bazlullah Road. Thyagarayanagar, Madras, more - particularly described in the Schedule hereto of the value of Pa. 15,000/- (Rupees en teen thousand) only subject to the condition that the 1st Beneficiary shall have only a life interests the said property and shall during his lifetime receive sad an joy all the rents income and profits of the said property hereby settled after defraying from the said income the necessary expenses for repairs and for the maintenance and upkeep of the property in good condition and for payment of the Municipal taxes, quit rents and other public out-goings payable in respect of the said property with liberty however to reside in the said property during his lifetime if he so chooses and that the 1st Beneficiary shall not have any power to sell, mortgage, gift or otherwise transfer and alienate the said - property hereby settled or any part thereof during the lifetime of the 2nd Beneficiary herein and that after the lifetime of - the 1st Beneficiary, the 2nd Beneficiary herein shall possess - -and enjoy the said property hereby settled absolutely with - full powers of alienation by way of sale,gift,mortgage or otherwise transfer and alienate the same as the full owner therof.”

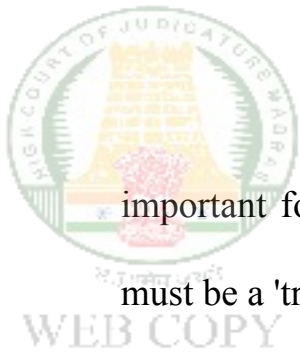
10. It is the case of the appellant / plaintiff that the settlement deed or condition therein insofar as it imposes absolute restriction / embargo against alienation, is hit by Section 10 of the Transfer of Property Act and thus, void. In this regard, it may



be relevant to extract Section 10 of the Transfer of Property Act, which reads as under:

“10. Condition restraining alienation.—Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.”

10.1. A reading of the above provision would make it clear that once there is a transfer of property, any condition which imposes an absolute embargo/ restraint against alienation, is declared to be void. The principle underlying the statutory declaration of voidity of the condition of absolute restraint on alienation is on the premise that the right to transfer is incidental and inseparable rather inherent part of the ownership of a property. An absolute restraint, therefore, on the right to transfer on the owner is repugnant to the nature of the estate and the very essence of the grant of ownership. The rule in this section is founded on the principle of public policy which furthers/ promotes free circulation and disposition of property while a condition rendering an estate inalienable would frustrate the above policy and thus declared void. This is the general and basic postulate underlying this section. Thus, the policy underlying the section is that the power of alienation which is a necessary incident to an ownership, cannot be fettered by a condition of absolute restraint against transfer. The transfer of property and embargo against alienation are repugnant and cannot co-exist. But, what is



important for Section 10 of the Transfer of Property Act to get attracted is that there must be a 'transfer of property'.

11. Now, what is sought to be contended in effect by the learned counsel for the appellant / plaintiff is that the condition against alienation on being rendered void in view of Section 10 of the Transfer of Property Act, the settlement deed by which a limited right of life interest was granted to Ambigainathan and on his demise, absolute right over the properties, was to devolve on the 1st defendant, would get metamorphosised/transformed into vesting absolute ownership with Ambigainathan. As a sequitur, the said Ambigainathan as the absolute owner, would have the authority to decide the manner of disposal/ settlement of properties and in the absence of any transfer by Ambigainathan, the properties would devolve on all the legal heirs of Ambigainathan, who would have right to succession in accordance with the relevant law of inheritance. Thus, the 1st defendant cannot place reliance on the 1957 settlement deed in support of his claim of absolute title to the suit schedule properties after the death of Ambigainathan.

12. Keeping in view the policy behind Section 10 of the Transfer of Property Act, a reading of the relevant portions of the 1957 settlement deed, would show that all that which was granted to Ambigainathan, was only a limited right to enjoy the



properties i.e., life interest/ estate and not an absolute transfer of property. Where the transfer is to a limited estate/right viz., life interest/ estate with a restriction against alienation of the properties, it is not open for the plaintiff to state that an embargo against such alienation is void. The question of restriction on alienation would not even arise if we keep in mind the very nature of the right/interest that is transferred viz., life interest. A transfer of life interest by its very nature does not take within its ambit the right to transfer for what is conveyed is a limited interest in the form of life interest/ estate. It may also be relevant to bear in mind that one cannot transfer/convey a better title than what one owns /possesses. Section 10 of the Transfer of Property Act would thus have no application to transfer of life estate.

13. Section 10 of the Transfer of Property Act is intended to apply to only such of those transfers where the right that is transferred, carries with it the right to alienate as a necessary incident rather constitutes an inherent part of the nature of the transfer, but the agreement/contract contains a condition restricting alienation. It is in such circumstances and in respect of such transactions that the statutory declaration of voidity of the condition against alienation, would get attracted. In the case at hand, Section 10 of the Transfer of Property Act does not get attracted to the transaction which does not result in absolute transfer of title, wherein right to transfer is not a



necessary incident or an inherent part of such transfer. Thus, the 1957 settlement deed insofar as it only conveys a life interest to Ambigainathan, would not attract Section 10 of the Transfer of Property Act.

14. That apart, the construction of the 1957 settlement deed and Section 10 of Transfer of Property Act, as suggested by the plaintiff, cannot be approved for the following reasons viz.,

(a) Construction resulting in rewriting the Settlement Deed - Impermissible:

A life interest under a settlement deed cannot be converted into transfer of ownership for that would amount to rewriting the contract which is impermissible. In this regard, it may be useful to refer to the following judgments:

(i) SBI v. Arvindra Electronics (P) Ltd. [(2023) 1 SCC 540]:

"Even otherwise as rightly submitted on behalf of the Bank directing the Bank to reschedule the payment under OTS would tantamount to modification of the contract which can be done by mutual consent under Section 62 of the Contract Act. By the impugned judgment and order rescheduling the payment under the OTS Scheme and granting extension of time would tantamount to rewriting the contract which is not permissible while exercising the powers under Article 226 of the Constitution of India."
(emphasis supplied)



(ii) Shree Ambica Medical Stores v. Surat People's Coop. Bank Ltd. [(2020) 13 SCC 564]:

"23. To hold to the contrary would be rewriting the agreement between the parties and creating a fresh contract to which the parties had not agreed."
(emphasis supplied)

(iii) Oriental Structural Engineers (P) Ltd. v. State of Kerala, [(2021) 6 SCC 150 :

"18. Such an exercise on the part of the Arbitration Court and the appellate court would constitute rewriting the contract, which is impermissible."
(emphasis supplied)

(b) Right to Property includes Right to Dispose:

Section 10 of the Transfer of Property Act, if it were to be understood as resulting in transforming a grant of limited life interest into an absolute transfer in the property on the premise that the restriction on the right to alienate is void, it may well be vulnerable to challenge. We say so for the reason that the property has several facets including the right to dispose of the same in the manner in which the owner intends. The contention put forth by the plaintiff would result in transfer of a limited life estate getting converted/ metamorphorsised into a transfer of absolute ownership, which the owner of the property never intended to transfer in favour of the person to whom a limited life estate was intended to be conveyed, while transferring the ownership to some other party. The above contention would impinge on the rights guaranteed under



Article 19(1)(f) read with Article 31 as it then existed and presently, Article 300 A of the Constitution of India. In this regard, it may be useful to refer to the following judgments of the Hon'ble Supreme Court to appreciate the incidents/facets of ownership of property:

(i) Jilubhai Nanbhai Khachar v. State of Gujarat [1995 Supp (1) SCC 596 at page 624]

“42. Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word ‘property’ connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law. In Ramanatha Aiyar's The Law Lexicon, Reprint Edn., 1987, at p. 1031, it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have. The term property has a most extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land. In Dwarkadas Shrinivas case [1950 SCC 833 : 1950 SCR 869 : AIR 1951 SC 41] this Court gave extended meaning to the word property. Mines, minerals and quarries are property attracting Article 300-A.”

(ii) Laljibhai Kadvabhai Savaliya v. State of Gujarat, (2016) 9 SCC 791 :

“22. As laid down by this Court in Jilubhai Nanbhai Khachar [Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596] , the term “property” in legal sense means an aggregate of rights which are guaranteed and protected by law and would extend to entirety or group of rights inhering in a person. It was observed by this Court as under : (SCC pp. 624-25, para 42)

“42. Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in



every legal way, to possess it, to use it, and to exclude everyone else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word “property” connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law. In Ramanatha Aiyar's *The Law Lexicon*, Reprint Edn., 1987, at p. 1031, it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have. The term “property” has a most extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land.”

15. It is thus clear that the contention of the learned counsel for the appellant / plaintiff that the clause on restrictions of the power of alienation of Ambigainathan, who was conveyed only with life interest vide settlement deed dated 09.12.1957, would be hit by Section 10 of the Transfer of Property Act, is without basis and unsustainable. It is an attempt in vain to circumvent Order 7 Rule 11 of CPC under the guise of raising a question of law on the construction of Section 10 of the Transfer of Property Act, which we find is spurious, preposterous, mere bluster, illusory and would be hit by Order 7 Rule 11 of CPC as being manifestly vexatious. In this regard, it may be useful to refer to the following judgments:

i) T. Arivandandam v. T.V. Satyapal, reported in (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 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 law suits.”

(emphasis supplied)

ii) Sopan Sukhdeo Sable v. Charity Commr., reported in (2004) 3 SCC 137]:

“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 complaint 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 complaint 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.”

(emphasis supplied)

iii) Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174:

“7. The complaint 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 complaint only. If on an entire and meaningful reading of the complaint, 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.

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(emphasis supplied)

iv) 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.”

Barred by limitation:

16. We also find that the plaintiff would not have the *locus* to question the settlement deed as found by the learned Judge. The plaintiff ought to have challenged the 1957 settlement deed within three years of attaining majority in view of the fact that they were minors, when the settlement deed was executed, which has not been done by the plaintiff. Apparently, the plaintiff, conscious of the limitation in not challenging the settlement deed executed in 1957 and to circumvent the same, has challenged the settlement deed dated 27.02.2020 executed in favour of the 4th defendant by his father, the 1st defendant (deceased), which cannot be sustained in the absence of a challenge to the 1957 settlement deed. In this regard, it may be relevant to refer to Article 59 of the Limitation Act 1963, and the observation of the Hon'ble Supreme Court in *Raj Narain Saris (dead) through Lrd. and others v. Laxmi Devi and others [(2002) 10 SCC 501]*



and the same reads as under:

Article	Description of Suits	Period of limitation	Time from which period begins to run
59.	To cancel or set aside an instrument or decree or for	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled to set aside or the contract rescinded first become known to him.
60	To set aside a transfer of property made by the guardian of a ward – (a) by the ward who has attained majority (b) by the ward's legal representative – i) When the ward dies within three years from the date of attaining majority. ii) When the ward dies before attaining majority.	Three years Three years Three years	When the ward attains majority. When the ward attains majority When the ward dies.

a. Raj Narain Saris (dead) through Lrd. and others v. Laxmi Devi and others [(2002) 10

SCC 501]:

“7. As noticed above, the learned Single Judge of the Allahabad High Court though elaborately laid down the requirement of Order 7 Rule 11 and the true effect thereof, but in our view, totally misread and misapplied the provision in the contextual facts. No explanation whatsoever is available on the plaint as to the situation under which the suit was filed after about a long period of 40 years. The knowledge of the deed of sale stands accepted by reason of the averment in the plaint itself (vide para 9 of the plaint).

8. On an analysis of the plaint, apart from there being a mere bald statement that the sale deed has nothing to do with the rest of the area i.e. 6 bighas 13 biswas and the bungalows built thereon which stand to be owned and possessed by the plaintiff and prior to him by Munni Lal, there is no other



averment tracing the title for 6 bighas and 13 biswas. Admittedly, several portions of the plot stood demarcated as being 3 bighas 13 biswas and the other being 6 bighas 13 biswas; whereas there is no dispute as regards 3 bighas 13 biswas but the conferment of title on to the plaintiff as regards 6 bighas 13 biswas is not available in the plaint itself. The plaint is totally silent on that score, though, however, the existence of the deed of sale noticed above stands accepted by the plaintiff. The litigation, in our view, cannot but be termed to be utterly vexatious and abuse of the process of court, more so by reason of the fact that the deed of sale being executed as early as 1941 stands unassailed for a period of over 50 years. The decision of this Court in T. Arivandandam [(1977) 4 SCC 467 : AIR 1977 SC 2421] has its due application and having regard to the decision as noticed above and upon consideration of the relevant provisions as engrafted in the Code itself, we have no hesitation in accepting the order of the learned Additional District Judge. The High Court obviously fell into a manifest error and as such this appeal is allowed. The order of the High Court stands set aside. The order of the learned Additional District Judge stands restored. No order as to costs.”

(emphasis supplied)

b. C.S.Ramasamy vs. Nanjammal and others reported in (2022) SCC Online SC 1330:

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

(emphasis supplied)



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16.1. Thus, we agree with the learned Judge that the failure to challenge the 1957 settlement deed for more than 5 decades renders the suit barred by limitation, apart from the fact that the litigation as found supra is vexatious, thereby attracting Order VII Rule 11 of CPC.

17. For all the above reasons, the order of the learned Judge rejecting the plaint under Order VII Rule 11 of CPC as being vexatious and barred by limitation, does not warrant any interference by this court. Accordingly, both the Original Side Appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]

24.07.2023

Index: Yes/No
Speaking /Non speaking order
Neutral Citation: Yes/No
mka/shk



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O.S.A. Nos.310 and 311 of 2022

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

mka/shk

O.S.A.Nos.310 and 311 of 2022
and
C.M.P.No.21746 of 2022

24.07.2023