



C.R.P.No.4690 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 16.02.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.4690 of 2017
and C.M.P.No.22057 of 2017

L.Gautamchand Jain

... Petitioner

Vs.

1. J.Devasagayam
2. S.Ramesh
3. R.Natraj (Died)

4. The Sub-Registrar
Sowcarpet,
Chennai – 600 079.

5. The Sub-Registrar
Tiruporur,
Chengleput District.

6. Rajeswari

7. Mudhra

8. Gayathri

R6 to R8 brought on record
as legal heirs of the deceased
third respondent viz., R.Natraj
vide order dated 16.02.2023
made in C.M.P.Nos.1741,
1750 & 1765 of 2023 in
C.R.P.No.4690 of 2017)

... Respondents



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Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 31.10.2017 made in I.A.No.938 of 2014 in O.S.No.184 of 2013 on the file of the District Munsif Court of Chengalpattu by allowing the Civil Revision Petition.

For Petitioner : Mr.N.Manokaran
For Mr.Ilayaperumal

For Respondents
R1 : Notice served
For R2 : Mr.L.Dhamodaran
For R3 : Died
For R4 & R5 : Mr.C.Sathish
Government Advocate
For R6 to R8 : Not ready in notice

ORDER

The Civil Revision Petition has been filed as against the fair and decreetal order dated 31.10.2017 passed by the learned District Munsif, Chengalpattu, in I.A.No.938 of 2014 in O.S.No.184 of 2013, thereby dismissing the petition filed by the petitioner for rejection of plaint.

2. The petitioner is the first defendant and the first respondent is the plaintiff. The first respondent filed suit as against the petitioner and other respondents herein for declaration declaring that the Power of



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Attorney was fraudulently executed in favour of the petitioner herein and registered vide Document No.128 of 1994 is null and void and to declare the sale deed dated 29.12.2006, registered vide document No.1163 of 2006 and the sale deed dated 31.03.2012 vide document No.3866 of 2012 are null and void along with the subsequent prayer of permanent injunction restraining the petitioner and other respondents not to alienate the suit properties pending disposal of the suit. While pending the suit, the petitioner herein filed petition for rejection of plaint under Order VII Rule 11 of C.P.C., and the trial Court dismissed the same as against which the present Civil Revision Petition.

3. The learned counsel appearing for the petitioner submitted that the first respondent himself admitted that the cause of action which was arose for the present suit as early as in the year 1995, 2000 and 2004. Therefore, the suit itself barred by limitation. The case of the first respondent is that only after obtaining encumbrance certificate by him, he came to understand about the alleged power of attorney and the subsequent sale deeds in respect of the suit properties. Whereas the power of attorney



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revealed that the first respondent is not the applicant to the encumbrance certificate and it was obtained by some other person. Therefore, there was no cause of action to file suit and the suit itself barred by limitation, since it was not filed within a period of three years from the first cause of action arose.

3.1. He further submitted that the suit has been valued under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 (herein after referred to as “the Court Fees Act”) and not under Section 27(c) and Section 25(d) of the the Court Fees Act. The suit itself not valued property and paid deficit Court fee. The first respondent executed power of attorney in favour of the petitioner in the year 1994 registered vide document No.128 of 1994. On the strength of the power of attorney, he executed sale deed in the year 2006. Subsequently, the purchaser executed the sale deed in the year 2012. The first respondent failed to file any suit within a period of three years and as such the provisions under Articles 58 & 59 of the Limitation Act are clearly applicable and the suit is liable to be rejected.



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3.2. In support of his contention, he relied upon the following reported judgments :-

(i) 2020(7) SCC 366 – Dahiben Vs. Arvinbhai Kalyanji Bhansali & ors

(ii) 2020 (16) SCC 601 – Raghwendra Sharan Singh Vs. Ram Prasana Singh

(iii) 2022 SCC Online SC 1330 – C.S.Ramasamy Vs. V.K.Senthil & others

(iv) 2022 (1) MWN 340 – V.Kumar & anr Vs. R.Natarajan & ors

(v) CDJ 2021 MHC 1357 – Syed Abdul Haleem & anr Vs. Rajarathinam constructions

4. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner, Mr.L.Dhamodaran, learned counsel for the second respondent and Mr.C.Sathish, learned Government Advocate appearing for the respondents 4 & 5. Though notice served to the first respondent and his name printed in the cause list, no one is appearing before this Court either by person or through pleader.



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5. The first respondent filed suit for declaration and permanent injunction in respect of the suit property. The first respondent averred that he owned the suit property and the same was purchased by the two sale deeds dated 22.04.1980 registered vide document Nos.531 & 532 of 1980. He was in dire need of emergent family requirements, as such he borrowed a sum of Rs.50,000/- from the petitioner on submitting original documents as security. In the year 1995, the first respondent met the petitioner and paid the interest for the loan borrowed by him.

6. It is further averred that though the first respondent requested the petitioner to provide loan account details and tendering payment towards clearance of the pending due, the petitioner informed him that he would consult with other persons with regard to interest and inform. Again in the year 1999, 2000 and 2004, the first respondent paid a sum of Rs.4,00,000 towards the clearance of interest and principal amount pending due on the loan. Even then, the petitioner failed to furnish any loan detail. Therefore, the first respondent visited the petitioner and he could not even meet the first respondent since he is big financier having local influence in



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addition to money and muscles power. Therefore, he applied for encumbrance certificate in respect of suit property and found that in the year 1994 itself, the petitioner fabricated power of attorney and on the strength of the power of attorney, he executed sale deed in favour of the second respondent on 29.12.2006. In turn, the second respondent herein had executed sale deed in favour of the third respondent herein on 31.03.2012. Immediately, he filed the present suit for declaration and injunction.

7. The only point for consideration is that whether the suit is barred by limitation or not?

8. On a perusal of encumbrance certificate dated 26.11.2012 produced by the first respondent revealed that it was applied by one D.Jayaseelan Paiyanoor and not by the first respondent herein. Whereas, the specific case of the first respondent is that he applied for encumbrance certificate and only after seeing the encumbrance certificate, he came to understand about the power of attorney and other sale deeds. Therefore, he filed suit on 20.06.2013 that too after the period of seven months, from the



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date of encumbrance certificate.

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9. Further the first respondent also executed confirmation letter and on receipt of the money on the very same day viz., the date of power of attorney viz., 26.04.1994 and it revealed that the first respondent categorically admitted that he had executed general power of attorney in favour of the petitioner. The power of attorney was executed after receipt of the entire payment as sale consideration. Therefore, there was no cause of action arose for filing the present suit, since it is barred by limitation.

10. It is also found that the suit is manifestly vexatious and without any merit and does not disclose a right to sue. Therefore, the petitioner rightly filed petition for rejection of plaint under Order VII Rule 11 of C.P.C. The said provision requires that whether the plaint discloses a real cause of action or something purely illusory. The Hon'ble Supreme Court of India and this Court repeatedly held that the law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint. However, by clear drafting of



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the plaintiff, it has created the illusion of a cause of action, it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression and determine whether the litigation is utterly vexatious and an abuse of the process of the Court.

11. That part, the time limit for institution of suit for declaration is three years. If the suit is not covered by any specific article, then it would fall within the residuary article. Article 58 and 59 of the Limitation Act, prescribe the period of limitation for filing a suit where a declaration is sought or cancellation of an instrument or rescission of a contract. As per Article 58 of the Limitation Act, to obtain any declaration the period of limitation is three years. The time from which period begins to run when the right to suit first accrues. As per Article 59 of the Limitation Act, to cancel or set aside an instrument or decree or for the rescission of a contract, the limitation period is three years. The time from which period begins to run, when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.



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12. The Hon'ble Supreme Court of India in the case of ***Khatri Hotels (P) Ltd., Vs. Union of India*** reported in **2011 (9) SCC 126**, held that use of the word 'first' between the words sue and accrued, would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.

13. In the case on hand, admittedly the first respondent had executed confirmation letter cum receipt dated 26.04.1994 and admitted that he had executed power of attorney in favour of the petitioner herein on receipt of the entire sale consideration. If at all the first respondent had any grievances and if the same was fraudulently executed in favour of the petitioner, the first respondent ought to have file suit challenging the said Power of Attorney within a period of three years from the date of such document or came understand that the same was fraudulently executed in



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favour of the petitioner herein.

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14. On a perusal of the entire averments made in the plaint, the cause of action arose in the present suit only after seeing the encumbrance certificate and the first respondent came to understand about the alleged power of attorney. As stated supra, the encumbrance certificate was not obtained by the first respondent and it was obtained by one D.Jayaseelan Paiyanoor. In order to file suit, the plaint has been cleverly drafted thereby created illusory cause of action. Therefore, it is nothing but vexatious suit and an abuse of process of Court and it should be nipped in the bud, since the suit itself barred by limitation under Articles 58 & 59 of the Limitation Act.

15. In view of the above discussions, the plaint in O.S.No.184 of 2013 cannot be sustained and it is liable to be rejected and this Court has no hesitation to interfere with the order passed by the Court below. Accordingly, the order dated 31.10.2017 passed by the learned District Munsif, Chengalpattu, in I.A.No.938 of 2014 in O.S.No.184 of 2013, is



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hereby set aside. The application filed in I.A.No.938 of 2014 is allowed and the plaint in O.S.No.184 of 2013 is rejected.

16. In the result, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

16.02.2023
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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order

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To

1. The District Munsif Court
Chengalpattu.



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