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OSA Nos.319, 320 and 321 of 2022.

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 07.06.2023

CORAM

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

Original Side Appeal Nos. 319, 320 and 321 of 2022

Anand Pradeepkumar Fredrick

.. Appellant in all appeals

Versus

1. Mr. Gunasekaran Victor Devasahayam
2. Mrs. Minnie R. Fredrick
3. Mrs. Reena Jebamoni
4. Ms. Aruna Ezekial
5. Mr. Bennet Ezekiel

.. Respondents in all appeals

O.S.A. No. 319 of 2022:- Appeal filed under Order XXXVI Rule II of the Original Side Rules read with Clause 15 of the Letters Patent against the Order dated 04.11.2022 passed in Application No. 3533 of 2022 in C.S. No. 76 of 2022.

O.S.A. No. 320 of 2022:- Appeal filed under Order XXXVI Rule II of the Original Side Rules read with Clause 15 of the Letters Patent against the Order dated 04.11.2022 passed in Application No. 3215 of 2022 in C.S. No. 76 of 2022.



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O.S.A. No. 321 of 2022:- Appeal filed under Order XXXVI Rule II of the Original Side Rules read with Clause 15 of the Letters Patent against the Order dated 04.11.2022 passed in C.S. No. 76 of 2022.

For Appellant : Mr. S.R. Rajagopal, Senior Advocate
for M/s. Achari & Antony Associates
in all the Original Side Appeals

For Respondents : Mr. A.K. Karunakaran for R1

Mr. C.R. Prasanan for R2
in all the Original Side Appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.MAHADEVAN, J**)

The appellant herein is the plaintiff in the suit in C.S.No.76 of 2022 and the respondents herein are the defendants therein. For the sake of convenience, the parties to these appeals are referred to as per their litigating status in the said suit.

2. O.S.A. No. 319 of 2022 is filed by the plaintiff against the Order dated 04.11.2022 passed in Application No. 3533 of 2022 in C.S. No. 76 of 2022.

3. O.S.A. No. 320 of 2022 is preferred against the Order dated 04.11.2022 passed in Application No. 3215 of 2022 in C.S. No. 76 of 2022.



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4. The other appeal in O.S.A. No. 321 of 2022 is filed against the Order dated 04.11.2022 passed in C.S. No. 76 of 2022.

5. Thus, all these appeals are filed by the plaintiff as against the common order dated 04.11.2022 passed by the learned Judge, by which the applications filed under Order VII Rules 1 and 2 by the defendants 1 and 2 were allowed and resultantly, the suit filed by the plaintiff was rejected on the ground that there is no cause of action to institute it.

6. For the purpose of disposal of these appeals, the averments in the plaint are necessary to be looked into.

7.(i) According to the appellant / Plaintiff, he is the son of the second defendant. The first defendant is his maternal uncle. The third defendant is the maternal aunt of the plaintiff. The fourth and fifth defendants are his nephew and niece respectively. It is stated by the plaintiff that the plaint described property was originally purchased by his grandfather Mr. J.A. Devasahayam in the name of his grandmother Mrs. Martha Devasahayam. Mr. J.A. Devasahayam died leaving behind his wife Mrs. Martha Devasahayam, the defendants 1 to 3 and



Mrs. Jean Ezekial as his legal heirs. The Plaintiff was born to the second defendant on 15.09.1964 and he was the first grandson of the family. On 06.02.1991, Mrs. Jean Ezekial died leaving behind the defendants 4 and 5 to succeed to her estate.

(ii) The plaintiff further stated that his grandfather Devasahayam and grandmother Martha Devasahayam lived in an apartment at San Antonio, Texas, United States of America. His aunt Mrs. Jean Ezekial was living in an individual Bungalow at San Antonio, Texas, United States of America. After completing his schooling, the plaintiff pursued Engineering at University of Houston in Texas, United States of America particularly to take care of his grandparents at their old age. It is also stated that the plaintiff's grandfather died and therefore, after finishing his degree, the plaintiff and his grandmother returned to India where he spent maximum time with his grandmother till her death in the suit property. It is further stated that the plaintiff described property was purchased by his grandfather and it was the intention of his grandmother to settle her 1/3rd share in the said property to the plaintiff out of love and affection towards him. Even the defendants have also agreed to allot 1/3rd share of his grandmother in the plaintiff described property to the plaintiff and the balance was agreed to be shared by the defendants. While so, the plaintiff's grandmother was bed ridden,



at that time, she was 76 year old and had lost her memory as well as eye sight and for no reason, the plaintiff's mother prevented him from meeting the grandmother. Taking advantage of this situation, the defendants forged a Will dated 29.06.1989 said to have been executed by the plaintiff's grandmother and registered it in the office of Sub-Registrar, Purasawalkam as document No. 80 of 1989. Further, the first defendant created another unregistered forged Will dated 11.12.1991 to make it as if the entire property was allotted to him. It is also stated that subsequently, his grandmother Mrs. Martha Devasahayam died on 27.11.1996 at Chennai. After the death of his grandmother, the plaintiff has been residing at Delhi and looking after his business. The plaintiff however stays in the plaint described property whenever he comes to Chennai. While so, on 20.04.2022, few persons, referring themselves as broker or buyers visited the suit property. The Plaintiff was clueless as to what was their intention to visit the property. Subsequently, on 28.04.2022, one of the persons, who visited the property on 20.04.2022, again inspected the suit property. When the plaintiff enquired him, he informed him that he wants to purchase the property. When the plaintiff informed him that he has no intention to sell the property, the said person informed the plaintiff that the property stands in the name of the defendants and he has no manner of right over it. On further enquiry, on



29.04.2022, the plaintiff came to know about the order dated 07.08.2020 passed by this Court in TOS No. 8 of 2015 and TOS No. 9 of 2014. The Plaintiff also came to know that a decree has been obtained in TOS No. 9 of 2014 and TOS No. 8 of 2015 through a joint memo of compromise filed by the defendants herein. The Plaintiff also came to know that originally, OP No. 633 of 2001 was filed by the first defendant to probate the Will dated 11.12.1991 in which the plaintiff was not made as a party. Subsequently, the second defendant filed OP No. 732 of 2013 and it was converted into TOS No. 9 of 2014. Thereafter, the earlier OP filed by the first defendant in OP No. 633 of 2001 was also converted as TOS No. 8 of 2015.

(iii) According to the plaintiff, on going through the documents filed in the Testamentary Original Suit Nos. 9 of 2014 and 8 of 2015, he came to know that the Wills mentioned above have been sent to forensic examination and a report dated 18.01.2017 has been submitted stating that the signatures in the Wills vary and they were not signed by one and the same person. Thus, the defendants colluded among themselves and created bogus Wills to defeat his property rights. Even otherwise, the plaintiff's grandfather Devasahayam purchased the plaintiff described property out of his hard earned money and therefore, his grandmother may not have absolute right to execute a Will for the



entire property. At the most, the plaintiff's grandmother can only have 1/3rd right or share in the plaint described property and therefore, the Wills created by the defendants have to be declared as null and void. Therefore, the plaintiff filed the suit for the following relief:

- (i) *To pass a preliminary decree of partition by allotting 1/3rd share of deceased Martha Devasahayam in the schedule mentioned property by metes and bounds to the plaintiff as has been agreed by oral partition by the deceased Martha Devasahayam and family members*
- (ii) *to declare the Will dated 29.06.1989 registered as document No. 80 of 1989 on the file of SRO, Purasawalkam as null and void and without authority*
- (iii) *to declare the unregistered Will dated 11.12.1991 as null and void and without authority*
- (iv) *to declare the Memorandum of compromise dated 14.07.2020 entered among the defendants in the TOS No. 8 of 2015 and TOS No. 9 of 2014 and the consequential order dated 07.08.2020 in the TOS No. 8 of 2015 and TOS No. 9 of 2014 as collusive, not binding on the plaintiff, null and void*
- (v) *to grant the cost of the suit*

8. Pending suit, the plaintiff has also filed Application No. 278 of 2022 in C.S. No. 76 of 2022 praying to grant an ad-interim injunction restraining the respondents/defendants from alienating or encumbering the suit schedule mentioned property pending disposal of the suit.

9.(i) On notice, the first defendant has filed a counter affidavit in Original Application No. 278 of 2022 in C.S. No. 76 of 2022 filed by the plaintiff. According to the first defendant, the plaint averments relating to purchase of the suit property by Late. J.A. Devasahayam itself is false. On the



other hand, the property was purchased by Mrs. Martha Devasahayam in her name. Till her life time, the property stood in the name of Mrs. Martha Devasahayam and therefore, the averment that Late. Devasahayam purchased the plaintiff described property is incorrect. Mrs. Martha Devasahayam was employed as a Teacher and she possessed sufficient means to purchase the plaintiff described property with her own funds.

(ii) The first defendant further averred in the counter affidavit that after returning from United States of America, late. Martha Devasahayam and her husband Late. Devasahayam lived in the suit property along with the second defendant. At that time, the plaintiff was a student and he himself was dependent upon his parents. After the plaintiff left for United States of America, he never resided in the suit property and even his parents moved to their own house in Harleys Road during the year 1986. Therefore, from 1986, it was the first defendant who lived in the suit property along with his parents. While Mr.Devasahayam died on 24.09.1992, Mrs. Martha Devasahayam died on 27.11.1996. After their death, the first defendant is in exclusive possession of the suit property. Further, Mrs. Martha Devasahayam had no intention to settle her 1/3rd share in the suit property. The fact remains that Mrs.Martha Devasahayam is the exclusive owner of the property and therefore, the question of settling



1/3rd share itself will not arise. There was no oral partition or agreement to settle the 1/3rd share property of Mrs. Martha Devasahayam to the plaintiff and the plaintiff is put to strict proof of this allegation.

(iii) The first defendant further stated that on 29.06.1989 and 11.12.1991, the mother of the first defendant Mrs. Martha Devasahayam executed two Wills out of her own free will and there was nothing to disbelieve the same. While so, in the year 2022, the plaintiff has filed the present suit with wild allegations about the genuineness of the Will. The TOS No. 8 of 2015 and TOS No. 9 of 2014 were filed without impleading the plaintiff because the plaintiff was not a class I legal heir of late. Mrs. Martha Devasahayam. The plaintiff, if at all has any right in the suit property, ought to have taken steps for mutating his name in the public records, but he failed to do so. In any event, the suit has been filed with inordinate delay. The allegation that the forensic experts opined that the signatures in the Will vary is concocted. In the Testamentary Original Suit proceedings, no expert was appointed by the Court and the question of the expert submitting a report does not arise. The probate proceedings were initiated by the third defendant in respect of an earlier Will dated 29.06.1989 and it was the subject matter of OP No. 732 of 2013 (TOS No. 9 of 2014). Due to advanced age of the first defendant and his sisters, a



compromise was agreed, based on which, a decree was passed. The Plaintiff was fully aware that he was not a beneficiary under any of the Wills executed by Mrs. Martha Devasahayam. The suit is frivolous and vexatious and therefore it is not maintainable. There is no collusion among the family members in obtaining a decree in the testamentary proceedings. The Plaintiff has no *locus standi* to question or interpret the agreement between the family members to enter into a Memorandum of Compromise. Therefore, the first defendant prayed for dismissal of the application for interim injunction.

10.(i) The second defendant/mother of the plaintiff has filed a separate counter affidavit in the application in O.A. No. 278 of 2022 in C.S. No. 76 of 2022 filed by the plaintiff for grant of ad-interim injunction pending suit. In the counter affidavit, among other things, it was stated that the plaintiff is not a legal heir or lineal descendant of the deceased Mrs. Martha Devasahayam. As far as the suit property is concerned, the plaintiff can only be regarded as a stranger, who has no right, title or interest over the same. Her mother Mrs. Martha Devasahayam is the owner of the property in question and she had executed the Will dated 29.06.1989 whereby the property was bequeathed in favour of all her children namely the defendants 1 to 4. Even in the TOS No. 9 of 2014 and TOS No. 8 of 2015, a Compromise was entered into between the legal



heirs over which the plaintiff cannot have any grievance. It was also reiterated by the second defendant that her mother Mrs. Martha Devasahayam alone purchased the suit property under the sale-cum-mortgage deed dated 04.11.1954 executed by Board of Trustees for improvement of City of Madras, a body corporate constituted under the provisions of the Madras City Improvement of Trust Act, 1950 through its Chairman, having office at No.33, Mount Road, Madras - 600 015 and it was also registered as document No. 2496 of 1954. As per the said document, Mrs.Martha Devasahayam paid the sale price by instalments and she was the absolute owner of the suit property. While so, the allegation that the suit property was purchased by her father Devasahayam is absolutely false and frivolous.

(ii) As regards the alleged oral agreement that 1/3rd share of Mrs.Martha Devasahayam will be conveyed to the plaintiff, it was stated by the second defendant that there was no such oral arrangement at all. The Plaintiff has filed the frivolous suit only on the basis of the so-called oral understanding and therefore, the suit itself is not maintainable. When the plaintiff has pleaded oral partition or agreement to convey the property to him, it is for him to substantiate the same by oral and documentary evidence. Even assuming that there was any such oral agreement, Mrs. Martha Devasahayam died on



27.11.1996 and such oral agreement has to be enforced within three years of her death. However, the plaintiff has not taken any steps in that direction and therefore, the suit is barred by limitation and on that ground also, it is liable to be rejected.

(iii) The second defendant/mother of the plaintiff in the counter has further stated that the plaintiff has no *locus standi* to challenge the correctness of the compromise decree entered into between the defendants herein in the Testamentary Original Proceedings and it is barred under Order 23 Rule 3 of CPC. The suit is also not maintainable as per the judgment of the Honourable Supreme Court in **Triloki Nath Singh vs. Anirudh Singh through legal representatives and others** reported in **2020 (6) Supreme Court Cases 629** as well as **Sree Surya Developers and Promoters vs. N. Sailesh Prasad and others** reported in **2022 (5) Supreme Court Cases 376**. In any event, the plaintiff is not a class I legal heir and he is not entitled to maintain the present suit by laying a claim for right, title or interest in the suit property.

(iv) As regards possession, the first defendant was in possession of the property since 1986 and the plaintiff was never in possession of the same after 1986. When he is out of possession, the court fee paid under Section 37 (2) of the Tamil Nadu Court Fees and Suit Valuation Act is improper and the court fee



ought to have been paid under Section 37 (1) of the said Act. Therefore, on the ground of improper payment of court fee by the plaintiff, the suit is liable to be dismissed under Order VII Rule 11 of CPC.

(v) The second defendant further stated in the counter affidavit that the suit property was purchased by her mother and not by her father, as contended by the plaintiff. Further, the allegation that the plaintiff was very close to her parents and he had spent time with them at United States of America is false. On the other hand, the plaintiff joined the Engineering Course in Coimbatore during the year 1982 and thereafter he joined Anna University, Guindy, Chennai. Subsequently, he went to United States of America in the year 1986 and stayed in a paid accommodation which was 300 kilometers away from the resident of her parents. Even before leaving India to United States of America, the plaintiff never stayed in the suit property. When the parents of the second defendant went to United States of America in the year 1972, the plaintiff was only 8 years old. Even otherwise, the plaintiff stayed in United States of America only for 2 years and he had never taken care of his grandparents (parents of the second defendant) between 1984 and 1986. After the death of Devasahayam, the father of the second defendant, plaintiff and his mother Mrs. Martha Devasahayam never lived in the suit property. On the other hand, the first defendant along with



his family were staying in the suit property from 1986 and taken care of her mother Mrs. Martha Devasahayam.

(vi) As regards the validity of the Wills dated 29.06.1989 and 11.12.1991, the second defendant would state that there is no collusion among the defendants in getting the Will dated 29.06.1989 executed by Mrs. Martha Devasahayam, as alleged by the plaintiff. The Will was registered in the office of the Sub-Registrar, Purasawalkam and it is a genuine Will. As regards the unregistered Will dated 11.12.1991, it is stated by the second defendant that the same had not been executed by Mrs. Martha Devasahayam in favour of the first defendant by superseding the earlier Will dated 29.06.1989 and therefore, the Testamentary Original Proceedings was contested by the second defendant. It was contended that the signature in the unregistered Will dated 11.12.1991 of Mrs. Martha Devasahayam is forged. However, ultimately, a compromise has been entered into between the parties and as per the compromise, the properties have been allotted to each of the sharers.

(vii) As regards the opinion of forensic expert, it was done to show that the Will dated 11.12.1991 is forged. This document was filed in the TOS No. 9 of 2014 and TOS No. 8 of 2015, however, during trial in the suits, the parties have arrived at a compromise. The Plaintiff is in no way connected with the



testamentary original proceedings and he has no right to question the compromise entered into between the parties. When the property in question was purchased by mother of the defendants 1 and 2, the plaintiff, being the grand son and class II legal heir, cannot claim any right over the same when the Class I legal heirs are very much available. In any event, the suit was filed mainly on the basis of the plea that Mrs. Martha Devasahayam had orally assured the plaintiff to convey her 1/3rd share in the plaint described property. However, during the life time of Mrs. Martha Devasahayam, no such assurance was ever given to the plaintiff. Therefore, the foundation, based on which the suit was instituted itself is false and consequently, the second defendant prayed for dismissal of the application for ad-interim injunction.

11. (i) Notwithstanding the filing of the counter affidavit filed in the application filed by the plaintiff for ad-interim injunction, the first defendant has also filed an Application No. 3215 of 2022 in C.S. No. 76 of 2022 under Order VII Rule 11 of the Code of Civil Procedure (in short, "the CPC") to reject the plaint on the ground that it does not disclose a cause of action. In the application for rejecting the plaint, among other things, it was stated that the mother of the first defendant Mrs. Martha Devasahayam was holding the post of Deputy Inspector of Schools, Madurai District. After her husband Devasahayam got



employment in Chennai, Mrs. Martha Devasahayam also moved to Madras with the family and worked as a Senior Teacher in Presidency Girls High School, Egmore from 1949 till her retirement. During the year 1972, the parents of the first defendant went to United States of America where his father was teaching Mathematics at a College. Thereafter, in the year 1986, they returned to India and stayed in the suit property along with the second defendant/mother of the plaintiff for some time. Subsequently, the second defendant/mother of the plaintiff left the suit property and the first defendant along with his family stayed in the suit property and continue to remain in possession even as on the date of filing the suit.

(ii) The first defendant denied the allegation that the suit property was purchased by his father Devasahayam in the name of his mother Mrs. Martha Devasahayam. The suit property was purchased by Mrs. Martha Devasahayam and therefore she is competent to execute the Wills dated 29.06.1989 and 11.12.1991. As per the Will dated 29.06.1989, the property was to be shared between the first defendant and his siblings, whereas, in the subsequent Will dated 11.12.1991 the entire property was bequeathed in favour of the first defendant. Therefore, the first defendant, in order to probate the Will initiated the probate proceedings and later it was converted into testamentary original



proceedings. Ultimately it ended in compromise among the legal heirs of Mrs.Martha Devasahayam and it was acted upon.

(iii) The first defendant also denied the allegation that the plaintiff was in possession of the suit property on 20.04.2022 when unknown persons told him that the property is for sale. According to the first defendant, the plaintiff was not in possession of the suit property at all. Further, the plaintiff had a strained relationship with his mother/second defendant and his brother Arun Fredrick for the past few decades and they are not in good terms. In order to wreck vengeance, the plaintiff has filed the vexatious suit. The suit has been filed to harass the defendants, who are in their advanced age. The suit has been filed only to arm-twist and browbeat the defendants to come to terms. There is no cause of action for instituting the present suit. The foundation for the plaintiff to file the suit is that there was an oral partition during which it was agreed that the 1/3rd share of Mrs. Martha Devasahayam will be given to him. On the other hand, there was no such arrangement or agreement between the parties. Further, Mrs. Martha Devasahayam was the exclusive owner of the property and the question of she having only 1/3rd share in the property itself is imaginary. The plaint does not disclose a cause of action besides it is grossly undervalued and is hit by Order VII Rule 11 (a) and (b) of CPC. Therefore, the first defendant



prayed for rejecting the plaint filed by the plaintiff.

12. Similar application for rejecting the plaint was filed by the second defendant/mother of the plaintiff in Application No. 3533 of 2022 in C.S. No. 76 of 2022. According to the second defendant, the plaintiff is not the lineal descendant of the first degree of the deceased Martha Devasahayam, who executed the registered Will dated 29.06.1989 in favour of the defendants 1 to 4. The Will has been acted upon and the plaint described property has been divided into metes and bounds by virtue of a compromise decree dated 07.08.2020 passed in TOS No. 9 of 2014 and TOS No. 8 of 2015. While so, the plaintiff is not entitled for preliminary decree for partition of the plaint described property. When the plaintiff has not even produced the title deed to show that the property in question was purchased by his grandfather Devasahayam, he is not entitled to maintain the suit as per the decision of the Honourable Supreme Court in the case of **The Church of Christ Charitable Trust and Educational Charitable Society, run by its Chairman vs. Ponniamman Educational Trust, rep. by its Chairman/Managing Trustee** reported in **2012 (2) MWN Civil 662**. The admitted fact remains that the plaint described property was purchased by Mrs.Martha Devasahayam. As class I legal heirs, the defendants are entitled to a share in the suit property. The Plaintiff has instituted the suit on the



misconception that the property was purchased by grandfather Devasahayam in which Mrs. Martha Devasahayam is entitled to 1/3rd share, which she allegedly assured to transfer it in his favour. The foundation, based on which the suit has been instituted itself is improper and contrary to facts. When Mrs. Martha Devasahayam had executed a registered Will dated 29.06.1989, it supersedes all the claim made by the plaintiff. The testator Mrs. Martha Devasahayam died on 27.11.1996 and after her death, the Will has been acted upon and it culminated in passing the decree and Judgment dated 07.08.2020 passed in TOS No. 9 of 2014 and TOS No. 8 of 2015. Thus, there is no cause of action to institute the present suit. The present suit has been filed to defeat the rights of the defendants and to prevent them from enjoying the fruits of the compromise decree dated 07.08.2020. The suit has been filed only to harass the defendants. There is no merit in the plaint and it is liable to be rejected.

13.(i) The Plaintiff has filed a common counter affidavit in the applications filed by the defendants 1 and 2 to reject the plaint. According to the plaintiff, a trial in the suit alone will enable him to prove the averments made in the plaint. Further, the second defendant/mother, who is fully aware of all the happenings in the family, has to be cross-examined with many aspects. That apart, the defendants have to be cross-examined as to the manner in which the



Will came into existence, whether the Testator had executed the Will when she was not in a sound and disposing state of mind etc. When once the genuineness of the Will is put to challenge in the suit, the defence that a compromise has been entered into between the defendants and the Will has been acted upon and parties are in possession of the respective shares of the property allotted to them in the compromise, cannot be a ground to defeat the genuine claim of the plaintiff. Therefore, according to the plaintiff, there is a cause of action to file the suit and it requires examination during the trial.

(ii) As regards the oral assurance given by the plaintiff's grandmother Mrs. Martha Devasahayam to allot 1/3rd share in his favour, the plaintiff would state that he has no ill-intention to grab the property by instituting the suit. Since all the family members agreed for the plaintiff's grandmother to convey her 1/3rd share in the suit property to the plaintiff, he did not insist his grandmother to execute a deed to affirm it. Even though it was contended that the property in question was purchased by Mrs. Martha Devasagayam and not by the plaintiff's grandfather Mr. Devasagayam, it is stated that only during trial, it could be decided as to whether Mrs. Martha Devasagayam has the wherewithal and source of income to purchase the property or not. Once it is established that Mrs. Martha Devasagayam has no capacity to purchase the property, then the



Will relied on by the defendants have to be declared as null and void and the one executed without any authority. The Plaintiff also stated that his grandfather Mr. Devasahayam was the sole bread winner of the family and he was employed as Professor as well as Secretary and Head of the Automobile Association of India for South India besides engaged in some business. On the other hand, the plaintiff's grandmother Mrs. Martha Devasahayam was a school teacher with a very meagre income out of which she could not afford to purchase the suit property. Thus, if it is established that the property was purchased from and out of the income of Mr. Devasahayam, then, the right of the deceased Mrs. Martha Devasahayam to execute the Will could be questioned and consequently, the claim of the defendants on the basis of the Will has to fall to ground. Even otherwise, the plaintiff has filed the suit on the basis of an assurance to orally convey 1/3rd share in his favour by his grandmother Mrs. Martha Devasahayam. While so, the plaintiff must be permitted to lead evidence to prove this assertion. Thus, the plaintiff would only state that there is cause of action for filing the plaint and the averments made in the plaint will be proved during the course of trial. Accordingly, the plaintiff prayed for dismissal of the applications filed by the defendants 1 and 2 to reject the plaint filed by him on the ground that there is no cause of action to institute the suit.



14. Upon hearing the rival submissions, the learned Judge allowed the applications filed by the defendants 1 and 2 and rejected the plaint filed by the plaintiff by a common order dated 04.11.2022. The relevant portion of the order dated 04.11.2022 is extracted hereunder:

"22. To establish that the property was purchased by his grandfather which would also mean that the grandmother had no means to purchase the property, though it was purchased in her name, it was necessary that the plaintiff should produce a copy of the sale deed and file it as a document. He had not done so. The sale deed was a registered document.

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24. Thus, since the sale deed by which the property was purchased was through a registered document and registration had been completed in manner prescribed by the Indian Registration Act, 1908 and the instrument had been duly entered in the books kept under Section 51 of the Indian Registration Act, 1908 and correctly entered in the indexes kept under Section 55 of the Indian Registration Act, 1908 the plaintiff is deemed to have notice of the title and the manner in which the consideration was stated to have been paid as stated in the recitals of the said document. Even though it may not be proper for this Court to refer to the affidavit filed in support of the applications filed by the defendants still the fact had been admitted by the plaintiff in the counter filed to these applications that the grandmother was employed as a teacher, having income may be meagre, according to the plaintiff, but still income, at the relevant point of time. He had not disclosed the Sale Deed and had not filed a copy along with the plaint. More importantly, he had also not stated the dates of death of his grandfather and grandmother.

25. From the affidavit filed in support of the application No.3215 of 2022, it is seen that J.A. Devasahayam, father/grandfather of the plaintiff died on 24.09.1992 and Mrs.Martha Devasahayam, the grandmother died on 27.11.1996. It is also seen that the grandmother was a senior teacher in Presidency Girls High School, Egmore, from 1949 till her retirement. The grand parents went to USA in 1972 and returned in 1986. These dates alone are referred, since they are germane but not been disclosed by the plaintiff. The property was purchased in the year 1954. The consideration was paid in instalments. It was purchased in the name of the grandmother, since she had income to purchase the same. The plaintiff having notice of the registration should have produced the certified copy of the sale deed and having failed to do so, he must suffer the consequences there of.



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32. *The plaintiff's oral assertion that the grandfather paid the consideration cannot be countenanced in the teeth of the registered document, which he had deliberately suppressed.*

33. *The plaintiff had further placed reliance on Section 33 (a) of the Indian Succession Act, 1925. The said provision is as follows....*

34. *This provision can come into effect only when the deceased left behind a property, which property stood in his name. The property in the instant case, stood in the name of Mrs.Martha Devasahayam, the grandmother. Therefore, the provision can never be invoked at all.*

35. *Even otherwise, in the plaint it had been stated that there were talks of oral partition in the year 1987 and 1988. In those years, both the grandfather and the grandmother were alive. They could never have predicted that the grandfather would die first and the grandmother would die later, for the provision to be applicable even it is to be assumed that it would be applicable. It is for that reason that the plaintiff had suppressed the dates of their death.*

38. *Thus the plaintiff had come to Court with an illusion that in the year 1987 and 1988, the grand parents had decided that the grandfather would die first and that the grandfather had purchased the property and therefore, his wife / the grandmother would get 1/3 rd share and that the said 1/3 rd share should devolve on to the plaintiff. The entire case is false to the knowledge of the plaintiff.*

41. *In the instant case also the plaintiff has only caused an illusion. The learned counsel for the plaintiff, then shifted the case to one of questioning the compromise entered in the Testamentary and Original Suits by the parties. That compromise had been presented before Court. The Court by its judgment had examined the compromise and had come to a conclusion to put the compromise into effect.*

42. *The learned counsel placed reliance on a judgment of the Division Bench of the Calcutta High Court reported in AIR 2006 Cal 200, Uma Addhya Vs. Biren Mondal. It had been held as follows:*

"9. It is now settled law that the Probate Court is a Court of conscience and the duty of the Probate Court is only to adjudicate whether the Will in question was the last Will and testament of the deceased, whether the same was duly executed and attested, whether the same was executed without being vitiated by force, fraud, undue influence, etc. and whether the testator had the required mental capacity to execute the Will. Apart from those questions, a Probate Court cannot go into the question of title of the testator nor can the Court grant probate which is at variance with the terms of the Will.

11. In the case before us, the Probate Court after initial grant of probate being satisfied that there was just cause of revocation revoked the same and the Appellate Court, if satisfied



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that there was no such just cause, could set aside the order of revocation and in that case, the original probate would have revived. We have already pointed out that there was no argument on the merit but parties came to compromise and on the basis of compromise alone, the Court set aside the order of revocation without being satisfied whether the order of revocation was right or wrong. The procedure followed by the Division Bench was beyond the province of the Court dealing with an appeal against the order of revocation of grant."

43. *It had been held that the probate Court cannot go into the question of title and must give a finding on the genuinty or otherwise of the Will. Here while recording the compromise, a learned Single Judge of this Court had come to a conclusion that the property is divisible among all the legal heirs. I would affirm that particular finding.*

44. *The plaintiff is a stranger to the Memorandum of Compromise. He has no caveatable interest to the property. He has no right over the property. The only right he has is an illusory right. Unless he establishes that right over the property, he cannot come forward and question any other act.*

45. *The document produced by the plaintiff about the alleged fingerprint expert is of the year 2017. The plaintiff claimed that he was handed over documents only in April 2022. The said opinion is not binding on any Court. It is a self-serving opinion. It has to be proved in manner known to law, but the parties can be put to trial only if the plaintiff has a right over the property. Even if both the Wills are fraudulent in nature, still the property will devolve only according to natural succession among the legal heirs of the grandmother of the plaintiff and the plaintiff is not a legal heir.*

46. *It is for that reason, he had caused an illusion by placing reliance under Section 33(a) of the Indian Succession Act, 1925. Such claim is false. He has not produced the Sale Deed of the property. He has not even disclosed the dates of the death of his grand parents. He had stated that in the year 1987 and 1988 there was an oral partition. On that date, both the grand parents were alive. Nobody in the world would have known who would die first. The entire case of the plaintiff is based on falsity. The plaintiff does not deserve any consideration from this Court.*

47. *In the result,*

(i) *A.No.3215 of 2022 stands allowed.*

(ii) *A.No.3533 of 2022 stands allowed.*

(iii) *The suit is rejected against all the defendants since it does not disclose any cause of action.*

(iv) *With the hope that the relationship among the parties would mend for the better in future, I refrain from granting costs."*



15.(i) Mr. S.R. Rajagopal, learned Senior counsel appearing for the appellant / plaintiff submitted that the order passed by the learned Judge, rejecting the plaint filed by the plaintiff, is contrary to law. The learned Judge, rejected the plaint solely by relying on the averments in the applications filed by the defendants 1 and 2 for rejection of the plaint along with the documentary evidence filed therewith. In this context, the learned Senior counsel placed reliance on the decision of the Honourable Supreme Court in the case of **Soumitra Kumar Sen vs. Shyamal Kumar Sen and others** reported in **2015 (5) Supreme Court Cases 644** wherein it was held that for rejection of plaint, the averments in the plaint along with the documents filed therewith have to be looked into. Thus, for rejecting the plaint, no material, except the plaint averments and the supporting documents filed therewith has to be considered. The learned Senior counsel also placed reliance on the decision in **K. Akbar Ali vs. K. Umar Khan and others (Special Civil Appeal No. 31844 of 2018 dated 12.02.2021)** wherein it was held that while deciding the application for rejection of the plaint, the Court has to examine the strength of the case projected by the plaintiff and not to consider the defence of the defendants.

(ii) With respect to the enforceability of compromise decree obtained by the defendants in the Testamentary Proceedings before this Court, the learned



Senior counsel for the appellant / plaintiff would submit that the rights of the defendants under the compromise decree can only be enforced by way of separate suit or proceeding and it shall not operate as *res judicata* as has been held by this Court in the case of **Subbathal vs. Kittammal** reported in **1968 SCC Online Madras 177**

(iii) As regards the proof of Will, the defendants have made reference to the Will said to have been executed by the deceased Martha Devasagayam and it is required to be proved in a solemn form and the genuineness of the Will has to be clear as held by the Calcutta High Court in the case of **Narayana Mulchandani, In re; vs. Jagdish Mulchandani** reported in **2018 SCC Online Calcutta 1942**.

(iv) The learned Senior counsel for the appellant / plaintiff further contended that the learned Judge did not take note of the fact that the question of title arising under the Indian Succession Act, 1925 cannot be gone into in the testamentary proceedings since the probate Court has only limited jurisdiction. The construction of a 'Will' relating to the right, title and interest of any other person is beyond the domain of the probate Court as held by the Honourable Supreme Court in the case of **Krishna Kumar Birla vs. Rajendra Singh Lodha** reported in **(2008) 4 SCC 300**. In this case, the Will said to have been



executed by Mrs. Martha Devasahayam has not been proved in a manner known to law. The Will was sought to be enforced on the basis of a compromise entered into between the parties. While so, the learned Judge erred in observing that the probate Court had examined the Memorandum of Compromise entered into between the defendants and consequently the Will is proved. The fact remains that the Probate Court had no occasion to examine the validity of the Will in question.

(v) The learned Senior counsel for the appellant / plaintiff also submitted that a grant of probate cannot be made by the consent of the parties or by way of filing memorandum of compromise. Such settlement does not become executable as a decree of the Court, but has to be enforced separately in a suit or any other proceedings. However, no separate suit or proceedings has been initiated by the defendants to determine their right in the property in question. In this regard, reliance was placed on the decision of the Bombay High Court in the case of **Gaurishankar vs. Asaram and others** reported in **Manu/MH/1569/2016** wherein it was held that a stranger to a suit is also a stranger to a Memorandum of Compromise. One cannot file an application either in the probate proceedings or in the appeal proceedings to challenge the compromise decree as he is not a party to the probate proceedings and the same



would not be lawful. Therefore, it is contended that the defendants without filing a separate suit are asserting a right in the property on the basis of the compromise arrived at before the Testamentary Original forum and it will not confer them any right over the property.

(vi) The learned Senior counsel for the appellant / plaintiff submitted that the issues involved in the suit have to be determined after a full fledged trial. Unless trial is conducted in the suit, the issues cannot be precisely determined and there will be no material made available to conclude that the averments in the plaint are correct. Further, the learned Judge has observed that the plaintiff/appellant is a stranger to the compromise entered into between the defendants and he has no caveatable interest in the property in question. The learned Judge also concluded that the parties can be put to trial only if the appellant has a right over the schedule mentioned property. Such a conclusion is perverse inasmuch as it is the admitted fact that the plaintiff/appellant is the grandson of Mrs. Martha Devasahayam and it is not as if he has no right over the property in question. The appellant / plaintiff cannot be construed as a third party to the dispute over the property in question. The appellant has every right to question the attempt on the part of the defendants to alienate the suit property through collusiveness so as to deprive the lawful right of the appellant. In this



context, reference was made to the decision of the Honourable Supreme Court in the case of **Krishna Kumar Birla vs. Rajendra Singh Lodha and others** reported in **(2008) 4 Supreme Court Cases 300** and contended that determination of the caveatable interest of a party in probate proceedings would cause prejudice to the right of a person because it defeats some other line of succession in terms whereof the caveator asserted his right.

(vii) With respect to the observation of the learned Judge that even in the absence of any Will, still, the property will devolve only according to natural succession among the legal heirs of Mrs. Martha Devasahayam, the learned Senior counsel for the appellant / plaintiff would submit that to prove the status of legal heir of Late. Martha Devasahayam, the defendants have not produced the legal heir certificates. While so, the claim of the defendants on the basis of the compromise decree obtained in the testamentary original proceedings, cannot confer them any right, title and interest over the property, which was not taken note of by the learned Judge.

(viii) The learned Senior Counsel for the appellant / plaintiff further contended that the applications filed by the defendants 1 and 2 under Order VII Rule 11 of the CPC has been entertained by the learned Judge to reject the plaint on the ground that it did not disclose a cause of action. According to the learned



Senior counsel, the plaint filed by the appellant clearly establishes his right to sue the respondents/defendants with respect to the schedule mentioned property.

The plaint also discloses the various fraudulent acts of the first respondent, particularly in creating a forged unregistered Will dated 29.06.1989 to grab the entire property. Even the second defendant/mother has stated that the Will dated 29.06.1989 has been created and fabricated by the first defendant. While so, the learned Judge ought not to have rejected the plaint on the ground that there is no cause of action to institute it. In this context, the learned Senior counsel for the plaintiff-appellant placed reliance on the decision of the Honourable Supreme Court in **A.B.C. Laminart Private Limited and others vs. A.P. Agencies**, reported in **1989 (2) Supreme Court Cases 163** and submitted that the plaint discloses a cause of action to institute the suit and the learned Judge has erroneously rejected it only by looking into the averments in the counter affidavit and the affidavits filed by the defendants 1 and 2 to reject the plaint. The leaned Senior counsel for the appellant, by placing reliance on the decision of the Honourable Supreme Court in **Vijay Pratap Singh vs. Dukh Haran Nath Singh and others [Manu/SC/0394/1962]** further contended that if the allegations in the plaint *prima facie* disclose a cause of action to institute it, then, the Court cannot embark upon an enquiry to ascertain as to whether those



allegations are true or whether the petitioner will succeed in the claim made by him. The Court has to restrict, at this stage, to ascertain whether on the allegations a cause of action is shown. Therefore, by contending that the plaint filed by the plaintiff/appellant discloses a cause of action, the learned Senior counsel would submit that the rejection of the plaint by the learned Judge is not proper and it calls for interference by this Court. Accordingly, the learned Senior counsel appearing for the appellant / plaintiff prayed for allowing the Original Side Appeals as prayed for.

16. (i) Per contra, Mr. A.K. Karunakaran, learned counsel for the first respondent submitted that the appellant / plaintiff is not the Class I legal heir of the deceased Mrs. Martha Devasahayam and he has no *locus standi* to question the manner in which the defendants, who are the class I legal heirs, decided to divide the property by metes and bounds. The second defendant is one of the daughters of Late. Martha Devasahayam and she is the mother of the plaintiff, who herself has opposed the plaint filed by the plaintiff. When class I legal heirs are alive, the question of the appellant attempting to inherit the right in the property of the deceased Mrs. Martha Devasahayam cannot be permitted. Even otherwise, Mrs. Martha Devasahayam had executed a Will dated 29.06.1989 which was registered before the competent Sub-Registrar. After



execution of the Will, the testator died on 27.11.1996. To probate the Will, probate proceedings were initiated and on being opposed by the other legal heirs, the proceedings were converted into Testamentary Original Suit. In the suit, evidence was let in by the parties. The learned counsel for the first respondent also invited the attention of this Court to the deposition of the first respondent as well as the second respondent herein and their cross-examination. By pointing out the same, the learned counsel for the first respondent only submitted that when trial was in progress, it was decided by the parties to the Testamentary Original Suit that a compromise can be entered into taking note of the age of the parties. It was decided that instead of contesting or prosecuting the testamentary proceedings, it would be in the interest of all concerned to mutually arrive at a settlement so that they could enjoy the fruits of the litigation even during their life time. Such a compromise arrived at between the defendants herein, in their capacity as class I legal heirs of the deceased Mrs. Martha Devasahayam, cannot be questioned by the plaintiff. The appellant / plaintiff is one of the grandsons of the deceased Mrs. Martha Devasahayam. When the children of Mrs. Martha Devasahayam succeeds to the estate of the deceased and entered into a compromise, the appellant / plaintiff, as Class II legal heir, has no *locus stnadi* to question such settlement.



(ii) The learned counsel for the first respondent further submitted that

the suit has been filed only to harass the defendants from enjoying the fruits of the litigation. The plaint contains bundle of misrepresentations and it is nothing but short of frivolousness. In the plaint, the plaintiff had made averments which are contrary to truth as well as records. The Plaintiff has stated that the property in question was owned by his grandfather Late. Devasahayam in which the testator Mrs. Martha Devasahayam has a share, as his wife. The plaintiff further proceeded to aver that Mrs. Martha Devasahayam had enormous love and affection towards the plaintiff and she assured to convey her 1/3rd share to him. At the outset, Mrs. Martha Devasahayam alone had purchased the property in question in her own name and out of her hard earned money. While so, the question of Mrs. Martha Devasahayam assuring the plaintiff to convey 1/3rd share in the property to the plaintiff itself, is false. In any event, on the basis of an alleged oral assurance given by Mrs. Martha Devasahayam, the plaintiff has come up with the present suit. In the counter affidavits filed by the first defendant as well as the second defendant/mother of the plaintiff, it was clearly stated that no such assurance was ever given by Mrs. Martha Devasahayam to the plaintiff to convey her 1/3rd share in the suit property. Thus, the foundation, based on which the present suit has been laid, is very weak and baseless. The



suit is vexatious and therefore, the defendants need not undergo the ordeal of a lengthy trial in the suit. There is no cause of action for instituting the suit itself.

Already, the defendants are aged and infirm and to harass them, the present suit has been filed. The learned Judge, on consideration of the above aspects, has rightly rejected the plaint. There is no merit in these appeals and the appeals are liable to be dismissed. Accordingly, the learned counsel for the first respondent/first defendant prayed for dismissal of this appeal.

17.(i) Mr.C.R. Prasanan, learned counsel for the second respondent/mother of the plaintiff, submitted that the suit is an abuse of process of law and it is vexatious. The plaint does not disclose a cause of action for instituting it. The relief claimed in the plaint is undervalued by alleging that the plaintiff/appellant is in possession of the suit property. The learned Judge therefore, in exercise of power under Order VII Rule 11 of CPC has rightly rejected the plaint filed by the plaintiff on the ground that it has no cause of action and it does not call for any interference by this Court.

(ii) As far as the averments in the plaint, the learned counsel for the second respondent/mother of the plaintiff would only contend that the allegation that the plaintiff had a cordial and affectionate relationship with the deceased Martha Devasahayam was not correct. Similarly, Mrs. Martha Devashayam was



the owner of the plaint described property, as stated in the plaint, is also not correct. The second defendant/mother of the plaintiff and other children of Mrs.Martha Devasahayam are alive, while so, the plaintiff/appellant, being one of the grandsons, cannot assert any right, interest and title to the property in question over and above the legitimate right of the class I legal heirs. The plaintiff/appellant was never in possession of the suit property and therefore, the valuation of the suit itself is incorrect. Further, Mrs. Martha Devasahayam had executed a registered Will whereby she had bequeathed the property in question to all her children. In such circumstances, the claim of the plaintiff, to pass a preliminary decree for partition in the suit property is untenable. Thus, it is submitted by the counsel for the second respondent that there is no cause of action at all to institute the suit. The cause of action is imaginary. Based on such weak cause of action, the defendants, who are already aged, need not be directed to undergo the ordeal of a lengthy trial in the present suit. Taking note of the above, the learned Judge has rightly allowed the application filed by the second defendant under Order VII Rule 11 of CPC and rejected the plaint.

(iii) As to what constitute a 'cause of action', the learned counsel for the second respondent placed reliance on the decision of the Honourable Supreme



Court in the case of **Church of Christ Charitable Trust and Educational**

Charitable Society, rep. by its Chairman vs. Ponniamman Educational

Trust, rep. by its Chairperson/Managing Trustee reported in **(2012) 8**

Supreme Court Cases 706 wherein it was held that plaintiff, who had instituted

the suit, must aver clearly the facts necessary to enable him to obtain a decree

and must produce documents on which cause of action is based. In the present

case, the averments in the plaint are vague and unclear. The Plaintiff has not

even issued a pre-suit notice to the defendants claiming his alleged share in the

suit property. The suit was instituted directly without putting the defendants on

notice of his intention to sue them. Further, the plaintiff has not even filed any

document to show that Late. Devasahayam, his grandfather, was the owner of

the property in question, as claimed in the plaint. The learned counsel for the

second respondent therefore submitted that the learned Judge is wholly justified

in rejecting the plaint filed by the plaintiff and it does not call for any

interference in this appeal by this Court. Accordingly, the learned counsel for the

second respondent prayed for dismissal of the appeals.

18. We have heard the learned counsel on either side and perused the materials placed on record.



19. The appellant / plaintiff instituted the suit in CS.No.76 of 2022 for a preliminary decree of partition of the property in question by allotting him one-third share thereof. He also prayed for a declaration to declare the Will dated 29.06.1989 registered as document No. 80 of 1989 on the file of Sub-Registrar, Purasawalkam as null and void. A further relief of declaration was also sought to declare the unregistered Will dated 11.12.1991 as null and void and without authority. That apart, a further declaratory relief was sought for to declare the Memorandum of Compromise dated 14.07.2020 entered into by the defendants in TOS No. 8 of 2015 and TOS No. 9 of 2014 and the order dated 07.08.2020 passed thereof as null and void.

20. On notice, the first defendant filed Application No. 3215 of 2022 in C.S. No. 76 of 2022 to reject the plaint under Order VII Rule 11 of CPC. The second defendant/mother of the plaintiff also filed similar application in Application No. 3533 of 2022 for rejection of the plaint. The learned Judge allowed the applications by the common order dated 04.11.2022 and rejected the plaint filed by the plaintiff as one without any cause of action.

21. Assailing the order of the learned Judge dated 04.11.2022 the learned Senior counsel for the plaintiff would mainly contend that for rejecting



the plaint, the averments in the plaint alone have to be looked into and not the defence raised by the defendants. In support of this contention, reliance was placed on several decisions of the Honourable Supreme Court which are mentioned supra. Therefore, it would be appropriate to look into the plaint averments to determine as to whether the plaint discloses a cause of action or not.

22. The law on the materials to be considered while dealing with an application to reject the plaint is well settled. It is only the plaint and the documents filed along with the plaint that are germane to decide the application. The Judgments relied upon by the Learned Senior Counsel for the appellant also lay down the said proposition. Since, the proposition is well settled, this court is not going into the judgments. Therefore, this Court will have to consider, whether the averments in the plaint disclose a cause of action for filing the present suit or a mere illusion is created. From a reading of the plaint, it is very clear that the plaintiff is the grandson of Mrs. Martha Devasahayam and Mr. Devasahayam. The first defendant is his maternal uncle and the second defendant is his mother. In other words, the defendants 1 and 2 are the children of the deceased Devasahayam and Mrs. Martha Devasahayam. The plaint has



been filed mainly on the ground that the grandfather of the plaintiff

Mr. Devasahayam was the owner of the suit property in which his wife Mrs. Martha Devasahayam has one-third share. Further, the deceased Mrs. Martha Devasahayam has orally assured the plaintiff that the one-third share in the suit property, which will fall to her share, will be transferred and/or conveyed to him. The plaint further proceeds to state that the defendants have also expressed their agreement and consent for Mrs. Martha Devasahayam to convey and/or settle one-third share in the suit property to the plaintiff. This is the foundation based on which the plaintiff has laid the suit. However, the plaintiff has not filed any documentary evidence to show that the property absolutely belongs to his grandfather Mr. Devasahayam. This was also pointed out by the learned Judge in para No.22 of the order impugned in these appeals. As settled by the Hon'ble Apex Court, for the purpose of considering the averments in the plaint, the same has to be construed along with the documents filed along with the plaint and it is incumbent upon the plaintiff to file the documents which are referred in the plaint and which have given him the cause of action to initiate the suit. On the contrary, in the absence of any document, it unfolds that the deceased Devasahayam was not the owner of the property at all. The property in question is the self-acquired property of Mrs. Martha



Devasahayam, grandmother, who out of her income as Teacher, purchased it.

Therefore, the basis on which the suit was instituted by the plaintiff itself is contrary to the facts. The general presumption in law is that the title over the property vests with the purchaser of the property. The failure of the plaintiff to produce the sale deed, ex-facie exposes the smoke screen over the title to the property to create a cause of action.

23. Further, the plaintiff has mentioned in the plaint that his grandmother Mrs.Martha Devasahayam assured to convey one-third share in the suit property in his favour and it was also agreed to by the defendants. The said claim is again based on his illusory claim that the property was purchased by his grandfather in the name of his grandmother. We have already held that the failure of the plaintiff to produce the sale deed is fatal to the claim of plaintiff that the consideration had flown from Mr.Devasahayam and the cause of action is only illusory. While so, the statement in the plaint that his grandmother orally assured to convey her one-third share is again nothing but an illusion created for the purpose of the suit, as she is the owner of the entire property.

24. With respect to the contention of the learned Senior counsel that the learned Judge had referred to the averments in the written statement of the



defendants while rejecting the plaint, the learned Judge, in para No.24 of the judgment has clearly stated that "*even though it may not be proper for this Court to refer to the affidavit filed in support of the applications filed by the defendants, still the fact had been admitted by the plaintiff in the counter filed to these applications that the grandmother was employed as a teacher, having income may be meagre, according to the plaintiff, but still income, at the relevant point of time.*" Therefore, it is clear that the plaintiff has admitted that his grandmother had enough resources and wherewithal to purchase the suit property from and out of her income as a Teacher. It is pertinent to mention here that the said fact was also suppressed by the plaintiff in the plaint, which again casts a cloud over his *bona fide*. The learned Judge, having regard to this admission on the part of the plaintiff, has concluded that the suit property was purchased by Mrs. Martha Devasahayam out of her own funds and the averments in the plaint are contrary to such facts. In any case, this Court has already taken note of the law that only the averments in the plaint and the documents filed along with the documents are germane to decide the application for rejecting the plaint. It will be apropos to mention at this juncture that the fact that a property was held in benami was never raised by the grandfather of the appellant. It is again worthwhile to mention here that the property was purchased in 1954.



Section 66 of the Civil Procedure Code, which was in vogue until repealed by

Section 7 of The Benami Transactions (Prohibition) Act, 1988 states as follows:

“Section 66

(1) No suit shall be maintained against any person, claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.”

It is clear from the above provisions that no suit can be maintained against a purchaser of the property except under the circumstances enumerated in clause (2) of the above Section. The case of the plaintiff will not fall within the ambit of sub-clause (2). Even proceeding further and taking into consideration the provisions of the Benami Transactions(Prohibition) Act, this court is of the view that though a suit can be filed, it must also be proved that the property was not purchased for the benefit of the wife by virtue of the provisions of Section 3 (2) of the Act, which creates a statutory presumption that the property was purchased in favour of the wife or the daughter. The plaintiff/appellant in the present case has failed to even produce the basic and essential document, upon which his entire case depends and has a bearing on his second claim of oral



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25. The appellant has relied upon many judgments to contend that the testamentary proceedings for probate ought not to have been compromised and has also questioned the Wills and the compromise decree. It is pertinent to mention here that the plaintiff/appellant must have a right to sue to have a cause of action. Therefore, it is necessary to look into his claim as a lineal descendant of the deceased Mr. Devasahayam. The Plaintiff is the grandson of the testator. The children of Mr. Devasahayam and Mrs. Martha Devasahayam viz., defendants 1 and 2 are very much alive and they are the lineal descendants. As per section 33 of the Indian Succession Act, the property of the intestate will devolve upon his widow and the lineal descendant. In the absence of the lineal descendant upon the kindred, the plaintiff though is also lineal descendant, when his mother, who is also a lineal descendant, is alive, the plaintiff, as a grandson, would fall next in line and cannot supersede their right and interest in the property and lay a claim thereof. The presence of direct descendants like son and daughters pre-empts their children to stake a claim, during their life time. It is only, when class I heirs are not available, a right accrues to the plaintiff to sue. On the contrary, the son and daughter are very much available in the present case



and they have also questioned the *locus standi* of the plaintiff to lay a claim over the suit property by surpassing their right. Thus, the plaintiff cannot supersede the right, title or interest of the defendants 1 and 2 and assert any other over-riding claim in the suit property as a lineal descendant. In any case, as we have already held that the property on the face of it, belongs to Mrs. Martha Devasahayam, the reliance or claim based upon Section 33 of the Indian Succession Act, is also misplaced. Therefore holding that the plaintiff, who has no right to sue would not have cause of action to file the suit.

26. To crown all the above, this Court is of the view that the plaint contains certain allegations, despite being contrary to and in suppression of basic facts, and the same on a wholesome reading, does not disclose a cause of action. In this context, the counsel for the second respondent relied on the decision in the case of **Church of Christ Charitable Trust and Educational Charitable Society, rep. by its Chairman vs. Ponniammal Educational Trust, rep. by its Chairman/Managing Trustee** mentioned supra, wherein it was held that the plaintiff must aver clearly the facts necessary to enable him to obtain a decree and must produce documents, on which cause of action is based. In the present case, the plaint averments are unclear and resultantly it will not



confer a cause of action for the plaintiff to maintain it. That apart, as held by the Apex Court in **T.Arivanandam's case**, which has also been referred to by the Learned Judge, the court must see through the illusion created in the plaint and reject frivolous suits.

27. Further, it is evident that Mrs. Martha Devasahayam had executed a Will dated 29.06.1989, registered as document No. 80 of 1989. Few years after the execution of the Will, on 27.11.1996, Mrs. Martha Devasahayam died and the Will came into force. The defendants have also initiated probate proceedings and subsequently they were converted into Testamentary Original Suits. In the suit proceedings, initially, the parties have let in evidence and prosecuted and/or contested the testamentary original proceedings. Subsequently, during trial in the suit proceedings, the parties have entered into a compromise based on which a compromise decree dated 07.08.2020 was entered into. Thereafter, the instant suit in C.S. No. 76 of 2022 was filed by the plaintiff seeking to even nullify the compromise decree. In such circumstances, the plaintiff must have an inherent right and cause of action to file the suit. An illusion by clever drafting cannot give any cause of action. The above facts are available from the averments in the plaint. We have already held that the presence of mother who is a lineal



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descendant excludes her children. Therefore, when a settlement has been arrived at between the direct lineal descendants, the plaintiff cannot have any say. The foundation based on which the present suit is instituted is illusory. While so, the defendants need not be subjected to undergo the rigour of a lengthy trial in the suit, at the instance of the plaintiff, whom we have found to have no locus or the cause of action. The learned Judge, taking note of the above aspects, has elaborately dealt with the issues and rejected the plaint filed by the plaintiff. We do not find any reason to interfere with the order passed by the learned Judge.

28. In the result, all the Original Side Appeals fail and they are accordingly, dismissed. No costs.

(R.M.D., J) (M.S.Q., J)

07.06.2023

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non-Speaking Order

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