



Second Appeal Nos.1485 and 1486 of 1999

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On	26.02.2024
Orders Pronounced On	03/19/24

CORAM:

THE HON'BLE MR. JUSTICE G.ARUL MURUGAN

Second Appeal Nos.1485 and 1486 of 1999

- 1.Padmanabha Reddiar (Died)
- 2.Durairaj (Died)
- 3.D.Hemalatha
- 4.D.Kokul
- 5.Dikshitha
- 6.Janarthanan
- 7.Ramesh

(3rd to 5th Appellants are brought on record as LRS of the Deceased 2nd Appellant Viz., Durairaj vide order of Court dated 06.09.2022 made in CMP No.9174 of 2022 in SA.No.1485 of 1999 by KRJ)

(6th and 7th Appellants are brought on record as LRS of the Deceased 1st Appellant Viz., Padmanaba Reddiar vide order of Court dated 06.09.2022 made in CMP.No.10701, 10689, 10686 of 2022 in SA.No.1485 of 1999 by KRJ)

Versus

- 1.Padmini Ammal(Died)
- 2.Vijaya Industrial Alcohol Ltd.Pondicherry
Rep by its Managing Director.
No.38, 1st Cross Natesan Nagar,
Pondicherry.
- 3.K.Srinivasan (Died)
- 4.K. Janarthanan
- 5.Jalaja
- 6.K.Surendiran



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- 7.Jayanthi
- 8.K.Radhakrishnan
- 9.K.Bramenath
- 10.Padmavatai Ammal
- 11.Kumar
- 12.Vijayalakshmi @ Canagavally
- 13.Santha @ Sanabaille
- 14.Lakshmigandham
- 15.Meerabai
- 16.Mythili @ Maragathavalli
- 17.Banu @ Pournima
- 18.Arthi

(R3 to R9 brought on record as LR's of the deceased R1 vide Court order dated 18.11.2019 in CMP No.4766 of 2009.)

(R10 to R14 are brought on record as LR's of the deceased 1st Appellant Viz., Padmanaba Reddiar vide Court order dated 06.09.2022 made in CMP Nos.10701, 10689 and 10686 of 2022 in SA.No.1485 of 1999 by KRJ)

(R15 to R18 are brought on record as LR's of the deceased 3rd respondent Viz., K.Srinivasan vide Court order dated 06.09.2022 made in CMP.Nos.10675, 10677 and 10690 of 2022 in SA.No.1485 of 1999 by KRJ)

Common Prayer: These Second Appeals are filed under Section 100 of CPC, 1908 against the decree and judgment dated 10.04.1996 in AS.No.83 and 57 of 1995, on the file of the Principal District Court, Pondicherry, reversing the decree and judgment date 16.03.1995, in O.S.No.221 of 1990, on the file of the Principal Subordinate Court, Pondicherry.



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In Both

For Appellants : M/s.P.Veena Suresh

In SA.No.1485 of 1999

For Respondents : Mr.T.P.Manoharan,
R2, R4 to R8 Sr.Counsel for
and R15 to R18 Mr.T.M.Naveen.

R1 and R3 : Died
R11 to R14 : No Appearance
R10 : Died
R9 : No Appearance

In SA.No.1486 of 1999

For Respondents : Mr.T.P.Manoharan,
R4 to R9 Sr.Counsel for
and R15 to R18 Mr.T.M.Naveen.

R1 and R3 : Died
R11 to R14 : No Appearance
R10 : Died
R2 : No Appearance

COMMON JUDGMENT

1. The unsuccessful plaintiffs had filed the above second appeals.
2. The 1st and 2nd respondents are the 1st and 2nd defendants in the suit.



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3. Pending the appeals, the 1st and 2nd Appellants died and 3rd to 5th Appellants are brought on record as LR's of the Deceased 2nd Appellant Viz., Durairaj. 6th and 7th Appellants along with Respondents



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10 to 14 are brought on record as LR's of the Deceased 1st Appellant Viz.,
Padmanaba Reddiar.

4. Pending the appeals, the 1st and 3rd respondents also died and R3 to R9 are brought on record as LR's of deceased 1st Respondent and Respondents 15 to 18 are brought on record as LR's of the deceased 3rd respondent Viz., K.Srinivasan.

5. For the sake of convenience, the parties are referred to as per the ranking before the Trial Court.

6. According to the plaintiffs, the suit properties are land properties and originally belonged to the sons of Lakshmana Reddy @ Lakshmana Reddiar of Katterikuppam, Pondicherry viz., Padmanabha Reddiar and Kuppusamy Reddiar. They had purchased the property and were in continuous possession and enjoyment. The first defendant who was a close family friend from the year 1961 represented that a new Legislation was to be enforced in the Territory of Pondicherry by which the higher land holdings by individuals will be deprived of. The 1st defendant suggested that she could purchase some of the lands for a price



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from the 1st plaintiff and Kuppusamy Reddiar. The 1st defendant induced them to execute a sale deed for a meager sale consideration of Rs.2,500/- for the entire extent of 15 Acres, when the land fetched a price of not less than Rs.2,000/- per acre. The 1st defendant had executed a notarial sale deed on 26.06.1961 and transcribed in R.V.625 No.89 dated 30.06.1961 for a meager sale consideration and therefore, obviously the sale is hit by the Principle of Lesion under the prevailing law and therefore is void. In view of the whole transaction being void, the 1st defendant cannot make any claim or right through the sale and as such the plaintiff had continued in occupation of the property and also raised casuarina crops aged more than 3 to 4 years.

7. Kuppusamy Reddiar died leaving behind his 6 sons and among them the 2nd plaintiff is one of the sons who also represents the other children. Even though the sale is void and unenforceable and also the 1st defendant was aware that the plaintiffs are in possession of the property, took steps to engage with the 2nd defendant for transacting a sale and therefore, the 2nd plaintiff was constrained to issue a notice to the defendants calling upon them not to have any such transactions.

However, due to inadvertent mistake in the notice issued by the 2nd



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plaintiff it has been wrongly stated that the first plaintiff is no more. The cause of action for the suit arose in the month of February 1990 when the defendants sought to engage for the purported sale and therefore, the plaintiff has come forward with the suit to declare the sale deed dated 29.06.1961 as void and sought to set aside the same and also for a permanent injunction.

8. The first defendant resisted the suit by filing a written statement and has denied the claim of the plaintiff. According to her, the suit is not maintainable either in law or on facts. The second plaintiff who has issued the pre-suit notice could not have had any knowledge of the transaction as either he would have not been born at all or just born. When the plaintiff has filed the suit based on the cause of action in February, 1990, the prayer to declare the sale deed of the year 1961 as void is not maintainable. The suit is filed by the plaintiff on the Principles of Lesion. Article 1674 of the French Civil Code clearly enumerates the principle, procedure and circumstances to seek for rescission, which has to be initiated within a period of 2 years from the date of sale and therefore, the suit filed is not within the prescribed period. According to the defendant, she had purchased the property for



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valuable consideration under Notarial Sale Deed dated 26.06.1961 in the presence of two witnesses and the sale was transcribed on 30.06.1961 and registered on 04.07.1961. Ever since the date of purchase, she had been in peaceful possession and enjoyment of the property and the revenue documents like Patta and Adangal stands in her name. The 1st defendant had entered into an agreement of sale with the 2nd defendant for valuable consideration and based on the registered sale agreement, the 2nd defendant was put in possession of the property in order to facilitate the 2nd defendant to proceed with the preliminary work of construction of distillery plant. On coming to know about the sale agreement with the 2nd defendant, the 2nd plaintiff has demanded money but when the same was not entertained, the 2nd plaintiff threatened to spoil the contract and even intimidated the defendant, which had been reported to the police and also issued reply notice on 27.04.1990. As the 2nd plaintiff failed in his *malafide* attempt, he has come forward with a vexatious suit for untenable claims. The plaintiff had taken contrary stands in the notice issued and the suit filed. The 2nd plaintiff had even gone to the extent of saying that the first plaintiff is no more, but has filed the suit along with the first plaintiff. The plaintiff has not filed any document to *prima facie* show that they are owners and are in possession



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of the property and therefore sought for dismissal of the suit.

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9. The 2nd defendant has resisted the suit by filing a separate written statement contending that the suit is bad for mis-joinder of the parties. When as per the legal notice issued by the 2nd plaintiff, the 1st plaintiff is reported dead, then the suit is filed by the 1st plaintiff who is a dead person. The plaintiff cannot maintain the suit for relief in respect of the document of the year 1961 by alleging a cause of action in February, 1990. This defendant is a Hyderabad based company investing huge capital with an initial investment of 6 crores to instal a distillery plant. This defendant entered into the agreement of sale with the 1st defendant on 14.02.1990 to purchase the suit property to install a Treatment Plant and after perusal of the title deeds and revenue documents and since the 1st defendant had absolute and markable title, they have entered into an agreement based on which they were put in possession of the suit property and they have spent more than 3 Lakhs for fencing and development works. When the possession was handed over to them, earlier the 1st defendant was in possession of the suit property by carrying on cultivation. The casuarina saplings which was raised by the 1st defendant in her possession was handed over to this defendant.



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Therefore, the plaintiff has filed the suit mis-representing the facts and made unsustainable pleas, therefore not maintainable and prayed for dismissal of the suit.

10. During Trial the 1st plaintiff examined himself as PW1 and PW2 to PW4 were also examined and marked Exs.A1 to A6. On the side of the defendants, the 1st defendant examined herself as DW1 and examined one Harikrishnan as DW2 and marked Exs.B1 to B3. The Trial Court after analysing the documents and evidences decreed the suit. The Trial Court has simply observed that since according to the plaintiff, the suit property fetched Rs.2,000/- per acre at the time of sale, the sale deed executed for a total consideration of Rs.2,500/- is for a very low value and the defendants have not established the correct value of the suit properties. The Trial Court found that since the plaintiff is in possession of the property, the suit is not barred by limitation and the sale is also hit by the principles of Lesion. Aggrieved by the judgment and decree, the 1st defendant filed appeal in AS.No.57 of 1995. The 2nd defendant also filed a separate appeal in AS.No.83 of 1995 both on the file of Principal District Judge, Pondicherry. The Lower Appellate Court after reappraising the evidences, by a common judgment and decree dated



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10.04.1996 allowed both the appeals, and set aside the decree. The

Lower Appellate Court found that the plaintiff has not established by evidence that there was an under valuation in the property at the time of sale by producing the actual price and also the procedures as contemplated under Articles 1674 to 1680 of the French Civil Code has not been adopted for the sale to be declared as void on the principles of lesion. The Lower Appellate Court also found that any suit for rescission of sale on the principles of lesion ought to have been initiated within a period of two years but the suit has not been initiated within the prescribed period. The Lower Appellate Court also found that the defendants are in possession of the suit properties. Aggrieved, the



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plaintiffs are before this Court by way of two separate appeals as against the common judgment in both the appeals.

11. This Court ,vide order dated 18.01.2001, admitted the appeals and framed the following substantial question of law:

“Is not the Judgment of the Lower Appellate Court vitiated for the non-consideration, unrebutted oral evidence of P.W.-1 to P.W.-4 and for eschewing the entire documentary evidence adduced by the plaintiff?”

12. The learned counsel appearing for the appellant argued that when the sale was executed in favour of the 1st defendant in Ex.A4, it has not been executed on the prevailing market price but had been executed only for a meager value due to the law that was to be brought in Pondicherry in respect of the land holding. Only because the 1st defendant was a family friend, the document in Ex.A4 was executed which was not intended by the parties to be an actual sale and therefore, the plaintiffs continued to be in the possession of the suit property. The learned counsel for the Appellant however fairly conceded that the averments in the plaint and the document filed and procedures contemplated does not satisfy the claim of rescission. But the learned counsel contended that when the plaintiffs were able to file documents



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to show that they are in possession of the suit properties, they are entitled to file the suit and the suit is maintainable and not barred by limitation.

The plaintiffs have filed document in Ex.A1 which is for the Fasli 1384-1396 and 1398 corresponding to the Gregorian Years 1974 to 1986 & 1988 which was issued in Patta No.410 that stands in the name of Kuppusamy Reddiar. The learned counsel further contended that only the documents in Ex.A6 which is issued for the Fasli 1399 and 1400 corresponding to Gregorian Years 1989 and 1990 is in the name of the 1st defendant Padminiammal. Further even as per the document executed in Ex.A4 and the translated copy in Ex.A5, even though the title has been conveyed in favour of the 1st defendant, nothing in respect of handing over the possession of the suit property is specifically mentioned and the admission of DW1 also speaks about the same effect. The learned counsel further contended that the possession is not handed over to the 1st defendant on execution of the documents in Ex.A4 and there are superfluous evidence to show that the plaintiffs are in possession and enjoyment of the suit properties. The learned counsel contended that as the suit has been filed for declaration and also for possession and even though the plaintiff is not able to establish his claim based on lesion, still the plaintiffs are entitled to protect their possession. When the Trial



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Court has decreed the suit finding that the plaintiffs are in possession of the suit properties, the Lower Appellate Court by mis-interpreting the documents has reversed the decree which is not based on the materials available on record and as such perverse and therefore, sought for allowing the second appeals.

13. *Per-contra*, the learned Sr. Counsel appearing for the respondents argued that even the legal notice issued by the second plaintiff in Ex.A2 makes it very clear that he is taking legal step for recovery of the lands, it fortifies the fact that the defendants are in possession and enjoyment of the suit properties. The learned senior counsel further argued that second plaintiff who has issued the notice is one of the sons out of the six sons of Kuppusamy Reddiar who had not joined the plaintiff to question the sale and also the 2nd plaintiff made a blatant lie that the 1st plaintiff died and no more. Only after issuance of the reply notice in Ex.A3, the 2nd plaintiff had come up with the suit along with 1st plaintiff who according to him is no more. The conduct of the 2nd plaintiff in issuing the legal notice contrary to the facts and about the status of the 1st plaintiff, when Kuppusamy Reddiar who was alive after the sale for about 30 years in Ex.A4 and his other five sons and



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even the 1st plaintiff who is the party to the document have never questioned or disputed the sale transaction and much less they have even disputed the possession of the suit properties shows his real intention. The learned Sr. Counsel further contended that the suit filed by the plaintiff is not maintainable as it is not within the period of limitation. After coming into the force of the Limitation Act on 01.01.1963, the French Civil Code got replaced with and therefore, parties are only governed by the Limitation Act, 1963. The learned Sr. Counsel further argued that even though the plaintiffs claimed that since the sale deed executed in Ex.A4 is prior to 01.01.1963 and the right in favour of the plaintiff accrued under the French Code, even then the time limit prescribed under the code is only 3 years. It is further contended that when the Limitation Act is held to be extended to Pondicherry on the dictum of the Hon'ble Supreme Court from 01.01.1964, the plaintiffs ought to have filed the suit within the period of three years from 01.01.1964 and since admittedly the suit is not filed on or before 01.01.1967, the suit is not maintainable due to limitation. The learned Sr. Counsel further contended that when the 2nd plaintiff has issued illegal notice and filed the suit based on the cause of action alleged by him, he has not chosen to give evidence before the Court and necessarily an



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adverse inference has to be drawn and the claim of the plaintiff cannot be sustained. The learned Sr. Counsel further contended that when even from the legal notice the plaintiff is clear that the possession is with the defendant, any amount of evidence produced without pleadings cannot be of any use and the plaintiffs have come up with the vexatious suit and thereby have prevented the defendants from enjoying their property for which the plaintiff ought to contemplate the damages caused. Learned Sr. Counsel also contended that the notarial sale deed executed in Pondicherry has a very high value and the parties cannot be allowed to discredit the transaction. The Learned Sr. Counsel further submitted that the Courts below appreciated the materials and evidences in proper perspective and has arrived at a finding of fact, which needs no interference and further no substantial question of law arises for the consideration of this Court in the above Appeals.

14. Heard the counsel on both sides and perused the materials available on record.

15. Admittedly, the sale deed in Ex.A4 dated 26.06.1961 and registered on 04.07.1961 has been executed by the 1st plaintiff and his



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brother Kuppusamy Reddiar in favour of the 1st defendant. It is the claim of the plaintiffs that the transaction in Ex.A4 was not intended to be a sale but however since the law in respect of the individual land holdings was about to be brought, the 1st defendant being the family friend and on his instigation, 1st plaintiff and his brother Kuppusamy Reddiar, has executed a sale in Ex.A4 for a meager value of Rs.2,500/- for the entire suit properties, when the actual sale price was Rs.2,000/- per acre. The plaintiffs claimed that since it was not an actual sale, the possession of the property was not handed over and they continued to be in the possession and enjoyment of the suit property. Since they are in possession of the suit properties, they are entitled to protect their possession and therefore, the suit filed by them is within the limitation as per the French Civil Code. But the 1st defendant asserts that the transaction in Ex.A4 is an actual sale for valuable consideration and on the date of sale itself, the 1st defendant had been put in possession of the suit properties. The 1st defendant who was all along in enjoyment of the suit property by planting casuarina plants has entered into a sale transaction through a registered sale agreement with the 2nd defendant and has handed over the possession to the 2nd defendant which is a Hyderabad based company for putting up the plant. Now it is to be seen



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as to whether the sale executed in favour of the 1st defendant in Ex.A4 is void on the principles of Lesion and whether the plaintiffs are in enjoyment of the suit property as claimed by them and whether the suit is barred by limitation.

Notarial Sale Deed-

(i) A Notarial Sale Deed dated 26.06.1961 has been executed by the 1st plaintiff and his brother Kuppusamy Reddiar, before the Notaire Mottou Auguste Prosper in the presence of two witnesses and the sale was transcribed on 30.06.1961 and registered on 04.07.1961. The Notarial Sale Deed executed in Pondicherry has a higher evidentiary value as the sale Notarial deed is presumed to be true until forgery proceedings are initiated against the “Notaire Instrumentaire”. The perusal of the sale in Ex.A4 and translation document filed in Ex.A5 shows that the sale consideration of Rs.2,500/- has been received by the vendors in the presence and eyesight of the Notary and the witnesses. The sale in Ex.A4 and A5 is an unconditional sale.

(ii). To have a better understanding about the evidentiary value of

Notary sale deed, it will be useful to refer the decision in **Mourougaessa**



Modealiar Vs. Aguilandammalle and Ors. reported in (1995) 1 LW

(JS) 72. The relevant portion of the judgment is extracted hereunder:

“By virtue of his functions, whether they be assumed or be attributed to him as a monopoly by the law, the notary occupies a place of great dignity and honour in French life. The disinterested counsellor of the parties, the protector of the interest of the inexperienced and legally incapable, the trusted sharer of the innermost secrets of the family and often the peacemaker in its disputes, he has a high legal and moral responsibility which generations of notaries have faithfully discharges.”

“Having regard to the powers and duties of a notary contained in the portions extracted above and the high status afforded to him by law, we certainly think that the consultation Deivanayagam Pillai had with the Notary before purchasing the suit property and having the sale deed drawn up by him, will manifestly indicate good faith on his part. As a lay man, he has sought the counsel and advice of a man well versed in law and who was under an obligation to give correct and honest advice in respect of the subject matter of consultation. We are, therefore, clearly of the opinion that the trial Judge was fully justified in holding that Deivanayagam Pillai had purchased the suit property in good faith and therefore, it was for the plaintiff to prove that the sale was not actuated by good faith.”

(iii). Also in another decision in **Gnanasoundary @**

Gnasoundaram & 6 Ors Vs. Vaithianatha Sivacharyar [(2009) 2 LW

773], the duties and responsibilities of the French Notaries have been

discussed. The relevant portion of the judgment is usefully extracted



below:

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“19. Under the French regime, Notaires are not mere notaries as understood in the rest of India under the Notaires Act. But, French Notaires are French law graduates having the power of justice of peace and their office is a sanctified and responsible one, as French law attaches much importance to them and they were responsible for drafting the sale deeds in accordance with law and they were expected to get themselves satisfied about the recitals recorded by them on the instigation of parties in the deeds. With this background, it is just and necessary to analyse the French deeds here. Wherefore, it is obvious that the recitals in Ex.A26 cannot simply be slighted or discarded as mere unilateral versions of the executants of the mortgage deed. The clauses found in Ex.A26 would exemplify that the ancestors of Pattu Gurukkal, the propositus of the plaintiffs here acquired title over the suit property and they exercised right of ownership over it and on the strength of the same, Pattu Gurukkal and his relative mortgaged the suit property as evidenced by Ex.A26. In these circumstances, it is really strange to hear from the defendant certain statements as though his own ancestors are not the owners of the suit property and that some third party is the owner.”

(iv). Further, in **Pandurangan Vs. Sarangapani & Anr** [(1982) 95 LW 318], wherein it is held that the document executed before a notaire is presumed to be valid. The relevant portion of the judgment is usefully extracted below:

“11. Learned counsel for the respondent submitted that in the case of a document executed before a Notaire, it must be presumed that the document is a



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valid one. He went to the extent of submitting that the validity of such a document is conclusive. It is true that a Notaire is not in the same position as Registering authority under the Indian Registration Act, and that he combines in himself certain other functions as shown by the decision of this Court in Mourougaessa Mudeliar v. Aguilandammanalle (died) and others², by a Bench of this Court consisting of Ismail, J. as he then was, and Natarajan, J. The functions of a Notaire are not strictly identical with those of the officials empowered to register the documents under the Indian Registration Act. However, as brought out in an article by L. Neville Brown of the University of Lyons in Volume II 1953, of the International and Comparative Law Quarterly, it is possible to impeach the transaction on the score of falsity by appropriate evidence. The impeachment for falsity is a very involved and costly procedure under the French Law. In terms of the Indian conditions, the impeachment could be by a suit supported by proper evidence to show that the transaction was a false one. In the present case, there is no such convincing proof that the transaction was in any manner false. It appears as if the transaction is being challenged as a kind of nominal transaction not supported by consideration. The court below has pointed out that the document was executed before a Notary Public who had the duty to examine personally the parties and to ascertain that they are fit and able to give their consent to the transaction. The burden of proof that lay on the plaintiff to show that the Notaire's duty had not been properly performed in the present case has not been discharged. The result is that the validity of the alienation is not assailable on any grounds taken by the plaintiff. The court below rightly dismissed the suit."

16. From the above decisions, it is clear that the Notarial sale deed

executed before the French Notaries has much evidentiary value and the



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sale executed in favour of the 1st defendant in Ex.A4 has been transcribed in 30.06.1961 and registered on 04.07.1961 for sale consideration of Rs.2,500/- in the presence of the Notary and the witnesses and the consideration being paid in the form of coins, bank notes having valid tender, countered and delivered to the vendors has been recorded thereby confirming absolute sale.

Lesion-

(i). The plaintiff has come up with the suit to declare the sale deed in Ex.A4 as void on the principles of Lesion. According to the plaintiff at the time of the sale transaction, the lands were fetching the price of not less than Rs.2,000/- per acre and the sale deed executed for a total meager sale consideration of Rs.2,500/- for entire suit property, is hit by the principles of Lesion. It is the case of the plaintiffs that since the 1st defendant was their family friend, to avoid the proposed new legislation in respect of land holdings, the documents were executed. Chapter VI of the French Civil Code deals about when the sale could be rescinded. Section 2 of Chapter VI pertains to the rescission of sale for under value. Article 1674, from the translation of French Civil Code stipulates that if the vendor of the immovable property has suffered a damage by



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receiving 7/12 less than of its true price of the property, then the vendor has the right to get the sale rescinded. If the vendor asserts that he has suffered damages and intends to demand the sale to be rescinded on the principles of Lesion, then as per Article 1676 an action for rescission must be brought within two years of the sale, counting from the date thereof.

(ii). Even when vendor has come forward with the suit for rescission, as per Article 1677, prior to allowing an action for rescission , *prima-facie* case has to be made out. The procedures have also been set out in Article 1676 to Article 1678 which are extracted hereunder for easy reference:

“1676. An action for rescission must be brought within two years of the sale, counting from the date thereof. Time runs against married women, against absent(c) persons, interdicted persons, minors claiming in right of a person of age who was the vendor. Time runs during the time given by the contract for redemption, and is not suspended by such clause (d).



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1677. The judge must, previous to allowing an action for rescission to be brought, find that a prima facie caso has been made out. He can only do so where the facts pleaded are sufficiently serious to lead him to presume that damage has been suffered(e).

1678. The only evidence of damage by undervalue that the Court can receive is the report of three experts, who, can only make a single report and arrive at one conclusion which shall be that of the majority.”

(iii). Even if a good case has been made out for rescission, still the purchaser can elect either to give up the property on receiving back his purchase money or else to keep the property and pay the vendor the balance required to make up the true price and if the purchaser elects to keep the property and to pay the additional price, he must pay interest on the increased purchase price from the date of action of rescission.

Articles 1681 and 1682 are extracted hereunder:

“1681. If the judge thinks a good case has been made out for rescission, the purchaser can elect either to give up the property on receiving back his purchase-money or else to keep the property and pay the vendor the balance required to make up the true price, less such a sum as is equal to a tenth of the total of the true price. A third person in possession has the same rights as the original purchaser, saving always any rights he may have over against the purchaser(h).

1682. If the purchaser elects to keep the property and pay the additional price in accordance with the last



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Article, he must pay interest on the increased purchase-price as from the date of the action for rescission. If he prefers giving up the property and receiving the purchase-money, then he must hand back any produce received there-from as from the date that the action was commenced. He is also entitled to receive interest on his purchase- money as from the date of the commencement of action up to the date of payment if he has touched none of the Produce.”

17. As far as the instant case is concerned, it could be seen that there are no pleadings or documents filed to establish the actual sale price prevailing at the time of sale in Ex.A4. When the parties to the transaction had admitted the receipt of the total sale consideration and had executed the unconditional sale in Ex.A4 and further the plaintiffs have not taken any steps to establish the claim made by them that at the time of sale the actual prevailing market price for the property was Rs.2,500/- per acre, they are not entitled to declare the sale as void on the principles of Lesion. In fact, no proceedings as contemplated under Article 1677 to 1682 of the French Civil Code have been undertaken to ascertain the true value of the properties as claimed by the plaintiff and the plaintiffs also failed to establish the actual prevailing market price and as such, the suit filed by the plaintiffs on the basis of Lesion must necessarily fail. Only in such circumstances, the learned Counsel for the



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Appellant herself has fairly conceded that the plaintiffs cannot succeed to declare the sale deed as void on the principles of Lesion. Therefore, this Court need not go into further except to conclude that the sale in Ex. A4 has been executed in favour of the 1st defendant for proper valuable consideration.

Possession- The plaintiffs had claimed for relief of permanent injunction as against the defendants alleging that they are in possession and enjoyment of the suit properties. It is the case of the plaintiffs that, even though the sale in Exs.A4 and A5 is executed, possession of the properties were not handed over to the defendants. The claim of the plaintiff is that documents filed by them in Ex.A1 for the Fasli 1384 to 1396 and 1398 corresponding to the Gregorian Year 1974 to 1986 and 1988 issued in Patta No.410 stands in the name of Kuppusamy Reddiar and only the documents filed by them in Ex.A6 for Fasli 1399 and 1400 corresponding to the Gregorian Year 1989 and 1990 issued in Patta No.410 stands in the name of Padmini Ammal, the 1st defendant and therefore, the plaintiffs claimed that they are in possession of the suit properties.



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The perusal of the sale executed by the 1st plaintiff and his brother in favour of the 1st defendant in Ex.A4 reads as follows:

“The vendors put and subrogate the purchaser in all the ownership and enjoyment rights which they have or may have on the said immovables.”

Therefore, the very recitals in the sale deed executed in Ex.A4 shows that the 1st defendant was put in all the ownership and the enjoyment rights in respect of the property covered therein which is the suit property.

Further, the plaintiff has issued the legal notice in Ex.A3, wherein the advocate of the 2nd plaintiff in his notice has categorically stated that his client is taking legal steps for recovery of the lands. When the legal notice reads that the sale executed in Ex.A4 is hit by the principles of Lesion and therefore, void and the 2nd plaintiff is taking steps for recovery of lands, which will only mean and go to show that the 1st defendant is in the enjoyment and possession of the property and since they claim sale deed is void, plaintiffs are taking steps for the recovery of the property.



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Further, the defendants were able to file Ex.B1 which is the consolidated land tax receipts issued in the name of the 1st defendant, Padminiammal. The receipts in Ex.B1 are for the years 1967 to 1991. Even in the documents referred by the plaintiff in Ex.A1, it refers to the name of Kuppusamy Reddiar only as the Pattadar and it is either the 1st defendant/Padminiammal or Krishnamoorthy who had paid the tax for disputed lands from the year 1967-91. The document filed in Ex.B2 would show that even though the name of Kuppusamy Reddiar is entered for the Fasli 1398, the name of the 1st defendant has been entered for the Fasli 1399. Further, from the documents filed in Ex.B3, it could be seen that the suit property stood in the name of the 1st defendant/Padminiammal from the year 1990 to 1992. Therefore, from these documents it could be seen that the defendants are in possession and enjoyment of the suit properties.

18. From the sale deed in Ex.A4, the notice issued by the 2nd plaintiff in Ex.A3 and the documents filed by the defendants in Ex.B1 to B3, the defendants have proved their title to the suit properties and also their possession. As such it could be safely concluded that the 1st



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defendant is having valid title and the defendants are in possession and enjoyment of the suit properties.

Limitation-

(i). It is the case of the plaintiffs that though a sale has been executed in favour of the 1st defendant in Ex.A4, the possession has not been handed over and since they are in possession of the suit properties, they are entitled to file the suit as they will be governed only under the French Code. As referred earlier, as per Article 1676 of the said Code, an action for rescission must be brought within 2 years of the sale counting from the date thereof. When admittedly, the plaintiffs have not filed the suit within a period of two years from 26.06.1961, the suit filed by the plaintiffs for declaration of the sale as void on the principles of Lesion is hit by Limitation.

(ii). The Claim of the plaintiffs that they are in possession of the suit property and covered by French Civil Code and the suit is not hit by limitation, will be of no avail as the Limitation Act, 1963 has been promulgated and come in to force. After the coming in to force of the said Act, the French Code has been replaced by the Limitation Act and



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the parties are governed only by the Limitation Act in Pondicherry.

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(iii). This issue has been settled by the Hon'ble Supreme Court in the decision of **Gothamchand Jain Vs. Arumugam Alias Tamilarasan** reported in (2013) 10 SCC 472. The Hon'ble Supreme Court has held that the Limitation Act, 1963 had come in to force in the Union Territory of Pondicherry on 01.01.1964. The Hon'ble Supreme Court also found that since the suit had not been initiated within the prescribed period, the suit itself is barred by Limitation. The relevant paragraphs of the judgment are extracted below:

“7. We may notice that de jure merger of the erstwhile French Territory of Pondicherry took place on 16.8.1962 following the Treaty of Cession concluded between France and India on 28.5.1956 establishing the cession of the French Establishments by France to India in full sovereignty. The Parliament enacted the Pondicherry (Administration) Act, 1962 (Act 49 of 1962) to provide for the administration of Pondicherry and for matters connected therewith. The said Act came into force on 15.12.1962. Section 4 of the Pondicherry (Administration) Act, 1962 deals with continuance of existing laws and their adaptation, which reads as under:

“4.Continuance of existing laws and their adaptation.- (1) All laws in force immediately before the appointed day in the former French Establishments or any part thereof shall continue to be in force in Pondicherry until amended or repealed by a competent



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Legislature or other competent authority: Provided that references in any such law to the President or Government of the French Republic shall be construed as references to the Central Government, references to the Governor of the French Establishments in India, to the Commissioner of the Republic for the French Establishments in India, to the Chief Commissioner for the French Establishments, to the Chief Commissioner of the State of Pondicherry or to the Chief Commissioner, Pondicherry shall be construed as references to the Administrator of Pondicherry and references to the State of Pondicherry shall be construed as references to Pondicherry. (2) For the purpose of facilitating the application of any such law in relation to the administration of Pondicherry and for the purpose of bringing the provisions of any such law into accord with the provisions of the Constitution, the Central Government may, within three years from the appointed day, by order, make such adaptations and modifications, whether by way of repeal or amendment, as may be necessary or expedient and thereupon every such law shall have effect subject to the adaptations and modifications so made.”



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8. By the Fourteenth Amendment to the Constitution, which came into force on 28.12.1962, in the First Schedule to the Constitution under the heading “II. The Union Territories”, after entry 8, the following entry was inserted, namely:

“9. **Pondicherry** - The territories which immediately before the sixteenth day of August, ‘96, were comprised in the French Establishments in India known as Pondicherry, Karaikal, Mahe and Yanam.”

Later, by the Pondicherry (Alteration of Name) Act, 2006, instead of “Pondicherry”, the word “Puducherry” was inserted with effect from 1.10.2006.

9. The Government of Union Territories Act, 1963 (Act 20 of 1963) was enacted to provide for Legislative Assemblies and Ministries for the Union Territories. It received the assent of the President on 10.5.1963. The Limitation Act, 1963 was passed by the Parliament on 5.10.1963. By that time, the Union Territory of Pondicherry had become part of India. Clause 2 of Section 1 of the Limitation Act, 1963 says that it extends to the whole of India except the State of Jammu and Kashmir. Since the Union Territory of Pondicherry having become part of India, the Limitation Act automatically extended to the then Pondicherry. **The Limitation Act, 1963, consequently, came into force in the Union Territory of Pondicherry on 1.1.1964.**

...

11. This Court also held in *Syndicate Bank* case that it cannot but hold that in the wake of the factum of the Limitation Act coming into existence from 1.1.1964, Article 535 of the Portuguese Civil Code cannot but be termed to be impliedly repealed and it is on this score that the decision of this Court in *Justiniano Augusto De Piedade Barreto Vs. Antonio Vicente Da Fonseca* stood overruled. This Court also held that there is one general law of limitation for the entire country, being the Act of



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1963, and the Portuguese Civil law cannot be termed to be a local law or a special law applicable to the State of Goa, Daman and Diu, prescribing a different period of limitation within the meaning of Section 29(2) of the Limitation Act and the question of saving of local law under the Limitation Act, 1963 does not and cannot arise.

...

*13. The Pondicherry (Extension of Laws) Act, 1968, as amended, has adopted several such legislations in the UT of Pondicherry, but the Act which governs limitation is the general law of the land that is the Indian Limitation Act. **Consequently, it is not Article 2262 of the French Code Civil that applies to the suit in question, but Section 54 of the Indian Limitation Act, 1963.** Under such circumstances, as rightly held by the High Court, the suit filed beyond the period of limitation prescribed under Article 54 of the Indian Limitation Act, 1963 is clearly barred. Since the suit itself is barred by the law of limitation, the other questions of law framed by the High Court were rightly not answered. The appeal, therefore, lacks in merits and accordingly dismissed.”*

19. As such it is clear that the law of Limitation has come into force in the Union Territory of Pondicherry on 01.01.1964 and even the period of three years from thereon had expired 01.01.1967, therefore, the suit filed by the plaintiffs is barred by Limitation. The plaintiffs to overcome the same have, by clever drafting, shown the cause of action only from the year 1990 when admittedly they are challenging the sale deed of the year 1961 to overcome the period of Limitation. The



plaintiffs cannot be allowed to maintain the suit by altering the cause of action by way of clever drafting to get over the period of Limitation.

20. It is useful to refer the judgment in **Dahiben Vs. Arvindhbhai Kalyanji Bhanusali (Gajra) and Ors.** reported in (2020) 7 SCC 366, where the Hon'ble Court held that the delay of 5.5 year after the alleged cause of action shows that the suit was clearly barred by Limitation and the plaintiff to overcome the period of Limitation has cleverly drafted the plaint by making out an illusory cause of action. The relevant paragraphs of which are extracted below:

“24. “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit...

25. The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2(j) defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article. ...

29.16. The present case is a classic case, where the plaintiffs by clever drafting of the plaint, attempted to



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make out an illusory cause of action, and bring the suit within the period of limitation. Prayer 1 of the plaint reads as :

“1) The suit property being agricultural land of old tenure of Revenue Survey No.610 whose Block No. is 573 situated at village Mota Varachha, Sub-district : Surat city, District : Surat has been registered by Opponent No.1 of this case in office of the Sub-Registrar (Katar Gam) at Surat vide Sl. No.5158 in Book No.1. Since, the same is illegal, void, in-effective and since the amount of consideration is received by the plaintiffs, and by holding that it is not binding to the plaintiffs and to cancel the same, and since the sale deed as aforesaid suit property has been executed by the Opponent 1 to the Opponents 2,3, it is registered in the office of Sub-Registrar, Surat (Rander) on 1-4-2013 vide Sl. No.443 which is not binding to we, the plaintiffs. Since, it is illegal, void, in-effective and therefore, this Hon’ble Court may be pleased to cancel the same and this Hon’ble Court may be pleased to send the Yadi in that regard to the Sub-registrar, Surat (Karat Gam) and the Sub- Registrar (Rander) in regard to the cancellation of both the aforesaid documents.”

29.17.The Plaintiffs deliberately did not mention the date of the registered Sale Deed dated 2-7-2009 executed by them in favour of Respondent 1, since it would be evident that the suit was barred by limitation. The prayer however mentions the date of the subsequent sale deed i.e. 1-4-2013 when the suit property was further sold by Respondent 1 to Respondents 2 & 3. The omission of the date of execution of the Sale Deed on 2-7-2009 in the prayer clause, was done deliberately and knowingly, so as to mislead the Court on the issue of limitation.

29.18.The delay of over 5 and ½ years after the alleged cause of action arose in 2009, shows that the suit was clearly barred by limitation as per Article 59 of the Limitation Act, 1963. The suit was instituted on 15-12-2014, even though the alleged cause of action arose in



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2009, when the last cheque was delivered to the Plaintiffs. The Plaintiffs have failed to discharge the onus of proof that the suit was filed within the period of limitation. The plaint is therefore, liable to be rejected under Order 7 Rule 11 (d) CPC.”

21. In the instant case, the plaintiffs even though have sought for the relief, challenging the sale deed of the year 1961 had given an illusory cause of action from the year 1990 by way of clever drafting in order to overcome the period of Limitation. As such, the suit filed by the plaintiff is clearly barred by Limitation.

Burden of Proof - The plaintiffs have filed the suit to declare the sale executed in favour of the first defendant as void and the 2nd plaintiff has issued the legal notice in Ex.A2 based on which the present suit is filed. More particularly when the 2nd plaintiff has claimed in the legal notice that the 1st plaintiff was no more which was factually incorrect, and the 1st plaintiff has joined the 2nd plaintiff in filing of the suit, the 2nd plaintiff has not chosen to examine himself as a witness. Admittedly, Kuppusamy Reddiar was alive for a period of 30 years after the execution of sale in Ex.A4 and he had six sons and neither the Kuppusamy Reddiar nor the other five sons had ever disputed or



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questioned the same executed in favour of the 1st defendant and also the 1st plaintiff brother who is a party to the sale deed did not raise even a little finger after the sale transaction executed in favour of the 1st defendant for 30 years, the burden of proof was on the 2nd plaintiff who wanted to establish a fact, but he did not choose to examine himself as witness in the suit.



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22. The whole issue in this case revolves on the legal notice issued by the 2nd plaintiff who asserts that the sale has been executed for a lesser value and not as per the prevailing market value and that he is in possession and enjoyment of the suit property. While so, when the 2nd plaintiff has not examined himself by entering into the witness box, this Court has to draw an adverse inference that if the 2nd plaintiff has given evidence, he had to explain the apparent contradictions on the notices issued by him on the pleadings which will go against him and therefore, he has refrained himself from entering the witness box.

23. As per Section 101 of the Indian Evidence Act, 1872, the burden of proof lies on the person who asserts it and until the person discharges his burden, the Court cannot proceed on the basis of the weaknesses of the other party.

24. It is useful to refer the decision of the Hon'ble Supreme Court in **Rangammal Vs. Kuppuswami and Anr.**, reported in (2011) 12 SCC 220. The relevant portion is extracted hereunder:

“21. Section 101 of the Indian Evidence Act, 1872 defines ‘burden of proof’ which clearly lays down that:



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"101.Burden of proof - Whosoever desires any court to give judgment as to any legal right or law dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.

...

36. The onus was clearly on the plaintiff to positively establish his case on the basis of material available and could not have been allowed by the High Court to rely on the weakness or absence of defence of the defendant/appellant herein to discharge such onus. The courts below thus have illegally and erroneously failed not to cast this burden on the plaintiff/respondent No.1 by clearly misconstruing the whole case and thus resulted into recording of findings which are wholly perverse and even against the admitted case of the parties."

25. The plaintiffs have neither substantiated their claim by any documents nor had examined the relevant witnesses to discharge their burden and establish their case. The plaintiffs also had taken inconsistent



pleas in the legal notice, the plaint and the evidences filed. As such the suit filed by the plaintiffs is clearly based on mis-representation.

26. The learned counsel for the Respondent has argued that the defendants have suffered due to the vexatious litigations and they are entitled for the damages.

27. The learned Sr. Counsel relied on the judgment of **Ranipet Municipality, Rep. By its Comer. and Special Officer, Ranipet Vs. M.Shamsheerkhan** [1998 (1) CTC 66] for the proposition that the conduct of the plaintiff is an abuse of process of court. Relevant paragraph is extracted hereunder:

“9.It is this conduct of the respondent that is attacked by the petitioner as abuse of process of Court. What is 'abuse of the process of the Court'? Of course, for the term 'abuse of the process of the Court' the Code of Civil Procedure has not given any definition. A party to a litigation is said to be guilty of abuse of process of the Court, in any of the following cases:-

(1) Gaining an unfair advantage by the use of a rule of procedure.

(2) Contempt of the authority of the Court by a party or stranger.

(3) Fraud or collusion in Court proceedings as between parties.



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(4) Retention of a benefit wrongly received.

(5) Resorting to and encouraging multiplicity of proceedings.

(6) Circumventing of the law by indirect means.

(7) Presence of witness during examination of previous witness.

(8) Institution vexatious, obstructive or dilatory actions.

(9) Introduction of Scandalous or objectionable matter in proceedings.

(10) Executing a decree manifestly at variance with its purpose and intent.

(11) Institution of a suit by a puppet plaintiff.

(12) Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc.

...

The above are only some of the instances, where a party may be said to be guilty of committing abuse of the process of Court."

29. It could be clearly seen that when the 2nd plaintiff's father had conveyed the suit property along with his brother and the 2nd plaintiff's

father has never questioned or disputed the sale during his lifetime for a



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period of 30 years and neither of his sons or even the 1st plaintiff had ever disputed the sale. As averred by the defendants in the written statement, it could be seen that only after the transactions had been entered into between the 1st and the 2nd defendant and the 2nd defendant

had by spending huge amounts put up the fencing and started the development activities, the 2nd plaintiff had unilaterally issued the legal notice in Ex.A2, inventing a new story, going to the extent of declaring his uncle the 1st plaintiff as dead, and only after realizing the consequences from the reply notice issued by the defendants in Ex.A3, the 2nd plaintiff seems to have persuaded his uncle and jointly filed the suit.

30. It is a clear case of vexatious litigation and abuse of process of Court. Due to the vexatious litigation, the defendants were prevented from continuing the lawful activities as the owner of the property.

31. In view of the above findings, the substantial questions of law



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are answered against the Appellants and in favour of the Respondents.

The finding of the fact arrived at by the Lower Appellate Court is based on the materials available on record and are not perverse.



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WEB COPY 32. Therefore, the second appeals are dismissed, confirming the judgment and decree of the Lower Appellate Court, with cost of Rs. 25,000/- in each of the appeals.

19.03.2024

Index : Yes/No
Speaking : Yes/No
Neutral Citation Case : Yes/No
nst

To:

- 1.The Principal District Judge, Pondicherry.
- 2.The Principal Subordinate Judge, Pondicherry.
- 3.The Section Officer, VR Section, Madras High Court.



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G.ARUL MURUGAN.J.

nst

Pre-Delivery Common Judgment in
Second Appeal Nos.1485 and 1486 of 1999



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