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CRP.No.509 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2024

PRONOUNCED ON : 26.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP.No.509 of 2024

and

CMP.No.2392 of 2024

1.M/s.Rajam Estates (P) Ltd.,
rep.by its M.D.Nalini Selvaraj

2.Nalini Selvaraj

3.Amirtharaj Selvaraj

4.Anandaraj Selvaraj

5.Gnanaraj Duraisamy

... Petitioners

vs.

1.K.M.Stalin

2.K.H.Gurunath

... Respondents

PRAYER : This civil revision petition has been filed under Article 227 of the Constitution of India against the fair and decreetal order dated 06.10.2023 made in I.A.No.258 of 2018 in O.S.No.77 of 2018 on the file of the Additional District Judge, Krishnagiri.

For Petitioners ... Mr.P.Gunaraj

For Respondent ... Mr.R.Nalliyappan
No.1



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ORDER

WEB COPY This civil revision petition has been filed against the fair and decreetal order dated 06.10.2023 made in I.A.No.258 of 2018 in O.S.No.77 of 2018 on the file of the Additional District Judge, Krishnagiri.

2.The fact of the case is as follows:

(i).The first respondent is the plaintiff. The petitioners and the second respondent are defendants in O.S.No.77 of 2018 on the file of the Additional District Court, Krishnagiri. The first respondent filed a suit for specific performance directing the petitioners 1 to 5 to execute the sale deed in his favour in respect of the suit property in pursuance of the memorandum of understanding dated 05.09.2011 within the time fixed by this Court after receiving the balance of sale price besides sought an order of permanent injunction against the petitioners 1 to 5 restraining them from alienating or encumbering the suit property to the third parties and sought other reliefs, if any required.



(ii).The suit property originally belonged to the second respondent, who is the sixth defendant in the suit. The sale agreement was executed between the first respondent and the second respondent on 02.01.2011. Subsequent to the above sale agreement, the first petitioner herein (first defendant) represented by the second petitioner (second defendant) expressed its desire to joint with the first respondent (plaintiff) for purchase of the suit property from the second respondent (sixth defendant). Therefore, on 05.09.2011, the suit memorandum of understanding was executed between the first petitioner and the first respondent. The sale agreement and the memorandum of understanding are two separate deeds and two different contacts between the parties. The first respondent has already paid a sum of Rs.12,00,000/- to the second respondent as a sale advance. The petitioners 1 to 5, without the knowledge of the first respondent, have purchased the suit property from the second respondent by way of three sale deeds dated 21.09.2011 in document Nos.3824, 3825 & 3826 of 2011. When it came to the knowledge of the first respondent, he immediately issued a legal notice dated 13.10.2011 to the second respondent and the first petitioner questioning the sale deeds, but they did



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not send any reply but approached the first respondent and convinced him that the above sale deeds have been executed on the strength of the sale agreement dated 02.01.2011 and in pursuance of the memorandum of understanding dated 05.09.2011. Further, the first respondent issued a legal notice to the petitioners on 30.03.2017 calling them to execute the sale deed in his favour in respect of the suit properties by receiving the balance amount and the same was received by the first petitioner 04.04.2017 but the petitioners 2 to 5 evaded to receive the notice. Hence, the first respondent filed the above suit for specific performance based upon the memorandum of understanding dated 05.09.2011.

(iii).The petitioners filed I.A.No.258 of 2018 in O.S.No.77 of 2018 praying to reject the plaint in exercise of power under Order 7 Rule 11(a) & (d) CPC. The learned trial Judge dismissed the said application vide order dated 06.10.2023, which is under challenge herein.

3.The learned counsel appearing for the petitioners submitted that the suit is clearly barred by limitation, therefore, the plaint ought to have been



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rejected under Order 7 Rule 11 (a) & (d) CPC on the basis of the legal notice dated 13.10.2011 with the allegation that he had noticed the refusal of specific performance by the first petitioner and the second respondent as early as on 30.09.2011 on seeing the encumbrance certificate as per the plaint document No.3 filed along with the plaint. The trial Court has not properly appreciated the fact, in fact, the suit was barred by limitation as the same was instituted on 08.05.2018. The learned counsel further contended that the suit is barred by limitation under Article 54 of the Limitation Act and while considering the petition under Order 7 Rule 11 CPC, the Court shall consider the plaint averments and the suit documents filed along with the plaint in toto as they are all part and parcel of the plaint and the Court has to determine whether the plaint prima facie disclose the cause of action as per the ratio laid down by the Hon'ble Supreme Court in the case ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through legal representatives and others*** reported in ***(2020) 7 Supreme Court Cases 366***.

4.Further, contended that as per the ratio laid down by the Hon'ble Supreme Court, in ***(2020) 7 Supreme Court Cases 366***, the cause of action



starts when the right to sue first accrue to the plaintiff. In fact the right to sue first accrue, when the right asserted in the suit is infringed and the cause of action arose to the plaintiff on 30.09.2011 when the plaintiff has noticed that the performance is refused (i.e.) on seeing the E.C.on 30.09.2011 as averred in the legal notice dated 13.10.2011 (i.e) suit document No.3 and a demand to cancel the sale deeds is made to the 1st petitioner and second respondent failing which legal proceeding will be initiated and hence the limitation period of 3 years starts only from 30.09.2011 onwards and even as pleaded by the first respondent, the demand is made as early as on 13.10.2011 and 3 years period from the demand starts from 13.10.2011 and not from 30.03.2017 while as per law the 3 years period of limitation starts only from 30.09.2011. When the first respondent had noticed the refusal of performance by the petitioners and the second respondent on seeing the EC, while no time fixed for performance and the demand is also commenced from 13.10.2011 even as per the theory of 3 years from the date of demand only as alleged by the first respondent and not from the 2nd notice dated 30.03.2017 and hence, there is no valid cause of action for the above suit also as the alleged cause of action is an



illusory and invested only to file the above suit as if in time and thus, seeking to allow the civil revision petition and to reject the plaint as barred by limitation.

5.To support his argument, he relied upon the judgment of the Hon'ble Supreme Court in ***Dahiben Vs. Arvindhbai Kalyanji Bhanusali (Gajra) Dead through legal representatives and others*** reported in (2020) 7 Supreme Court Cases 366 and ***Janardhanam Prasad Vs. Ramdas*** reported in (2007) 15 Supreme Court Cases 174.

6.The learned counsel appearing for the first respondent submitted that this respondent is the plaintiff in the abovesuit and he has filed the above suit for the relief of specific performance on the basis of the memorandum of understanding dated 05.09.2011. The suit property originally belonged to the second respondent and he offered to sell the same to this respondent and entered into a sale agreement between them on 02.01.2011. Subsequent to the sale agreement, the 1st petitioner represented by the 2nd petitioner expressed its desire to joint with this respondent for



purchase of the suit property and therefore, on 05.09.2011, the suit memorandum of understanding was executed between the 1st petitioner and this respondent. Sale agreement and the memorandum of understanding are two separate deeds and two different contracts between the parties. It is the specific covenant of the memorandum of understanding is that this respondent and the 1st petitioner shall take the sale jointly and develop the land and share their profits accordingly and if any of the party proceed with the sale proceedings individually and get the sale deed in his favour without the knowledge of the other party, such sale deed shall be against the terms and conditions of the memorandum of understanding and the affected party shall either pay his share of amount and demand execution of sale deed in his/her favour or claim compensation for all losses sustained by him by such act of the other party.

7.Further, the learned counsel for the first respondent submitted that the first petitioner purchased the suit property by way of three sale deeds. This respondent, after coming to know about the sale deeds, on 13.10.2011 issued a legal notice to the second respondent marking a copy to the 1st



petitioner questioning the sale deeds and to execute the sale deed in his favour on the basis of the sale agreement executed in his favour. The second respondent and the 1st petitioner on 15.10.2011 received the legal notices, but did not send any reply, but approached this respondent and convinced him that the above sale deeds have been executed on the strength of the sale agreement dated 02.01.2011 and only in pursuance of the memorandum of understanding dated 05.09.2011, the 1st petitioner represented by the 2nd petitioner to this respondent that they will execute a sale deed in respect of the property so purchased by them in his favour as agreed in the memorandum of understanding dated 05.09.2011 on payment of the half of the total sale consideration less the amount already paid by him to the second respondent towards sale advance. It is pertinent to be noticed that the notice dated 13.10.2011 issued by this respondent was for specific performance on the sale agreement, not in respect of the suit memorandum of understanding.

8.It is further submitted that the plaintiff discloses sequences of cause of action and all causes of action have been specifically disclosed in the



plaint. This respondent has given real cause of action to maintain the above suit. The above case has been filed on privity of contract between this respondent and the 1st petitioner on the basis of the memorandum of understanding. It is a trite law that the cause of action is a bundle of facts and whether the plaint discloses cause of action is a question of fact which has to be gathered based on the averments made in the plaint in its entirety by taking those averments to be correct.

9.To support of his argument, the learned counsel for the first respondent relied upon the judgments **2021 (6) CTC page 671 and 2021 (1) Madras Weekly Notice (civil) page 535** and supported the judgment of this Court in **CRP (PD) No.955 of 2016 (K.Veeraraghavan Vs. T.Munusamy and two others) and P.Thillai Selvan Vs. Shyna Paul and another reported in (2014) 7 MLJ 732** and hence, pleaded to dismiss the civil revision petition.

10.I have considered the matter in the light of the submissions made by the learned counsel for the parties and also gone through the averments made in the plaint.



11. On going through the averments and the plaint documents, it appears that the suit is essentially based on the sale agreement between the first respondent and the second respondent on 02.01.2011 and the memorandum of understanding executed between the first petitioner and the first respondent on 05.09.2011. Therefore, it is the case on behalf of the first respondent that the suit property originally belonged to the second respondent (6th defendant) and he offered to sell the same to the first respondent/plaintiff and a sale agreement was executed on 02.01.2011. Subsequent to the sale agreement, the first petitioner (first defendant) represented by the second petitioner (second defendant) entered into a memorandum of understanding with the first respondent on 05.09.2011 to purchase the suit property from the second respondent jointly. Further, it appears that the petitioners herein (defendants 1 to 5) purchased the property from the second respondent individually by three sale deeds dated 21.09.2011 in document Nos.3824, 3825 & 3826 of 2011 for a total sale consideration of Rs.40,29,000/-. The above sale came to the knowledge of the first respondent on 30.09.2011 on seeing the encumbrance certificate from Sub-Registrar office, which was stated by the first respondent in the



legal notice dated 13.10.2011 (suit document No.3), in which, he had clearly stated that the performance is refused on 30.09.2011 on seeing the encumbrance certificate. Provision of Article 54 of the Limitation Act would have application for specific performance of a contract, which reads as under:

*The date fixed for the
For specific performance of a Three years
contract date is fixed, when the
plaintiff has noticed that
performance is refused.*

12.In view of the above, Article if any time was fixed for performance of agreement of sale, the suit must be filed within the period of 3 years, failing which, the same would be barred by limitation, if no time for performance was fixed, it was for the Court to find out the date, on which, the plaintiff had noticed that the performance was refused thereafter, the Court has to arrive a finding whether the suit was filed within 3 years from the date of refusal.



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13. In this case, the suit document No.3 i.e. legal notice dated 13.10.2011 issued by the first respondent/plaintiff clearly exposes the fact that he had noticed the performance was refused on 30.09.2011 on seeing the encumbrance certificate. Therefore, the first respondent had the requisite notice about the refusal of performance. Therefore, the first respondent/ plaintiff should have filed the suit for specific performance of contract within the prescribed period but the first respondent/plaintiff failed to do so.

14. The principles stated by the Hon'ble Supreme Court in ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through legal representatives and others*** reported in (2020) 7 Supreme Court Cases 366 is applicable to this case on hand. For better appreciation, the principles stated by the Hon'ble Supreme Court are as follows:

“The remedy under Order 7 Rule 11 CPC is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on



the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint,



forms the basis of the plaint it should be treated as a part of the plaint. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. It is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. If, however, on a meaningful reading of the plaint, it is found that the suit does not disclose right to sue,



cause of action or suit is barred by any law and the court has no option but to reject the plaint and without any merit, Order 7 Rule 11 CPC. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has not option, but to reject the plaint.

The power under Order 7 Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial. The plea that once issues are framed, the matter must necessarily go to trial cannot be accepted.

“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. While considering an application under Order 7 Rule 11



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CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory. What is required is that a clear right must be made out in the plaint. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the Court.

The period of limitation prescribed under Articles 58 & 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues. The use of the word “first” between the words “sue” and “accrued”, requires the court to examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” mean the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right



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asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.

15. On a reading of the plaint and the documents relied upon i.e. document No.3 the legal notice dated 13.10.2011, it is clear that the first respondent/plaintiff had admitted that the performance was refused on 30.09.2011 on seeing the encumbrance certificate.

16. In the case of *Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer* reported in **2013 (14) SCC 81**, the Hon'ble Supreme Court held the settled legal proposition of law of limitation. For better appreciation reproduced the paragraphs 12, 13 & 14 as follows:

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on



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equitable grounds. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “dura lex sed lex” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale.

According to Halsbury's Laws of England, Vol. 24, p. 181:

"330. Policy of Limitation Acts. The courts have expressed at



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least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence".

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.

(See: [Popat and Kotecha Property v. State Bank of India Staff Assn.](#) (2005) 7 SCC 510; [Rajendar Singh & Ors. v. Santa Singh & Ors.](#), AIR 1973 SC 2537; and [Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project](#), (2008) 17 SCC 448).

14. In [P. Ramachandra Rao v. State of Karnataka](#), AIR 2002 SC 1856, this Court held that judicially engrafting principles of limitation amounts to legislating and would fly



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in the face of law laid down by the Constitution Bench in A.

R. Antulay v. R.S. Nayak, AIR 1992 SC 1701.”

17.Further, in the case of *Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal* reported in *2017 (13) SCC 174*, the Hon'ble Supreme Court observed and held as under:

“The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the



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*averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under **Order VII Rule 11 of CPC** can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”*

18.In the case of **Ram Singh Vs. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364**, the Hon'ble Supreme Court observed and held that *when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid*



mention of those circumstances, by which the suit is barred by law of limitation. Similar view has been expressed by this Court in the case of Raj Narain Sarin (supra).

19. Applying the law laid down by the Hon'ble Supreme Court in the aforesaid decisions on the applicability of Order VII Rule XI to the facts of the case on hand, I am of the opinion that the plaint ought to have been rejected in exercise of powers under Order VII Rule XI(a) and (d) of CPC being vexatious, illusory cause of action and barred by limitation. Further, it is to be recorded that the first respondent/plaintiff filed a suit for specific performance based upon the agreement dated 02.01.2011 against the second respondent/6th defendant on 22.09.2014 with the deficit court fees and the same was returned for representation with adequate stamp duty on 24.09.2014 that plaint was not represented. The plaintiff not disclosed the fact in the plaint by clever drafting and not representing the plaintiff against the second respondent/6th defendant and the plaintiff filed the suit to circumvent the provision of Limitation Act and tried to maintain the suit,



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which is nothing but abuse of process of Court and the law.

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20.In view of the above and for the reasons stated, the impugned order passed by the trial Court rejecting the application under Order 7 Rule 11 CPC is unsustainable and the same is hereby set aside. Consequently, the application filed by the petitioners/ defendants 1 to 5 to reject the plaint in exercise of power under Order 7 Rule 11 (a) and (d) CPC is hereby allowed and the plaint in O.S.No.77 of 2018 on the file of Additional District Court, Krishnagiri, is ordered to be rejected. Accordingly, the present civil revision petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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To

The Additional District Judge, Krishnagiri.



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