



CRP. No.1365 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No.1365 of 2023
& CMP. No. 9123 of 2023

K.Meenakshi

...Petitioner

Vs.

V.S.Venugopalan (died)

Cause title accepted vide Court order dated 05.04.2023 made in CMP No. 10886 of 2022 in CRP Sr. No. 60127 of 2022 by TVTSJ

Kannammal (Died)

- 1.Valarmathi
- 2.Tamilarasu
- 3.Sulochana
- 4.Sumathi
- 5.Devadoss alias Devaraj
- 6.A.Kandasamy
- 7.K.Balaji
- 8.P.R.Karuppaiyah
- 9.M.D.Kanniappan
- 10.N.Gopal

... Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India, to strike off the plaint in O.S No. 199 of 2013 on the file of District Munsif Court, Sriperumpudur.



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For Petitioner : Mr. V.Raghavachari, Senior counsel.

For R2, R6 to R8 & R10 : Not Appeared.

For R1, R3 to R5 & R9 : Left

ORDER

This petition has been filed to strike off the plaint in O.S No. 199 of 2013 on the file of District Munsif Court, Sriperumpudur.

2. The petitioner herein is the 5th defendant in suit O.S No. 199 of 2013 filed by the plaintiff.

3. The learned counsel for the petitioner prayed to strike off the plaint on the following grounds.

i. The Learned District Munsif has failed to note that mere reading of the plaint with naked eyes will disclose the fact that the present suit filed by the plaintiff is vexatious and not maintainable in law.

ii. The Learned District Munsif has further failed to note that there was huge suppression of material facts by the plaintiffs in their plaint and it is a good ground to strike down the plaint, when there is a suppression of material fact by the person coming to court for his illegal gain.

iii. The Learned District Munsif further failed to note that the plaintiffs here does not have a cause of action for filing the present suit, the alleged cause of action mentioned in cause of action paragraph of the plaint is not at all a cause of action and it is just a clear drafting to create false cause of action and it is well settled preposition of law that, a suit without cause of action is not maintainable in law and there is no requirement to conduct a trial, whether the cause of action of mentioned in the suit is true or not



iv. The Learned District Munsif has further failed to note by reading the plaint itself will clearly prove the fact that the suit is barred by law of limitation. Even though point of Limitation is mixed question of fact and law, when by reading the plaint itself the court is able to find the suit is hopelessly barred by law of limitation, the court can striking out pleading as per order & Rule 16 and rejection of plaint as per order VII Rule 11 of code of Civil procedure code without conducting a trial on merits after knowing the suit is barred by law of limitation.

v. The Learned District Munsif has failed note that the main grounds on which the present vexatious suit was instituted by the plaintiffs under the grounds of Coercion, undue influence and fraud. It is well settled as per the provisions Indian contract Act that each ground i.e. Undue Influence, coercion and fraud each ground has different ingredients to be proved. Admittedly there is no pleading or explanation in the plaint to prove the ingredients to each ground mentioned above with regard above said act, by explaining the situation based upon material fact on which the said acts committed by the contesting parties to the suit. It is well settled law as per order VI Rule 2 of civil procedure code every pleading to state material facts and not evidence. Further as per Order VI Rule of 4 of Civil procedure code, the person who pleads fraud, and undue influence which particulars may be necessary beyond such are exemplified in the forms aforesaid particulars with dates and items if necessary] shall be stated in the pleading.. In the present case in hand the plaintiffs have no material facts to disclose and that is reason why he has not pleaded anything in his plaint. Further the plaintiffs does not have any cause of action to filed the present vexatious suit and it is well settled as per the Civil Procedure code, contract act as various dictum of Hon'ble High court and Supreme Court there should be clear pleading as well production material to establish the said grounds mentioned above. Otherwise, the suit should not be entertained with the said grounds mentioned above.

vi. The Learned District Munsif further failed to note that in his pleading he accuses the defendants by saying that they have not disclosed anything regarding the transaction. It is well settled law that as per the contract act, the person who appoints a agent has to disclose against all the world with regard to giving of power by him to his agent. Here the decision making authority is the principal who gives power. Here the power agent is



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just obeying the intention of principal as per power deed. Hence everything did by the plaintiffs having knowledge about everything now he cannot go step back and take a different view for his illegal gain,

Vii. The Learned District Munsif has further failed to note that as per Paragraph No.4 of the plaint, the plaintiffs were received a notice from the police department calling upon the plaintiffs to appear on 28-03-2013. There was no explanation on the part of the plaintiffs that who has given compliant against them. What is nature of compliant and after attaining police enquiry what created a doubt over their title over the property. These facts are pleaded by clever drafting to create a cause of action to defraud on the court to believe the suit was filed within limitation as per Limitation Act. Strictly speaking there is no cause of action for filing the present vexatious suit by the plaintiffs, in order fill lacuna, they have created the above said story regarding police complainant and converting as cause of action for filing present suit.

viii. The Learned District Munsif further failed to note that even assuming for argument sake, it is admitted that 1st defendant coerced and misused his power in execution of General power of Attorney deed by the plaintiffs in favour of 2nd Defendant, there is explanation in the plaint on the plaintiffs what has prevented them to initiate either civil or criminal action as against the 1st defendant, when he has specifically the 1st defendant is root cause for everything. When they were parties to the document immediately. The General power of Attorney deed was of the year 1996 and the present suit was filed by the plaintiffs in 2013 i.e after lapse 17 years from the date of power of Attorney deed, the suit is barred by law of limitation as per Article 59 of the Limitation Act, To cancel or to set aside an Instrument or decree or for the recession of contract, limitation is three years, from when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. The person who is party to document should challenge within three years from the date of document i.e. from 19-04-1996 and the relief sought by the plaintiffs in the suit was barred

ix. The Learned District Munsif has further failed to note that the main grievance of the plaintiffs, as per averments in plaint that they have not benefited monetarily as per the sale deed executed by their power agent i.e. 2



defendant in favour of 3 defendant. As per letter dated 01-07-2010 i.e. prior of filing present suit, the 1st plaintiff himself admitted regarding execution general power of attorney deed in favour of 2nd defendant, further admitted the execution of sale deed by 2 defendant in favour of 3 defendant and also admitted that he has received sale consideration from the second defendant. It is well settled preposition of law that only remedy available to plaintiffs is to get money from the 2nd defendant and not to set aside the sale deed when the sale deed was admittedly executed during the existence of power deed and the purchasers were purchased the property after paying sale consideration. The Learned District Munsif further failed to note that the plaintiffs have filed the present suit only with regard to setting side documents as well injunction not to alienate the property. In pliant he has not pleaded anything about possession over the suit property and he has not filed single document to show his possession over the suit property from the date of purchase till filing the suit.

x. The Learned District Munsif further failed to note that after purchase c petitioner, she appointed one R.Balasubramanian as her power of Att agent as per Power of attorney deed dated 07-09-2010, Book-IV.Doc. No.698/2010, on the file of Sub Registrar, Walajabad. In that power deed, even the 1st plaintiff was attested as attesting witness. So it is implies without saying that he has no grievance or quarrel over execution of General power of attorney deed in 1996 in favour of 2nd defendant, further accepted the execution of sale deed in 2003 by the 2nd defendant In favour of 3rd defendant and further alienation by the 3rd defendant through his power agent, the 4th defendant to the 5th defendant. If he has grievance or quarrel over the said document he could not have signed as attesting witness in a power deed executed by the 5th defendant in favour of Balasubramanian.

Xi. The Learned District Munsif further failed to note that even in the compliant given by the 1st plaintiff to District Registrar, even in a compliant given by the 1st plaintiff to Anti Land Grabbing cell, Kancheepuram, the 1st plaintiff admitted the execution of General power of attorney deed by him and 2nd plaintiff in favour of 2nd defendant and execution of sale deed by the 2nd defendant in favour of 3rd defendant. When factum of execution is admitted and when the plaintiffs were parties to the document, the present suit is barred by limitation since it was filed beyond the period of limitation as per Limitation Act. Further the above said averments were suppressed by



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the plaintiffs in their plaint. Those facts are material facts not pleading of said facts are good ground in law to strike off the plaint.

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4. By submitting above grounds, the learned counsel for the petitioner submits that present suit is clear of case of abuse of process of law. Further, he argues that near about 17 years from the date of execution of the power of attorney the plaintiff approached the Court to declare the said power of attorney as null and void as such is not maintainable since the said relief is barred by limitation. Besides, he has not pleading about the coercion and undue influence committed by the first defendant colluded with second defendant nor he assigned any reason for filing the suit though the plaintiff was aware of the execution of power of attorney in favour of the second defendant on 19.04.1994 but the Trial Court failed to take note of the all these legal proposition and erroneously take the case on file. Hence, prayed to strike off the plaint as it is clear case of abused of process of law and vexatious one.

5. There is no representation on the side of the respondents.

6. By submitting the above grounds, the petitioner submits that the suit is barred by limitation as plaintiff has not approached the Court to set



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aside the alleged power of attorney which is of the year 1996 within three years from the date of its execution. Though he admits the execution of power deed in favour of the second defendant the same can be inferred from the plaintiff's averment but the Trial court without considering the limitation aspect, erroneously took the case on file. But on considering the grounds raised by the petitioner he put forth many facts and circumstances through which he attempted to convince the court that the plaintiff was aware of the execution of the power of attorney much earlier. That apart, as contended that he executed the said power of attorney with full knowledge. Further on seeing the plaintiff's averment pleading coercion and undue influence in respect of execution of power of attorney in the year 1996. The entire dispute revolved upon the alleged power of attorney which stands in the name of the second defendant based on that document the second defendant sold property to third defendants. Subsequently, the sale transactions took place. As per the plaintiff's averments they came to know about the encumbrance in the property only in the year 2013. In fact, they are doing washerman work and pleading they are not aware of these documents. Moreover, limitation issue pleaded by the petitioner is a mixed question of law and fact and the same can be decided after conclusion of the trial. It is a settled proposition that



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when the issue is involved with mixed question of law and facts it needs detailed evidence. Therefore, at this juncture, plaint cannot be strike off as it vexatious one. However the liberty is granted to the petitioner to take all defence before the Trial Court. Further, the trial Court is directed to complete the Trial within a period of six months from the date of receipt of a copy of this order.

7. In the result, this petition is dismissed. No costs. Consequentially, connected miscellaneous petition is closed.

24.07.2024

pbl

To

1. The District Munsif Court, Sriperumpudur.



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T.V.THAMILSELVI,J.

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