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C.R.P.No.1643 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1643 of 2023
and C.M.P.Nos.10712, 10715 & 10719 of 2023

1.D.H.Sarath Kumar
2.Leelakumari
3.Venkatesh
4.Chowdry

... Petitioners

-Vs-

1.P.Krishnamurthy
2.Vanaja

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 25.04.2023 made in I.A.No.1 of 2021 in O.S.No.290 of 2018 on the file of the IV Additional District Court, Ponneri.

For Petitioners : Mr.Sathish Parasaran
for Mr.G.Vivekanand

For Respondents : Mr.T.R.Rajagopalan
for Mr.P.G.Thiyagu - for R1

ORDER

This Civil Revision Petition arises against the order of the learned IV Additional District Judge, Tiruvallur at Ponneri in I.A.No.1 of 2021 in O.S.No.290 of 2018.



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For the sake of convenience, the parties will be referred to as per their ranking in the suit.

2. O.S.No.290 of 2018 is a suit filed for

(a) declaration that the sale deed dated 31.03.1920 bearing Document No.1747 of 1920 on the file of SRO, Ponneri as null and void and not binding on the Plaintiff;

(b) Declaration declaring that the judgment and decree dated 04.03.1952 passed in C.S.No.57 of 1949 on the file of the Hon'ble High Court of Judicature at Madras as null and void and not binding on the plaintiff as far as item-2 of Part-1 of Schedule-2.

(c) Declaration, declaring that the sale deed dated 07.12.1964 bearing Document No.4992 of 1964 on the file of the Office of the District Registrar, Madras-North as null and void and not binding on the plaintiff;

(d) Declaration declaring that the settlement deed dated 16.07.2001 bearing Document No.1918 of 2001 on the file of SRO., Ponneri as null and void and not binding on the Plaintiff;

(e) Declaration declaring that the Sale Deed dated 14.02.2006 bearing Document No.534 of 2006 on the file of SRO., Ponneri as null and void and not binding on the Plaintiff;



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(f) permanent injunction restraining the defendants or their men, servants, agents or any other persons from alienating the schedule mentioned property in any manner either by leasing, mortgaging, alienating etc.

(g) permanent injunction restraining the defendants or their men, servants, agents or any other persons from in any way interfering with the plaintiff's peaceful possession and enjoyment of the schedule mentioned property in any manner;

3. In this suit, on service of summons, the defendants took out an application to reject the plaint in I.A.No.1 of 2021. The said application came to be dismissed by the learned IV Additional District Judge, Tiruvallur at Ponneri by the impugned order, pushing the parties for trial. Against the said order, the present Civil Revision Petition has been filed.

4. I am conscious that I am dealing with an application for rejection of plaint. In such an application, I am bound by the averments made in the plaint and I have to take them to be true. On a reading of the plaint as it stands, if I have to reject the same, I have to come to the conclusion that there is no cause of action for the suit and/or the suit is barred by limitation.

5. On a reading of the plaint, the following facts emerge. There is no



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dispute that the property belonged to one Prabala Seshachaliah. He executed a 'WILL', whereunder, he appointed his sons-in-law Dodla Sundariah and S.S.Krishnaswamiah as its executors. The property was to be managed by his sons-in-law till his son Prabala Krishnaswamy Iyer attained the age of 22. As per the 'WILL', the property was to devolve on his son, Prabala Krishnaswamy Iyer. Prabala Seshachaliah passed away on 24.11.1903. The 'WILL' dated 22.10.1903 was put up on probate before the Original Side of this Court. In and by way of an order dated 09.05.1904, the probate was granted. This was as per the order in O.P.No.55 of 1904. In the meantime, the plaint avers that Prabala Krishnaswamy Iyer attained the age of 22 years and therefore had taken over the ownership and possession of the property.

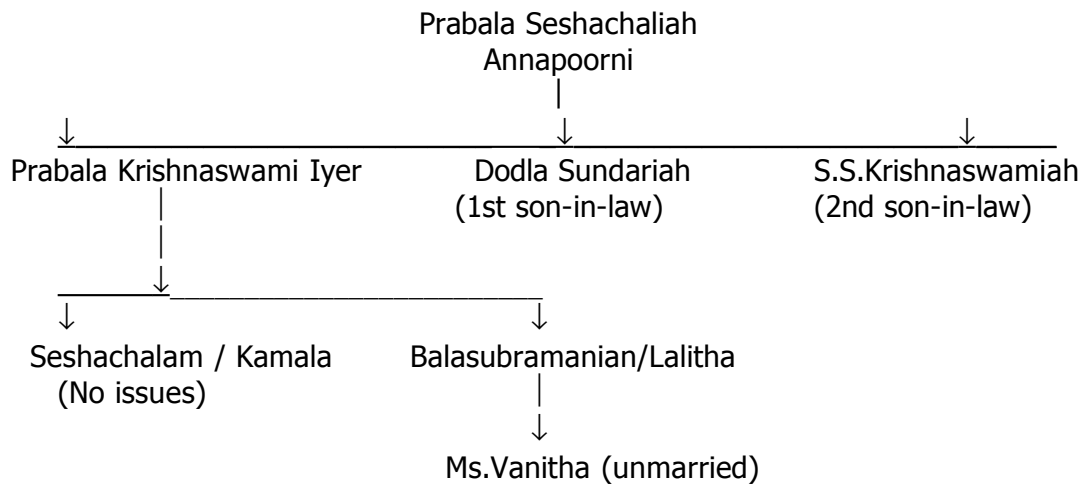
6. Between 1904 till 1920, there seems to be no issues. The plaint states that S.S.Krishnaswamiah, without having any right, title or interest over the property, executed a sale deed in favour of three gentlemen viz., Venkatesiah, Sambiah and Ramaiah. *Inter se* the family of the purchasers, a suit came to be presented before this Court in C.S.No.57 of 1949. The said suit was decreed and the properties were allotted to the aforesaid three persons and others also. Ramaiah, the third purchaser passed away on 25.06.1964. Therefore, Appathamma, his wife and his legal representatives together with Sambiah executed a sale deed in favour of D.Srihari Rao on 07.12.1964. Srihari Rao thereafter executed two settlement deeds in the year 2001 and 2006, settling the



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property in favour of his wife Leela Kumari and sons D.Venkatesh, D.H.Sarath Kumar and D.H.Chowdry.

7. The genealogical chart for the purpose of disposal of this revision is extracted hereunder:



8. The case of the plaintiff is that, when the property belongs to Prabala Krishnaswami Iyer, S.S.Krishnaswamiah could not have executed the sale deed for the property which belonged to the former. Therefore, he would attack the said sale deed dated 31.03.1920 and all the subsequent documents, including the settlement deeds of the year 2001 and 2006 as being null and void and not binding upon him.

9. Prior to the civil litigation, the parties were fighting before the revenue Courts. The first respondent herein had given objections before the revenue department saying that though the 'A' settlement register stands in the name of his



grandfather, the civil revision petitioners had somehow managed to mutate the other revenue records in their name. He would state, he came to know about this only on 01.07.2015 and therefore he gave a petition to the District Revenue Officer at Tiruvallur. The District Revenue Officer directed the Revenue Divisional Officer at Ponneri to conduct an enquiry, who in turn directed the parties to appear before the Tahsildar. Before the Tahsildar, proceedings had taken place and suffice it to say an order came to be passed by the Revenue Divisional Officer holding that the plaintiff / first respondent is entitled to have the property recorded in his name.

10. Challenging the said order of the Revenue Divisional Officer, a writ petition came to be filed before this Court in W.P.No.12694 of 2017. By an order dated 14.07.2021, the said writ petition was disposed of with the following directions.

- *That the impugned order dated 24.04.2017 is quashed.*
- *As a sequel, insofar as the patta to the property in question stood as on 23.04.2017 shall be restored with a condition that, by restoring the position dated 23.04.2017, the petitioner shall not try to encumber the property in question subject to the following further directions.*
- *The fifth respondent shall pursue the suit in O.S.No.290 of 2018 on the file of the IV Additional District Judge, Ponneri and in this*



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regard, in view of the aforesaid discussion, this Court feels that, the Civil Court shall give priority to the said Suit and decide the same on merits as early as possible preferably within a period of six months from the date of receipt of a copy of this order.

- *In view of the aforesaid directions, this Court expects the petitioner to inform this development before the concerned Court, where C.R.P.No.2044 of 2019 is pending and accordingly get a disposal of the same, which includes withdrawal of the said C.R.P.*
- *In view of the aforesaid directions, where there is likelihood of withdrawal or disposal of C.R.P.No.2044 of 2019 filed by the petitioner, there shall be some protective orders for both the petitioner as well as the fifth respondent.*
- *There shall be a further direction to the IV Additional District Judge, Ponneri to take up and decide I.A.No.251 of 2018 in O.S.No.290 of 2018 within two months and for such endeavour, both the parties shall give their cooperation without taking any unnecessary adjournments. For the said two months ie., till the disposal of I.A.No.251 of 2018, the petitioner is precluded from making any encumbrance of the property in question or creating any third party rights.*
- *The six months outer limit provided by this Court 1st above direction to complete the suit shall be subject to the endeavour to be made by the petitioner to file any interlocutory application*



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invoking Order VII Rule 11 of C.P.C., to strike off the plaint and if any such move is made by the petitioner, that interlocutory application also shall be taken up and decided first by the trial Court and subject to the decision to be made in such interlocutory application to be filed under Order VII Rule 11 of C.P.C., the six months outer limit indicated above shall work out.

- In view of the aforesaid findings, this Court feels that, the array of parties made in respect of the fourth respondent in his personal capacity may not be required. Therefore, the fourth respondent is struck off from the array of parties in this writ petition and whatever the allegations made against him by the petitioner in this writ petition is hereby eschewed.*
- Since the status quo ante with regard to the mutation in the revenue records as it stood on 23.04.2017 is ordered herein above, such mutation as on 23.04.2017 shall be made by the revenue authorities concerned especially the second respondent Tahsildar within a period of two weeks from the date of receipt of a copy of this order.*

11. Pending the writ petition, the present suit came to be filed by the first respondent for the reliefs aforesaid.



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12. The grounds on which the application for rejection of plaint was moved was that, there was no cause of action in the plaint and that it is hopelessly barred by limitation. The learned District Judge issued notice to the respondent in the application, received a counter and by the impugned order, came to a conclusion that limitation being mixed question of law and fact, it has to be gone into only at the time of trial. Aggrieved by the same, the present Civil Revision Petition.

13. Heard Mr.Sathish Parasaran, Senior Counsel for Mr.G.Vivekanand for the petitioners and Mr.T.R.Rajagopalan, Senior Counsel for Mr.P.G.Thiyagu for the respondents.

14. Mr.Sathish Parasaran would submit that it would be unfair to call upon the defendants to answer the claim of the plaintiff and that too after a lapse of 95 years. He would also state that the suit has to be rejected on the following grounds:

- i. That the plaintiff should have filed a suit for declaration of title with or without the relief of recovery of possession.
- ii. That the suit is barred by limitation, as the same is hit by Articles 58, 59, 60 and 92 of the Limitation Act.



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iii. The suit is not within the exception under Section 17 of the Limitation Act and therefore the plaint has to be rejected as barred.

iv. The plaint is a result of clever and adroit drafting and the Court will have to look through the same and on such exercise, it would be clear that the plaintiff is indulging in a kite flying exercise.

15. Mr.Sathish Parasaran would rely upon the following judgments to substantiate his arguments.

- A.S.S.Subbaiya Pandaram -vs- Mahamad Musthapa Maracayar and Others (1917 Vol.V, Law Weekly 690)
- Dahiben -vs- Arvindbhai Kalyanji Bhanusali (Gajra) and Others (2020 (7) SCC 366)
- Appasamy Real Estates Ltd., -vs- Neelayathatchi Ammal and Others (2005 (3) Law Weekly 152)
- Ramanathapuram Market Committee, Virudhunagar -vs- East India Corporation Ltd., Madurai (AIR 1976 MAD 323)
- Virender Kumar Garg -vs- Ravinder Kumar Garg (2013 SCC Online Del 4661)
- Srinivasan and six others -vs- SriMadhyarjuneswaraswami, Pattavaithalai, Tiruchirapalli District (1998-2-Law Weekly-189)

16. Rejecting these arguments, Mr.T.R.Rajagopalan would submit that there



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is no necessity for the plaintiff to seek for declaration of title since the title of Prabala Seshachaliah and the grant of probate are not in dispute. He would further add that the possession of the plaintiff is a mixed question of law and fact and it can be proved only at the time of trial. He would contend that the documents that have been relied upon by the plaintiff would point out to his possession and in any event that cannot be a ground for rejection of plaint.

17. I have carefully considered the arguments of both sides and have gone through the records.

18. While dealing with an application for rejection of plaint, I am bound by law to go through the plaint and the plaint documents and then come to a conclusion whether they make out a cause of action or not. Even to reject a plaint on the ground of limitation, a reading of the plaint must lead me to a conclusion that it is so barred. It is possible that if the matter goes for trial, the plaintiff might not succeed or that the defendants might have an excellent case on merits. However, these are irrelevant considerations while dealing with an application for rejection of plaint. A petition for rejection of plaint is a plea in demurrer and hence the Court takes the statements made in the plaint to be true and thereafter probes whether the allegations made by the defendants on the lack of cause of action or that of limitation are made out. Therefore, I would go by the plaint and



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plaint documents.

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19. A reading of the plaint shows that one Prabala Seshachalaiah had written a 'Will' in Telugu on 22.10.1903. As per the 'Will', he had appointed his both sons-in-law to make payment to his son Prabala Krishnaswami Iyer and his elder daughter-in-law Ramanamma, and to conduct the education of the said Prabala Krishnaswami Iyer, perform his Upanayanam and marriage and deliver the property together with accounts into the possession of the son as soon as the 22nd year (of his age) commences. This 'Will' was the subject matter of probate on the Original Side of this Court in O.P.No.55 of 1904 and on 09.05.1904 the probate was granted, giving a seal of approval to the 'Will' of Late Prabala Seshachalaiah.

20. A perusal of the plaint document No.4 shows that S.S.Krishnaswamiah had alienated the suit schedule mentioned property in favour of three persons for a sum of Rs.6,000/-. A perusal of the said sale deed (let me add this only for the disposal of this application), would show that no antecedent title had been extracted anywhere in the sale deed. *Inter se* between the purchasers, a suit came to be filed in C.S.No.57 of 1949 as is clear from document No.7. In this suit, none of the parties claiming under Prabala Seshachalaiah were parties to the suit. As per the judgment and decree, the property was allotted to Venkatesiah, Sambiah and Ramaiah, the predecessors-in-title of D.Srihari Rao, the father and



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husband of the defendants herein.

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21. The plaintiff would proceed that the 'A' Register continued to stand in the name of Prabala Krishnaswami Iyer, though he passed away on 30.06.1968 at the age of 75. The plaintiff would state that he came to know about the mutation made by the defendants in the revenue records only on 01.07.2015. He would state that it was a wrong entry in the revenue records, which he presumed could have been due to the error committed under the UDR scheme. Hence, he approached the Revenue Divisional Officer as aforesaid in the previous round of litigation before the revenue authorities as well as before this Court in the writ proceedings. Being a claim over immovable properties where vital rights are involved, my reading of the plaint discloses a cause of action to the plaintiff. His simple claim is that the property belonged to Prabala Seshachalaiah, who bequeathed the same in favour of Prabala Krishnaswami Iyer and on his death, the property devolved on the plaintiff and his sister.

22. It is in this light that I would look at the submission of Mr.T.R.Rajagopalan, who, while rejecting the argument of Mr.Sathish Parasaran, submitted that the suit for declaration of title would have been necessary if the title of the plaintiff had been denied. It is too early for me to pronounce as to whether a cloud has been created over the title, since written statement is yet to



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be filed in the matter. Suffice it to say the claim of both the plaintiff and the defendants is that Prabala Seshachalaiah was the owner of the property. If that is the situation, unless and until title could have been passed to Venkatesiah, Sambaiah and Ramaiah by S.S.Krishnaswamiah, it will not amount to a cloud over the title of the plaintiff. The plaintiff claims title by the operation of the laws of succession and the defendants claim by purchase. In order to succeed in the rejection of plaint, the defendants should have shown before the Court that the property had gone from and out of the family of Prabala Seshachalaiah and his descendants by an alienation made by any member of that family. A son-in-law, however trustworthy and close he might have been to the testator, is not the one who comes in the line of succession and therefore the document executed by him in favour of a third party cannot be treated for the purpose of rejection of plaint as a cloud over the title of the plaintiff. Therefore, the argument of Mr.Sathish Parasaran that there is no cause of action for the suit necessarily would have to fail.

23. Insofar as the plea of limitation is concerned, it is too well settled, but I have to restate that, limitation is a mixed question of law and fact. I am aware, under Section 3 of the Limitation Act, it is the duty of the Court to look into the aspect of limitation even if the defendant does not plead about the same. However, a reading of the plaint would show that it is not barred by limitation.



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Mr.Sathish Parasaran's argument that the document was executed in the year 1920, subsequently in 1949, 1964 and 2001, and the present suit came to be filed only in 2017 and therefore the suit is barred by time might sound inviting. However, in the light of the principles which apply for rejection of plaint, I have to see when the said documents came within the knowledge of the plaintiff.

24. It is the specific plea of the plaintiff that he came to know about the mutation of revenue records only on 01.07.2015. He produced the 'A' register for the property, which shows that it stood in the name of Prabala Krishnaswami Iyer represented by his guardian S.S.Krishnaswamiah. It is possible that after the purchase by Venkatesiah, Sambaiah and Ramaiah, they could have mutated the revenue records. But, that not having been pleaded in the plaint and not produced by the plaintiff before the Court, the Court cannot presume that such an act of mutation had taken place.

25. Insofar as the various Articles of Limitation Act which have been pleaded viz., 58, 59, 60 and 92 are concerned, all deal with when the cause of action to sue first accrues. According to the plaintiff, the cause of action arose when he got to know of the mutation of the revenue records on 01.07.2015. Taking the statement to be true, I cannot hold a suit filed on 28.06.2018 is barred by time.



26. At this stage, Mr.Sathish Parasaran would argue that Section 17 of the Limitation Act does not apply to the facts of this case as the plaintiff has pleaded fraud and forgery at the instance of S.S.Krishnaswamiah. A perusal of Section 17 would show that it contains four parts. Section 17(1)(a) applies when a fraud is committed by the defendant or his agent. Section 17(1)(b) applies when the knowledge of the right or title is concealed by the fraud of such person. Section 17(1)(c) applies on consequences of a mistake and Section 17(1)(d) is where any documentary evidence to establish the right of the plaintiff has been fraudulently concealed from him. As per these Sections, limitation would not commence if it attracts Sections 17(1)(a) to 17(1)(d) unless and until with reasonable diligence the plaintiff would have come to know of these facts.

27. In Paragraph 13 of the plaint, the first respondent has specifically averred that the entries of the revenue records are all wrong and he came to know of it only on 01.07.2015. Taking that as the period of commencement of knowledge, I would state, prima facie Section 17 stands attracted. Yet again, I have to enter a caveat that this finding is given only for the purpose of disposal of this revision and it certainly is not a final one binding on the parties after evidence is recorded. This observation is unnecessary, but still, I have to make the said observation because I do not want to influence the learned trial Judge when the matter is taken up for disposal.



28. Insofar as the plea that since the prayer made by the plaintiff is not for declaration of title and/or for recovery of possession, the suit is not maintainable, I have to state this is a plea which is on the merits of the case. If the defendants file a written statement denying the title of the plaintiff, then he always has the time to amend the plaint and seek for the relief of declaration. Whether that relief can be granted or not is a matter which has to be dealt with at that stage. In any event, a suit cannot be rejected for lack of pleadings or for the fact that a particular prayer has not been sought for.

29. I only have to refer the judgment of the **Hon'ble Mr.Justice M.Srinivasan in G.Subashini and Another -vs- P.Lakshmi Bai (1987) 100 Law Weekly 489** for the proposition that the case of the plaintiff has to be gathered from the averments made in the body of the plaint and not from the prayer paragraphs. The prayer paragraph is bound by the plaint and not *vice-versa* . It is always open to the Court to mould the prayer and grant an appropriate relief if it comes to a conclusion that the plaintiff is entitled to such relief. In fact, even if a wrong prayer is sought for, the Court is not prohibited from taking up the suit. In fact, it is empowered to grant appropriate relief that the plaintiff will be entitled to. Therefore, the plea of Mr.Sathish Parasaran that since the plaintiff has not sought for declaration of title and/or for recovery of possession, the plaint should be rejected, does not appeal to me.



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30. Qua the plea of clever and adroit drafting, I have to state that this is a simple plaint, where the plaintiff alleges that the defendants have purchased the property from a person who did not have title to the same. This is the golden thread which runs throughout the plaint. It is upto the plaintiff to prove the averments made by him in the plaint are true. By virtue of the fact that the plaint is not rejected does not mean the burden of proof has been shifted from the plaintiff to the defendants. To clarify, it continues to be the duty of the plaintiff to demonstrate that the averments made by him in the plaint are true at the time of trial. This will not only include the burden of proving about the lack of right in S.S.Krishnaswamiah, but also his plea that the sale deed dated 31.03.1920 is an act of forgery.

31. I have to view the case in another aspect. A probate has been granted to the 'Will' of Praba Seshachalaiah. The probate has not been challenged in a manner known to law. If I were to hold that a suit based on an order of probate, which, it is needless to add, is one in rem, and is not maintainable and would not be binding on all parties in terms of Section 44 of the Indian Evidence Act, I would be indirectly setting aside the order of probate. That course of action is not available to me, while rejecting the plaint.



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32. Now turning to the authorities that have been referred to by Mr.Sathish Parasaran, first of them is the Probate and Administration Act of 1881. Mr.Sathish Parasaran would argue that in terms of the 1881 Act, the executor and administrator of the deceased's property could either directly or indirectly purchase the property. This is as per Section 91 of the said Act. I am unable to see any relevancy of the said provision to the facts of the present case. It is not the plaintiff's case that S.S.Krishaswamiah has purchased the property from Prabala Krishnaswamy Iyer, the beneficiary of the 'Will' dated 22.10.1903. Therefore, the reference to the said provision is misplaced.

33. Mr.Sathish Parasaran would then refer to the judgment of the Division Bench of this Court in **Ramanathapuram Market Committee, Virudhunagar -vs- East India Corporation Ltd., Madurai (AIR 1976 MAD 323)** to urge that, if the plaintiff was aware of the mistake in the grant of Patta which was granted under the UDR, he should have had the knowledge about the mutation of the Patta in the year 1971. This is a plea that may be raised by the defendants in order to substantiate their case at the time of trial. The plaint nowhere concedes about the knowledge of the plaintiff regarding the mutation of the revenue records in the year 1971. On the contrary, the plaintiff specifically pleads that the plaintiff got to know about the error in the records only on 01.07.2015.



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34. Apart from this, the fundamental difference between the judgment in **Ramanathapuram Market Committee** case referred to supra and the case on hand is, the case that was dealt with by the Division Bench related to a Gazette notification issued by the Government of Tamil Nadu. By no stretch of imagination, a Patta granted by a Tahsildar can be given the same status as that of a Gazette notification issued by the Government of Tamil Nadu. In fact, the Evidence Act permits a Court to take judicial notice of a Gazette notification, but certainly it does not permit a Court take judicial notice of a proceeding of a revenue authority. This is because, a proceeding by a revenue authority cannot confer title on a party.

35. Turning to the next authority in **Srinivasan and 6 Others -vs- Sri Madhyarjuneswaraswami, Pattavaithalai, Tiruchirapalli District (1998 (2) Law Weekly 189 FB)** , I do not see how the said judgment is relevant to the facts of the present case. The issue that was answered by the Full Bench in that case was, whether the Civil Court has jurisdiction to grant Patta when an order passed under Act 30 of 1963 has become final. The Full Bench answered that, the Civil Court continues to have jurisdiction even after a Patta is granted by the provisions of Act 30 of 1963. It is nobody's case that a Patta had been granted to either party in terms of the Minor Inams (Abolition and Conversion into Ryotwari)



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Act of 1963. In fact, even when a statutory patta is granted in terms of the said Act, the Full Bench has held that a civil suit for declaration of title is maintainable.

Therefore, this judgment also does not help the case of the civil revision petitioner.

36. The next judgment that is relied by Mr.Sathish Parasaran is **Appaswamy Real Estates Ltd., -vs- Neelayathatchi Ammal and Others (2005 (3) Law Weekly 152)**. In the said case, the learned Judge dealt with the aspect of Section 17 of the Limitation Act. This is being sought to be pressed into service in the present case. A careful perusal of the said judgment would show that the suit had been rejected because the plaintiff therein had not challenged the sale deed dated 29.05.1957 which was the document by which the defendants claimed title to the property. The said defence is not available in the present suit, since the plaintiff has challenged the document under which the predecessors-in-title of the defendants have claimed title to the property ie., 1920 document executed by Krishnaswamiah in favour of Venkatesaiah, Sambaiah and Ramaiah.

37. The next submission of Mr.Sathish Parasaran is that the judgment in **Dahiben -vs- Arvinbhai Kalyanji Bhanusali Gajra (Dead) through Legal Representatives and Others (2020 (7) SCC 366)** applies to the facts of the present case. A careful perusal of the said judgment would show that the plaintiff in that case had sued stating that the sale deed under which the defendants



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claimed title was not supported by consideration. In fact, she had filed the sale deed as a plaint document. The Supreme Court found that the plaintiff had acknowledged and accepted the payments made under the document, which was challenged by the plaintiff. Hence they came to the conclusion that the plaint should not contradict with the plaint documents. The plaint was held to be hit by limitation because the plaintiff had admitted the execution of the sale deed in favour of the defendants. The circumstances set forth above do not exist in the present case. As already pointed out, the plaintiff nowhere pleaded that anyone claiming under Prabala Krishnaswami Iyer or Prabala Krishnaswami Iyer himself had executed the document transferring the title in favour of the predecessors-in-title of the defendants. Had it been so, I would have merely applied the said judgment and rejected the plaint.

38. Insofar as the judgment in **A.S.S.Subbaiya Pandaram -vs- Mahamad Musthapa Maracayar and Others (1917 Vol.V, Law Weekly 690)** is concerned, it was a case where the purchase that had been made by the defendant therein was from a Trustee who had a right to alienate the property. In terms of Article 134 of the then Limitation Act, the Court came to the conclusion that as the suit was barred as against the vendor himself, a successor to the office of the Trustee could not have maintained the suit. I should point out that the Court held that the suit was barred after a full trial. The principles that apply to



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determine whether the suit is barred by limitation or not after full trial cannot be made applicable to determine whether a plaint has been barred by time, at the time of deciding a rejection of plaint application, when the plaint otherwise discloses that the knowledge of the plaintiff was only on 01.07.2015.

39. With respect to the last authority that has been cited by Mr.Sathish Parasaran in **Virender Kumar Garg -vs- Ravinder Kumar Garg (2013 SCC Online Del 4661**, Para 13 of the said judgment becomes relevant. In that case, the person under whom the plaintiff claimed title, had denied that the property was a joint family property purchased from ancestral nucleus but, on the contrary, had given a reply notice that it was a self acquisition. Still, the plaintiff did not sue the father who had projected a case of self acquisition as long as the father was alive. Seven years after the issuance of notice, he presented the suit for declaration and partition. The Court held that as the cause of action for the suit had arisen when the father of the plaintiff had denied it was an ancestral property and claimed it to be a self-acquisition, by virtue of the death of the said person, a fresh cause of action would not commence. Such a situation does not exist in the present case. This is also a point which is always open for the defendant to argue at the time of trial.

40. The very recent judgment referred to by Mr.T.R.Rajagopalan, I feel,



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applies in all force to the facts of the present case. In **Kum.Geetha, D/o Late Krishna and Ors. -vs- Nanjundaswamy & Ors (2023 SAR Online (SC)**

1270) Hon'ble Mr.Justice Pamidighantam Sri Narasimha had taken the following view:

" The true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected."

41. I have already pointed out that the reading of the plaint discloses a cause of action and therefore applying the recent judgment of the Supreme Court, which I feel supports the view that I had taken above, I have no other option than to confirm the order of the learned District Judge.

42. To reiterate, whatever findings I have given above, is only for the disposal of the present revision. The trial Court should not construe that I have given any finding on the merits of the case. I have found a cause of action for the suit and I have held that it is not barred by limitation only on going through the averments made in the plaint. I am certain if the defendants file their written statement and raise contentious issues, the trial Court will frame appropriate issues and answer those issues without being influenced by the above observations made



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in this order. The defendants have been pursuing the application for rejection of
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plaint with all diligence and therefore they have not gone on record with respect to
their defence in the suit. When rejection of plaint application is filed, obviously the
defendants would want to see the result of that application before they go on
record with their defence. Therefore, considering the fact that the plaint discloses
triable issues, time is granted to the defendants till **30.09.2024** to file their
written statement.

43. With the above observations, the Civil Revision Petition stands
dismissed. No costs. Consequently, connected miscellaneous petitions are closed.
The order of the learned IV Additional District Judge, Tiruvallur at Ponneri in
I.A.No.1 of 2021 in O.S.No.290 of 2018 dated 25.04.2023 stands confirmed.

29.07.2024

Index : Yes/No
Neutral Citation : Yes/No
KST

To

The IV Additional District Judge
Tiruvallur at Ponneri.



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V. LAKSHMINARAYANAN, J.
KST

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