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A.Nos.5144 and 5145 of 2024
and
O.A.No.637 of 2024
in
C.S.No.204 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :25.11.2024

Pronounced on :09.12.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Application Nos.5144 & 5145 of 2024 and
Original Application No.637 of 2024 in
Civil Sit No.204 of 2024

A.No.5144 of 2024:

The Kalakshetra Foundation,
rep.by its Director,
Kalakshetra Road,
Thiruvananthapuram,
Chennai 600 041.

.. Applicant/second respondent/
second defendant

/versus/

1.T.S.T.Kaznavi
2.Nasi Banu
3.Yasmin Begum
4.J.Ashrab Ali
5.Habiba Beevi

.. Respondents 1-5/Applicants
1-5/Plaintiffs 1-5



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6.The District Revenue Officer,
Collectorate Office,
No.32, Rajaji Salai,
Chennai 600 001.

.. 6th respondent/1st respondent/
1st defendant

Prayer: This Application is filed under Order XIV, Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure, to vacate the interim order of injunction granted by this Hon'ble Court on 13.09.2024 in O.A.No.637 of 2024 in the above suit.

For Applicant :Mr.AR.L.Sundaresan,
Senior Counsel for
Mr.S.Raghunathan

For R1 to R5 :Mr.R.Thiagarajan
For R6 :Dr.S.Suriya, AGP(CS)

A.No.5145 of 2024:
The Kalakshetra Foundation,
rep.by its Director,
Kalakshetra Road,
Thiruvanmiyur,

Chennai 600 041.

.. Applicant/second respondent/
second defendant



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/versus/

1.T.S.T.Kaznavi
2.Nasi Banu
3.Yasmin Begum
4.J.Ashrab Ali
5.Habiba Beevi

.. Respondents 1-5/Applicants
1-5/Plaintiffs 1-5

6.The District Revenue Officer,
Collectorate Office,
No.32, Rajaji Salai,
Chennai 600 001.

.. 6th respondent/1st respondent/
1st defendant

Prayer: This Application is filed under Order XIV, Rule 8 of the Original Side Rules read with Order VII, Rule 11(b) and (d) the Code of Civil Procedure, to reject the plaint filed in the above suit under Order VII, Rule 1(b) and (d) of the Code of Civil Procedure.

For Applicant :Mr.AR.L.Sundaresan,
Senior Counsel for
Mr.S.Raghunathan

For R1 to R5 :Mr.R.Thiagarajan
For R6 :Dr.S.Suriya, AGP(CS)



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COMMON ORDER

C.S.No.204 of 2024 is the suit for declaration and consequential injunction instituted by T.S.T.Kaznavi and four others as against the District Revenue Officer, Chennai, and the Kalakshetra Foundation on being aggrieved by the cancellation of patta issued in their favour in respect of the suit schedule property.

2. Application No.5144 of 2024 under Order XIV, Rule 8 of the Original Side Rules read with Section 151 of C.P.C., to vacate the interim order of injunction granted by this Court on 13.09.2024 in O.A.No.637 of 2024 in the above suit.

3. Application No.5145 of 2024 to reject the plaint is filed under Order VII, Rule 11 (b) and (d) of C.P.C. by the second defendant, namely the



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Kalakshetra Foundation represented by its Director.

4. Before adverting to the merits of the application to reject the plaint, it is profitable to have a glimpse of the chequered history embroidered with litigations in respect of the property, which is subject matter of the suit.

5. Land in Old Survey No: 170/1, Town Survey No.285, Block No.55 at Thiruvanmiyur Village, Saidapet Taluk, Chengleput District, measuring about 5.05 acres was registered as patta land in the name of one Somasundaram Chettiar. On the petition by Thiru.T.K.Thiruganam, in proceedings dated 15/02/1963, the Special Assistant Settlement Officer, allowed patta for S.No.170/5 pro (4.69 acres) in the name of Joint Director, Kalakshetra and treated S.No.170/1 (0.36 acres) as Burial Ground Poramboke. On Revision before the Director of Settlement, this order was set aside *vide* a common order dated 24.12.1963 and remanded back to the



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Special Assistant Settlement Officer, Chengleput. The matter was heard by the Settlement Officer, Salem. On abolition of the Special Assistant Settlement Officer post, the Settlement Officer, Salem rejected the claims of all the parties in respect of S.Nos:170/1 and 170/2, *vide*, his order dated 11.04.1968. The order of the Settlement Officer, Salem, was challenged by the parties concern by separate revision petition before the Director of Settlement.

6. The Director of Settlement, *vide*, order dated 28.04.1971 set aside the order of the Settlement Officer, Salem, and remanded the case back for fresh disposal. The order of the Settlement Officer passed on 19/04/1973 after hearing the matter afresh was again challenged before Director of Survey and Settlements. Again, the order of Settlement Officer, Salem was set aside. This time remanded back to the Assistant Settlement Officer, Chengleput for fresh enquiry on the lines indicated in the order.



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7. On 09.04.1975, the Assistant Settlement Officer, Chengleput, issued the proceedings, after conducting fresh enquiry regarding claim of Patta for portion of S.No.170/1 between the rival claimants, namely, Joint Director, Kalakshetra Foundation and others as petitioners; T.K.Shanmugam as respondent. In the said proceedings royatwari Patta under Section 11 (a) of Act XXVI of 1948 was granted to the petitioners and the respondent as detailed in the schedule extracted below:

S.No.	Extent A.C.	Nature of Order
170/1pt	2.91	Ryotwari patta allowed u/s 11(a) of the Act XXVI of 1948 in favour of : The Kalakshetra, Thiruvanmiyur.
-6pro	0.12	Thiru.T.K.Shanmugam, 14, Anna Street, Thiruvanmiyur.
-7pro	1.23	Minor Parvathy.....(1)
	-----	by Guardian Thiru.G.Srinivasan
	4.26	Minor Muthukumarasamy.....(2)
		by Guardian M.Vallinayagam



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S.No.	Extent A.C.	Nature of Order
		Madras-28.
170/2pt -8 pro	0.61 ----- 0.14 ----- 0.75	Tmt.Padmini Chandrasekaran Gandhi Nagar, Minor Parvathy.....(1) by Guardian Thiru.G.Srinivasan Minor Muthukumarasamy.....(2) by Guardian M.Vallinayagam Madras-28.

8. The plaintiffs claim right over the property to an extent of 1.38 acres part of old S.No.170/1 on the basis that in R.S.No.170/1B situated at No.140, Thiruvanmaiur village, Saidapet Taluk, Chengleput District, was enjoyed by the members of Fisherman Welfare Association, Jeevanantham Nagar, for a long time. Based on their continuous possession from time immemorial, they were enjoying it as their own property. While so, in the year 1992, the Revenue Officials along with Policemen attempted to dispossess them and dismantle the structures erected by them. Their attempt to dispossess by force led to filing of Writ Petition in W.P.No:14288 of 1992

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by the Jeevanantham Nagar Fisherman Welfare Association seeking Mandamus forbearing the authorities from interfering with their peaceful possession and enjoyment of the property, except by due process of law. In the said writ petition, the High Court appointed an Advocate Commissioner to inspect the property and file report. Based on the Adangal register maintained by the Revenue Department and on the FMB sketch, the Advocate Commissioner reported that a portion of a land in S.No.170/1 measuring about 4 acres 26 cents is with Kalakshetra Foundation and it holds Patta No:1078 in its name. The said land is not a poramboku land. The survey No.170/1 been subdivided in the year 1976-77 as S.No.170/1A and S.No.170/1B. As per the sub-division, the Adangal register reveals S.No.170/1 measuring to an extent of 2 acre 76 cents is with Kalakshetra Foundation and S.No.170/1B measuring to an extent of 1 acre 50 cents with Ramadas, PuniyaKoti, Subramani, Manoharan, Devendran and Nagesh and Patta No.176 been issued in their favour.



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9. Based on the Advocate Commissioner report, on 15.04.1997 the Honourable High Court dismissed the writ petition filed by the Fishermen Association holding that in view of the fact that the land belongs to private individuals and not a Poramboku land as claimed by the writ petitioner Association, the Mandamus sought by the Fisherman Association is unsustainable. Thereafter, Jalaludeen, the father of the 4th the plaintiff purchased 3025 sq.ft. of land out of suit property from Ramdass and five others, who were holding patta for a land measuring 1 acre 50 cents in survey No.170/1B. He got the sale deed registered on 14.12.1996. Remaining portions of the land were sold out to various other persons by the patta holders. The purchasers joined together and put up a compound wall at a height of 7 feet to protect and preserve the suit schedule property.

10. In the plaint, it is alleged that during the year 1997, when the first



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defendant, at the instance of the second defendant tried to demolish the compound wall, the owners resisted their attempt and filed W.P.No.9989 of 1997 on the file of High Court for a Writ of Mandamus to direct the Collector of Chennai and the Commissioner of Corporation of Chennai forbearing them from interfering with the peaceful possession and enjoyment of the suit property by the petitioners. In the said Writ Petition, Kalakshetra Foundation got themselves impleaded as fifth respondent. Pending writ petition, survey was conducted by the Revenue Department and they issued a certificate dated 30.10.1998, identifying the land measuring 1.29.82.5 hect. in Town Survey Number 285 belongs to the second defendant/ Kalakshetra Foundation and land measuring 0.52.87.5 hect. is in occupation of one PuniyaKodi and five others. On considering the factual aspects and the certificate issued by the Revenue Department, after survey, the writ petition filed by the purchasers of the suit property from Puniakodi and others in W.P.No.9989 of 1997 was disposed of on



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10.11.1998 with the following observation:

"As in the earlier writ petition it has been held that the disputed land is not a poramboku land. The members of the said association are deemed to have been the owners of the said land. Now that the character of the land has been decided in the earlier writ petition No.14288 of 1992, if any further dispute with regard to the title over the property is in existence between the petitioner herein and the Kalakshetra Foundation, it is open to the parties to approach the Civil Court to establish their title".

11. About four years later, the Second defendant Kalakshetra Foundation filed W.P.Nos.8161 and 8162 of 2002, seeking possession of the property based on the certificate dated 30.10.1998, issued by the Thasildar, Mylapore, Triplicane. In the said Writ Petition, interim protection sought by the petitioner was disallowed. Hence, against the order passed in the Miscellaneous Application, Kalashetra Foundation preferred W.A.No.1676



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of 2002, In the appeal, Jamaludeen (father of the 4th plaintiff herein) who was one of the purchaser from Mr. PuniyaKoti was a party. The Division Bench on 11.06.2002 passed the following order:

" As already stated , it is better resolved by the survey authorities and as such the appellant is directed to move an application before the 2nd respondent for survey and demarcation of TS.No.285, admeasuring 1.29.82.5 hectares, situated at No.140 Thiruvanmiyur Village Block No.55, Mylapore-Tripitcane Taluk, of Chennai District. The 2nd respondent on collection of the proper charges payable thereto, shall get the land surveyed through the Deputy Inspector of survey, by issuing notice to the appellant and also the neighbours, basing upon which peg stones can be fixed on the land so demarcated as belonging to the appellant and then the appellant will be entitled to protect this property either by constructing the compound wall or fixing up a fence."



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12. **Plaint averment:**

The case of the plaintiffs is that Punyakoti and five others sold the suit schedule property to the plaintiffs based on the Patta issued to them. Earlier, the property was mortgaged on 21.03.1992 by Puniyakodi and others. They agreed to repay the sum of Rs.6 lakhs received as loan within five years from the date of borrowing. Failing which the Mortagagor, namely, the plaintiffs can transfer or sell the property. In lieu of interest they agreed for the mortgagor to enjoy the usufructus from the land. Puniyakoti and five others were not able to repay the mortgage money, hence, the plaintiffs adjudicated the mortgage deed under proceedings No.B1.29115 of 2002, dated 14.06.2002 before the Collector of Chennai and got transferred the right of Puniyakoti and five others in their name.



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13. The plaintiffs claim that from the date of usufructory-cum-sale mortgage executed by Punniyakotti and five others, the plaintiffs are in possession and enjoyment of the property. They have erected a watchman shed and employed a residential watchman to look after the safety of the suit property. There was negotiation between the second defendant, namely Kalashetra Foundation and the plaintiffs to settle their dispute amicably. The chairman of the second defendant Foundation in his letter dated 01.07.1998 proposed to amicably settle that disputes and withdraw all the cases, provided the plaintiffs surrender 15 cents of the land, out of 1 acre 50 cents to the Kalashetra Foundation, however, on 13.07.2005, the Estate Officer of Kalashetra Foundation issued a show cause notice to Punniyakodi and five others calling upon them to participate in the enquiry instituted under Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act 1971.



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14. The notice on behalf of of the second defendant forced Puniyakoti and five others along with Jalaludeen to prefer W.P.No.40498 of 2005 before the High Court challenging the notice issued by the Estate Officer, Kalashetra Foundation. The said notice was impeached on the ground that the Estate Officer Kalashetra Foundation lacks jurisdiction over the subject property. On being convinced about the balance of convenience, Stay of the Estate Officer. Notice was granted on 22.12.2005. Later, Kalashetra Foundation filed an application to vacate stay and the same was dismissed and the stay granted in favour of PuniyaKoti and five others and Jalaludeen was made absolute. The writ appeal referred by Katrashetra Foundation was also dismissed against the Estate Officer and the stay order against the Estate Officer stands confirmed on 25.11.2008.

15. Having failed in the attempt to dispossess the plaintiffs from the



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suit property, Kalashetra Foundation approached the District Revenue Officer, for cancellation of Patta issued to Ramdass and five others in Town Survey No.295. In the proceedings before Revenue Divisional Officer, Ramadass and others appeared before the first defendant through an Advocate and filed their preliminary objection regarding maintainability of the petition on the ground of limitation. However, the first defendant concluded the enquiry without affording sufficient opportunity. The order of the first defendant was challenged before the Special Commissioner of Land Reforms and Administration by a Revision Petition. The Revision Petition was dismissed confirming the order passed by the first defendant. The vendors of the plaintiffs, namely Puniyakodi and five others promising them that the responsibility to take care of the litigation entrusted to one P.K.O.Habeeb Mohammed, the Power Agent appointed by the vendors and he will take care of the plaintiffs interest.



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16. Puniyakoti and five others filed W.P.No.22384 of 2007 challenging the order of the Commissioner of Land Reforms and Administration confirming the order of the first respondent cancellation of Patta issued in their favour. The said W.P.No.22384 of 2007 was dismissed by an order dated 26.06.2019. Aggrieved by the dismissal of the Writ Petition, Puniyakoti and five others preferred Intra Court Appeal in W.A.No:57 of 2020 in which the plaintiffs were arrayed as respondent 4 to 9. This Court by an order, dated 07.08.2023 directed the 1st defendant to file a report regarding the following issues:-

(a)Whether any application made by the appellants in writing and

(b)Under what proceedings an order came to be passed directing patta to be issued to the appellants and also confirm.

(c)Whether the patta No.176 dated 07.07.1978 is a genuine or forged/fabricated patta.

17. After perusal of the report, W.A.No.57 of 2020 was dismissed with



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liberty to the plaintiffs to work out their remedy before the appropriate Forum in the manner known to law.

18. In the above said background of facts, This suit is filed for the following relief:

(a) Declaration that the order passed by the 1st defendant dated 04.04.2006 made in its proceedings J2/11617/04 cancelling the patta issued in favour of the plaintiffs is illegal, invalid and non-est in the eyes of law and consequently to set aside and consequently the order passed by the 1st defendant in its proceedings dated 04.04.2006 made in its proceedings J2/11617/04 as null and void and not binding on the plaintiffs and or their property morefully described in the plaint schedule.



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(b) Grant a decree of permanent injunction restraining the defendants their men, agents, servants or any other persons or persons claiming through them in any manner interfering or disturbing with the plaintiff's peaceful possession and enjoyment of the suit schedule more fully described in the plaint schedule here under except in accordance with law.

19. The gist of the application to reject the plaint:

The second defendant Kalashetra Foundation in the application to reject the plaint contends that the claim of the plaintiffs are tainted by fraud beside being time barred. Even otherwise the suit is not maintainable and to be rejected, in view of Order VII Rule 11(b) and (d) of C.P.C. Relying upon



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the order of the first defendant dated 04.04.2006, the Patta granted in favour of a Puniyakodi and others was in collusion with certain officials of the office of registration. After verifying it with the records, the first defendant had cancelled the fake patta issued in favour of Puniyakodi and others. The transfer of patta based on the Mortgage deed also found to be illegal and non est. Therefore, the consequential mutation of record done in favour of plaintiffs also was set aside. Before passing the proceedings, the defendants and others were put to notice by the plaintiffs and they were represented by the counsel. Their objections were considered and the records relied by them were tested and verified with the records maintained in the office and found that the relevant files maintained in the Revenue Department does not correlate with the entry made in the documents relied by the plaintiffs.

20. The liberty to work out the remedy before the appropriate Forum

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in the manner known to law granted in the W.A.No.57 of 2020 filed by Punniyakodi and others, in which the plaintiffs were transposed as respondents 4 to 9. This observation will neither give a cause of action or limitation for the plaintiffs to file the present suit for declaration, to declare the proceedings of the first defendant dated 04.04.2006 as null and void.

21. The plaintiffs trace their right over the property based on a mortgage deed allegedly executed on 21.03.1992. Any mortgage deed is mandatorily required to be registered under Section 59 of the Transfer of Property Act read with Section 17 of the Registration Act. The document on which the plaintiffs claim right has not been registered. Consequentially the plaintiffs are statutorily barred from claiming any right under the said document which cannot be enforced.

22. The relief sought for is a declaratory relief to set aside the order of



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the DRO cancelling the patta. In fact, the plaintiffs are indirectly seeking a declaration of title over the schedule mentioned property measuring about 25 grounds. The guideline value of the property is about Rs.3 crores per ground. The value of the property therefore, be not less than Rs.76 crores. However, the plaintiffs claims that the relief is incapable of valuation and valued it as Rs.1 crore and paid court fees of only Rs.3 lakhs.

23. Gist of common counter filed by the respondents/plaintiffs:

The application filed to reject the plaint is misconceived and filed without properly understanding the position of law. Order VII, Rule 11(b) is inapplicable to the Original Side of the High Court. Order X, Rule 11(b) and (c) are inapplicable to the Chartered High Court.

24. In any case, the value of the suit is purely a question between the



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plaintiffs and the Court, then the objections are not germane for deciding the value of the property and the Court fees payable thereon.

25. The case of the defendant is that Kalakshetra Foundation is owner of 2.91 acres in S.No: 170/1. Based on the long possession, patta was granted to Punniyakodi and 4 others for an extent of 1.50 acres. The defendant/applicant has no right to seek for cancellation of patta granted to Punniyakodi and others.

26. The District Revenue Officer before passing his order dated 04.04.2006 failed to give adequate opportunity to Punniyakodi and others. Though he know the plaintiffs have derived the possessory right from Punniyakodi and others based on the mortgage deed dated 21.03.1992 followed by the transfer of patta in their name, after the adjudication of the District Collector, *vide* order dated 30/01/2003, the patta was cancelled

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without hearing them.

27. The Revenue Divisional Officer not empowered to cancel the patta behind the back without notice. The impugned proceedings of the DRO (6th respondent herein/first defendant) dated 04.04.2006 cancelling the patta is without jurisdiction, hence, it is nullity. It can be challenged at any time, since the order was passed in violation of principle of natural justice. Limitation will not arise, when a proceedings is null and void. Further, limitation is a mixed question of law and facts. The issue of limitation cannot be decided summarily under Order VII, Rule 11(d) of CPC.

28. Likewise, when there is no dispute over the title regarding 1.50 acres and only the possession is in dispute, suit for declaration of title is not required and the relief sought is not for declaration of title. The suit is properly valued and the proper court fee is paid based on the relief sought to



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establish the possessory right enjoyed by the vendors of the plaintiffs and thereafter, continued by the plaintiffs for more than 50 years.

29. The Learned Senior Counsel for the applicant/2nd defendant referring the order of the RDO dated 04.04.2006 and the order of the Special Commissioner and Commissioner of Land Administration dated 15.03.2007 passed in the revision petition filed by Punniyakodi and 5 others through their power agent P.K.O.Habeeb emphasised that the Patta issued in favour of Punniyakodi and others and the later, transfer of patta in favour of the plaintiffs was the outcome of fraud and misdeed. After verifying the connected records available in the Taluk Office, which is the custodian of Land Records RDO had observed in an unequivocal term that to grab the land which lawfully owned by Kalakshetra Foundation, an attempt to tamper the revenue records has been made. Relying upon a Xerox copy of a certificate dated 30.10.1998 given purportedly in the name of the Thasildar-



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Mylapore-Triplicane Taluk transfer patta involving the land under reference (1.50 acres of land a portion of land in T.S.No:295) been effected on the request of one P.Rajkumar, the power agent of P.Ramdass, A.Punniyakodi and 4 others. Subsequently, the then Taluk Officer had ordered transfer of patta of the same land in favour of Kasnavi and others (plaintiffs herein), but the relevant file not available in the Taluk Office for due scrutiny.

30. In exercise of the statutory right, the order of the RDO dated 04.04.2006 was challenged by P.K.O.Habeeb, the power agent of Punniyakodi and others, before the Special Commissioner and Commissioner of Land Administration. The plaintiffs herein were put on notice about the revision petition. They after the receipt of notice dated 11.01.2007 and 15.02.2007 have not appeared for hearing and not filed any written submission. Thereafter, on hearing the counsel for revision petitioner and the counsel for Kalakshetra Foundation, the Special Commissioner and



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Commissioner of Land Administration has dismissed the revision petition on 15.03.2007 confirming the order of the RDO.

31. The order passed in the Revision Petition was challenged in W.P.No.22384 of 2007 by P.K.O.Habeeb as Power Agent of Punniaykodi and 5 others. In the plaint, the plaintiffs had candidly admitted about their authorisation to P.K.O.Habeeb to take care of their interest as they derive right through Punniakodi and others. The order of the Special Commissioner was passed after due notice and knowledge of the parties. In any event, the order cancelling the patta issued in favour of Punniakodi and others through whom these plaintiffs claim right been tested and upheld. The plaintiffs, who claim that they derive right from Punniaykodi and others, cannot after passively and actively participated in the proceedings have right to sustain the present suit as framed, despite bar under law.



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32. The claim of the plaintiffs that the Division Bench of this Court had granted them liberty to work out their remedy before the appropriate Forum in the manner known to law is not in respect of the cancellation of patta by the first defendant vide order dated 04.04.2006, but in respect of their claim over the property based on the usufructory mortgage executed by the appellants (Punniyakodi and others).

33. Reading out paras 12 and 13 of the order passed in W.A.No.57 of 2020 dated 21.09.2023, the learned Senior Counsel for the applicant submitted that, the subject matter of the Writ Appeal No.57 of 2020 was the interim stay granted by the Learned Single Judge restraining Kalakshetra Foundation to proceed further pursuant to the eviction notice issued by the Estate Officer of Kalakshetra Foundation to the occupants of the land. In the



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said writ appeal, Mr.G.Jalaludeen, the father of the 4th plaintiff herein, was the 7th appellant. The plaintiffs 2 to 5 got themselves impleaded in the said Writ Appeal as Respondents 4, 6 to 9 and appeared through a Senior Counsel. While dismissing Writ appeal, the Court gave them liberty to work out their remedy before appropriate Forum in manner known to law. This liberty was granted to the plaintiffs by the Division Bench in respect of their right under the usufructory mortgage alleged to have been executed by Punniyakodi and others. Whereas, the present suit is filed not in respect of the alleged mortgage but unconnected to the said mortgage. The suit is filed even without impleading the persons from whom the plaintiffs alleged to have derived the right to occupy the disputed land.

34. The suit for declaration, that the order of the first defendant dated 04.04./2006 as null and void and consequential injunction will not fall under the scope of liberty granted. Through this suit, the plaintiffs try to re-agitate



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the matter which has reached finality. This is clear abuse of process of law and therefore, even if Order VII, Rule 11 (b) of C.P.C cannot be pressed in view of Section 120 C.P.C r/w Order XXXIX and Clause 12 and 14 of Letters Patent and Order XXXIX, Rule 3 (1) of Madras High Court Original Side Rules, the plaint ought to be rejected under Order VII, Rule 11(a) and (d) of C.P.C on the ground of lack of cause of action and barred by law.

35. In aid of his argument, the Learned Senior Counsel for the applicant/2nd defendant placed before this Court the following Judgments:-

1.T.Arivandandam v. T.V.Satyapal and another
reported in [(1977)4 SCC 467];

2.State of Kerala and others v. Sudhir Kumar
Sharma and others reported in [(2013)10 SCC 178];

3.Madanuri Sri Rama Chandra Murthy v. Syed
Jalal reported in [(2017) 13 SCC 174];



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4.Dhiben v. Arvinbhai Kalyanji Bhanusali
(Gajra) (D) Thr. Lrs and others reported in [AIR 2020
SCC 3310], [AIR Online 2020 SC 634].

36. Per contra, Mr. R.Thiyagarajan, Learned Counsel for the respondents/plaintiffs contended that, the law is well settled and there can be no doubt while considering the application filed under Order VII, Rule 11 (d) of CPC., that only the statement made in the plaint to be considered and nothing else. The plaint has to be read as a whole and in its entirety, not in parts, bits and pieces. It is incorrect to say, the plaintiffs claim is vitiated by fraud and time barred. Both these allegations have to be tested by trial. They are substantial questions of fact. The Courts have time and again laid that limitation is mixed question of law and facts.

37. As preliminary object to the application to reject the plaint, the Learned Counsel for the respondents/plaintiffs submitted that in view of



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Section 120 of C.P.C, Order XXXIX of C.P.C, Order XXXIX, Rule 3 of Original Side Rules and Clause 12 and 14 of the Letters Patent, the special provisions applicable to the suit filed in the original side of the Chartered High Court application for reject of plaint under Order VII, Rule (b) of C.P.C. is wholly prohibited.

38. To attract Order VII, Rule 11 (d) of CPC., there must be a law in force to bar filing such suit. In the instance case, there is no such bar under any statute. The plea of limitation is a mixed question of Law and Facts. Hence, it cannot be adjudicated in an application for reject the plaint, moreso when the Division Bench of the High Court has given liberty to the plaintiffs to work out the remedy before appropriate Forum in accordance with law.



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39. On facts, he submitted that, the property in dispute falls within S.No:170/1 of Thirvanmiyur village. Before Sub-Division the extent of S.No:170/1 was 4 acres and 26 cents. The ownership and possession of Kalakshetra Foundation in respect of 2 acres 76 cents in S.No:170/1A never in dispute. The dispute is only in respect of 1.50 acres in S.No: 170/1B. The cancellation of patta granted to Punniuyakodi and consequential grant of patta to the plaintiffs is the subject matter of the suit and the relief sought by the plaintiffs is not barred by any law in force.

40. Narrating the sequence of event to show, how the plaintiffs got patta for the land in dispute in the year 2003 and came into possession of the 1.38 acres of land for which injunction is sought, the Learned Counsel for the plaintiffs submitted that the issuance of patta to Puniyakodi already decided in the earlier round of litigation. Therefore, the legality of the representation given by Kalakshetra Foundation for cancellation of patta in



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favour of Punniyakodi and others without impleading the plaintiffs and cancellation of patta without hearing the plaintiffs are facts need to be judicially tested.

41. The reports filed by the Revenue officials confirms the fact that the Kalakshetra Foundation granted patta only to an extend of 2 acres and 76 cents in S.No: 170/1A. As such they cannot question about the patta given to Punniyakodi and others under TSLR certificate for an extent of 1 acre 50 cents of land in S.No: 170/1B. The patta was subsequently transferred in favour of the plaintiffs, based on the usufructory mortgage deed dated 21.03.1992 executed by Punniyakodi and others after borrowing Rs 6 lakhs and promised to repay it within 5 years, failing which, they will sell the property to the plaintiffs.

42. Admitting the error in the mortgage deed that mentioning the



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address of the parties as resident at 'Chennai', when the city was then called as 'Madras'. It is contented that the stamp paper for the mortgage was procured in the year 1992 but not executed immediately, only after 4 years, Punniaykodi and others acknowledging the borrowing, executed the deed in the year 1996, by the time the name of Madras city changed to Chennai.

43. The said unregistered mortgage deed written on 100 rupees Stamp Paper was presented by the first plaintiff before the Collector of Chennai for adjudication. After conducting enquiry with Punniyakodi and 4 others and recording their consent, the Collector of Chennai directed the plaintiffs to pay a sum of Rs.1,02,900/- towards service charges in the account of Administrative Services, C1, Administration of Justice-1, services and services fees. On deposit of the said amount in RBI on 28.06.2002, the District Collector directed the Thasildar, Mylapore, Triplicane Taluk to

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transfer the patta for the suit schedule property in favour of the plaintiffs. Without considering these records, the DRO had cancelled the patta issued to them. Merely because the mortgage deed is unregistered, the defendant cannot contend that the deed is unenforcible and the suit filed is not maintainable.

44. Claiming that, the plaintiffs in this suit are before the Court to protect their possessory right which they are holding since the date of mortgage, the suit is valued appropriately and cannot be rejected on the score of undervaluation or for not seeking declaration of title over the property.

45. Further the leaned counsel also contented that there are enough Revenue records like Adangal register to show the patta issued to



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Punniyakodi and others acted upon and first they were in possession of the property, and thereafter they gave possession to the plaintiffs in terms of the mortgage deed. During the course of trial these facts could be established. The applicant /defendant have no locus to challenge the mortgage deed, assuming without conceding, if there is any doubt about the mortgage deed, only parties who can question it are Punniyakodi and 4 others. The mortgage deed being duly acted upon and possession handed over to the plaintiffs, the application to reject the plaint is not maintainable.

46. The averments contained in the plaint raises a plausible case which requires investigation of facts and interpretation of documents. The Court can come to a conclusion only after testing the materials placed before it. Hence, the plaint cannot be rejected at the threshold at the instance of the rival claimant.



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47. The possession of the plaintiffs is legal, lawful and valid. The long time possession has to be protected and contentious issue of right to be in possession has to be tested. The plaintiffs cannot be deprived of their right without trial, merely based on the self serving statements of the second defendant.

48. To buttress his argument, the learned counsel for the respondents/plaintiffs referred the following judgments:-

1. Raptakos Brett and Co.Ltd. v. Ganesh Property reported in [1998(7)SCC 184];

2. Popat and Kotecha Property v. State Bank of India Staff Association reported in [2005 (7) SCC 510];

3. Mayar (H.K.)Ltd., and ors v. Owners and parties, Vessel M.V.Fortune Express and ors. reported in [2006(3) SCC 100];

4. Ram Prakash Gupta v. Rajiv Kumar Gupta



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and Ors. reported in [2007 (10) SCC 59];

5. C.Natarajan v. Ashim Bai and Ors reported in
[2007 (14) SCC 183];

6. Surjit Kaur Gill and anr. v. Adarsh Kaur Gill
and anr. reported in [2014 (16) SCC 125];

7. P.V.Guru Raj Reddy v. P.Neeradha Reddy
and Ors reported in [2015 (8) SCC 331];

8. Soumitra Kumar Sen v. Shyamal Kumar Sen
and ors reported in [2018(5) SCC 644];

9. Pawan Kumar v. Babulal Since deceased
through legal represented and others reported in
[(2019) 4 SCC 367];

10. Madhav Prasad Aggarwal and another v.
Axis Bank Limited and another reported in [(2019)7
SCC 158];

11. Urvashiben and another v. Krishnakant
Manuprasad Trivedi reported in [2019(13) SCC 372];

12. Sakthi Bhog Food Industries Ltd. v. Central
Bank of India and Anr reported in [2020(17) SCC
260];

13.Srihari Hanumandas Totala v. Hemant Vithal
Kamat and Ors reported in [2021(9) SCC 99];



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14.Neelavathi and ors v. N.Natarajan and others
reported in [AIR 1980 SC 691].

49. The spectrum of Order VII, Rule 11 of C.P.C, in the legal ambit is explained by the Hon'ble Supreme Court in *Popat and Kotecha Property -vs- SBI Staff Association* reported in [(2005) 7 SCC 510] in the following terms:-

“12. In the present case the respondent has relied upon Clause (d) of Rule 11.

13. Before dealing with the factual scenario, the spectrum of Order VII Rule 11 in the legal ambit needs to be noted.

14. In Saleem Bhai and Ors. v. State of Maharashtra and Ors, it was held with reference to Order VII Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can



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exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal and Ors, it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

16. The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has



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to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code.

17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill, only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In Raptakos Brett & Co. Ltd. v. Ganesh Property, it was observed that the averments in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order VII was applicable.

19. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without



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addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hairsplitting technicalities.

20. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of- the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised.”

50. Thus, the statement in the plaint need to be looked as a whole to test whether the plaint is barred by law. Further, it is also essential to bear in



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mind that the real object of Order VII, Rule 11 of the Code is to keep out of Courts irresponsible law suits.

51. In the present suit, the plaintiffs states that the cause of action commenced on 09.04.1975, the day when the Settlement Officer, Chengleput passed an order allowing ryotwari patta to Kalakshetra Foundation and others by sub dividing S.No:170/1. Followed by issuance of patta to their vendors A.Punniyakodi and 5 others on 07.07.1978. Then on 31.01.2003 when TSLR certificate issued to the plaintiffs based on the proceedings of the Collector dated 28.06.2002.

52. The plaintiffs claims that the District Collector issued the proceedings based on the outcome of the enquiry in respect of the unregistered usufructory mortgage deed dated 21.03.1992 executed in their favour by Ramadoss and 5 others. The right of Ramadoss and 5 others is



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traced from the certificate dated 30.10.1998 issued by the Tasildar, Mylapore - Triplicane stating that after completion of operation of Town Survey System at Thiruvanmaiur Village, S.No: 170/1 sub-divided. The old survey No: 170/1 part New T.S.No: 295 classified as Ryotwari and patta No: 176 is issued to 1). P.Ramados, 2). Punniyakodi, 3). Subramani, 4). Manoharan, 5). Nagesh and 6). Devendiran.

53. The first defendant after examination of the records vide order dated 04.04.2006, had stated that the land in S.No:170/1 measuring 5.05 acres belongs to Kalakshetra Foundation as per the sale deed dated 07.04.1960. Though during Town Survey operation the said land was divided into two parts T.S.No:285 and T.S.No:295, the extent of the land was not at all reduced. In fact, in T.S.No:285 the said land was clubbed with lands belonging to other Institutions, namely TNHB., etc.,



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54. The DRO has held that the request of P.Rajkumar the Power Agent of Ramdoss, Punniyakodi and 4 others in his letter dated 18.01.2000 for issuance of patta been conceded by the Taluk Office without verifying his claim that Patta in New T.S.No: 295, Block 55, to an extent of 1.50 acres issued in the year 1978 and title confirmed by certificate dated 30.10.1998. In his order dated 04.04.2006, the DRO had recorded the fact that vital entries in the Adangal register are missing. The omission is committed by the Thasildar to help the respondents (Ramadoss, Punniyakodi and others) in their sinister design to gain illegal access to very valuable land.

55. The Revision Petition filed against this order was dismissed on 15.03.2007. Further, in W.P.No.22384 of 2007 filed against the order passed in Revision Petition, this court has considered the proceedings of the Assistant Settlement Officer, Chengleput dated 09.04.1975 which the plaintiffs rely as foundational document to claim right in the property. That



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apart, other documents which are now relied and referred by the plaintiffs were taken into consideration.. The first defendant's order dated 04.04.2006 which was confirmed in the revision and impugned in the Writ Petition was examined thoroughly and the High Court has held that DRO has power to entertain application for cancellation of patta in exercise of power under Board Standing Order 31 and under Section 13 of the Patta Pass Book Act, 1993.

56. In the same judgment, this Court had also made the below observation before dismissing the writ petition, which are relevant to decide the present application filed to reject the plaint.

“51. On a perusal of the order of the Assistant Settlement Officer, Chingleput, dated 09.04.1975 shows that the land in S.No.170/1 is a ryotwari land. While being so, how patta was granted in favour of the petitioners by the regular Tahsildar on 07.07.1978 was not explained by the Tahsildar and it creates suspicion.



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Even in the Certificate dated 30.10.1998 issued by the Tahsildar, Mylapore – Triplicane Taluk, the adangal column is blank in respect of the petitioners.

52. Hence, the District Revenue Officer as well as the Special Commissioner has rightly arrived at a conclusion that the Taluk Office has granted patta without any basis. In view of the above, this Court is not inclined to issue direction to the parties to approach the Civil Court. It is an unnecessary exercise. Hence, I have no hesitation to arrive at a conclusion that the patta obtained in the year 1978 and the Certificate obtained in the year 1998 is without any basis and there is no back records available to substantiate the above said revenue records.”

57. With the above observation, this Court in W.P.No.22384 of 2007 *vide* order dated 26.06.2019 upheld the order of the DRO, dated 04.04.2006 as confirmed by the Special Commissioner and Commissioner of Land Administration *vide* his order dated 15.03.2007.



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58. It is pertinent to take note that in the said writ petition, this Court has taken note of the fact that, before the Special Commissioner and Commissioner of Land Administration, these plaintiffs were parties. They did not challenge the order dated 15.03.2007 passed by the Special Commissioner and Commissioner of Land Administration. In the plaint, they admit the knowledge about the order passed in the revision petition and in paragraph 17 of the plaint, they candidly state that, "M/s Punniyakodi and 5 others executed a Power of Attorney Deed in favour of one Mr. P.K.O.Habeeb Mohammed and the said power of attorney has promised and assured the plaintiffs that he will look after the litigations on their behalf and hence, the plaintiffs have not joined as parties to the litigation as stated supra."

59. In the Writ Appeal W.A.No.57 of 2020, filed against the order



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passed in W.P.No.22384 of 2007, dated 26.06.2019, the Division Bench of this court vide its order dated 21.09.2023 had confirmed the order of the Single Judge by observing as below:-

“12. Thus, in the light of the well considered order passed by the learned Single Judge of this Court and taking into consideration of the report filed by the Revenue Authorities, wherein, it is stated that the appellants manoevered to obtain patta in their names by playing fraud, we are inclined to interfere with the order impugned in the Writ Appeal. Accordingly, we dismiss the Writ Appeal.”

60. Along with the Writ Appeal, the writ petition filed by Punniyakodi and 5 others challenging the eviction notice issued by the Estate Officer, Kalakshetra Foundation under the Public Premises Act, was also disposed with the following observation:-

“13. In view of the Judgement passed by us in the Writ Appeal, whereby, the order passed in



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W.P.No.22384 of 2007 is upheld, the relief sought for in Writ Petition No.40948 of 2005 viz., to quash the show cause notice proposing eviction of the petitioners by the second respondent, Estate Officer, Kalakshethra Foundation Thiruvannamipur dated 09.07.2005 cannot be granted. However, considering the fact that the dispute between the appellants and the third respondent, Kalakshethra Foundation with respect to the property in S.No.170 situated at Thiruvannamipur Village is civil in nature, this Bench while sitting under Article 226 of the Constitution of India cannot act as fact finding Authorities and go into such disputed questions of fact. Therefore, it is left open to the parties to work out their remedy before appropriate forum in the manner known to law.”

61. The petition in C.M.P.No.20401 of 2023 filed by the plaintiffs herein to implead them as Appellants 7 to 11 in W.A.No.57 of 2020 was disposed with the below observation:-

“So far as C.M.P.No.20401 of 2023 in Writ



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Appeal is concerned, the same has been filed by the petitioners 1 to 5 seeking to implead them as appellants 7 to 11 in the Writ Appeal. As already observed in the preceding para, since this Bench, pursuant to the Status Report filed by the Revenue Authorities had arrived at a conclusion that the dispute between the appellants/writ petitioners and third respondent -Kalakshethra Foundation was the subject matter of Appeal and the same is dismissed, the petitioners in C.M.P.No.20401 of 2023 are granted liberty to work out their remedy before the appropriate forum in the manner known to law, inasmuch as they are claiming right over the property in dispute by way of usufructory mortgage deed alleged to have been executed by the appellants in their favour.”

62. Thus, from the complete reading of the plaint wholly with the corresponding documents relied by the plaintiffs, it is clear as crystal that the right of the plaintiffs whatsoever in respect of the suit schedule property flows only from the mortgage deed dated 21.03.1992 executed in favour of



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the plaintiffs by Ramadoss, Punniyakodi and 4 others.

63. As far as the said mortgage deed, in the plaint the plaintiffs have not said much about it. To the allegation of the applicant/2nd defendant that the said mortgage deed is a fabricated document, the plaintiffs/respondents in the common counter had denied the allegation but, admit that it is an anti-dated document. The relevant portion of their admission is extracted below:-

“12. I submit that the averments made in paragraph 11 of the affidavit are not true and sustainable. It is false to allege that the Mortgage Deed dated 21.03.1992 produced by us, is a fabricated document and procured by fraud. It is no doubt true that some mistakes have happened in preparing the mortgage deed. It is true that on 21.03.1992, A.Punniyakodi and 4 others had borrowed a sum of Rs.6,00,000/- from us promising to repay the same within 5 years time. Though I have purchased the 100 rupees stamp paper for the preparation of mortgage



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deed, the document was not executed by them at that time. Subsequently on account of various reasons not attributable to the Applicant failed to prepare the mortgage deed. During the year 1996 after 4 years of borrowing the above said loan amount, we had demanded for return of the same from A.Punniyakodi and 4 others. They had accepted and acknowledged the said borrowal and promised to repay the same within a year as promised by them. At this juncture the Mortgage deed was prepared on the stamp paper procured by me during the year 1992. While typing the address of the parties by mistake instead of Madras, it was typed as Chennai. Taking advantage of the said mistake, the Applicant is not justified in stating that the mortgage deed is a fabricated document.”

64. The said mortgage deed is typed on a 100 Rupees Stamp Paper purchased on 05.03.1992, the deed is dated 21.03.1992, however, the plaintiffs admit that it was actually executed four years thereafter. It is an



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unregistered document. Therefore, the Court has to *prima facie* accept what the plaintiff say about the date of execution.

65. This deed describes Ramdoss and 5 others as the Mortgagors, they claiming that they are the rightful owners of the schedule property measuring to an extent of 1.50 acres comprise in S.No: 170/1B, patta No: 176 of Tiruvanvaiyur Village by virtue of their ancestors property and been in continuous occupation. It reads, the mortgagors have receive loan of Rs 6 lakhs from the mortgagees/plaintiffs. They have agreed to repay the loan amount without any interest immediately on completion of 5 years. The deed further says, they are Handing over the possession to the mortgagees to use the land as 'godown' for a period of 5 years without consideration for usage. In the event of non-payment of loan amount by the mortgagors, on completion of 5 years the mortgagees are at liberty to bring the schedule mentioned property for sale to realize the said amount or they are at all



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liberty to inherit the said property as if their own property.

66. The specific case of the plaintiffs is that, the above said deed is an usufructuary mortgage-cum-sale deed over the suit schedule property. Punniyakodi and others (mortgagors) executed it on 21.03.1992 in favour of the plaintiffs. Punniyakodi and 5 others failed to pay the loan amount, therefore after the expiry of 5 years, at request of the first plaintiff, the unregistered/insufficiently stamped document was adjudicated by the District Collector of Chennai. Thereafter, the plaintiffs got transferred the rights of Ms.Punniyakodi and 5 others over the suit property in their favour.

67. Whereas, this Court in W.P.No.22384 of 2007 had held that patta in the name of Punniyakodi and 5 others itself is not genuine. The alleged pattadharars have no right to convey the property to some third parties. The petitioners (Punniyakodi and 5 others) are encroacher's who had encroached



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the property based on the forged patta as if it was granted in the year 1978. Merely, the petitioners encroached upon the land would not get any title over the same as the patta issued by the Tahsidar was found erroneous.

68. When the above order challenged before the Division Bench in W.A.No.57 of 2020, the Division Bench confirmed the order of the single judge. While dismissing the appeal, the Division Bench has held the appellants (Punniaykodi and others) have manoeuvred to obtain patta in their name by playing fraud. After observing so, in the said context, the Division Bench has given liberty to the plaintiffs to workout their remedy before the appropriate forum in the manner known to law, in as much as they are claiming right over the property in dispute by way of usufructory mortgage.

(Emphasis added)



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69. After a categorical finding from this court that the patta dated 07.07.1978 allegedly issued in the name of Punniyakodi, Ramdoss and 4 others is a forged document, the plaintiffs shall predicate their suit on the premise that Punniyakodi and others had a valid title over the suit schedule property to mortgage the property to them. Based on the adjudication of the mortgage deed, they got the patta transferred in their name on 31.01.2003.

70. The examination of the mortgage deed, on the back of the mortgage deed, a rubber stamp endorsement of the District Collector indicating that under Section 40 of the Indian Stamp Act, 1899 Stamp Duty of Rs.77,900 + Penalty of Rs.25,000/- levied on this instrument and collected from Thiru T.Kaznavi and 5 others. The P.A (General) to the District Collector has signed in the endorsement with date as 28.06.2002.



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71. Even assuming that Punniyakodi and others had a semblance of right in the suit schedule property and executed a valid mortgage deed dated 21.03.1992 in favour of the plaintiffs, no right over the immovable property can be transferred by virtue of the adjudication by the District Collector in exercise of his power under Section 40 of the Indian Stamp Act, 1899.

72. Section 40 of the Indian Stamp Act, 1899 reads as below:-

“40. Collector's power to stamp instruments impounded — (1) When the Collector impounds any instrument under Section 33, or receives any instrument sent to him under Section 38, sub-section (2), not being an instrument chargeable with a duty not exceeding twenty paise only or a mortgage of crop (Article 41(a) of Schedule I) chargeable under Section 3 with a duty fifty paise or a bill of exchange or promissory note, he shall be adopt the following procedure: —

(a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty,



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he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.



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(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.”

73. This provision deals with the power of the Collector and procedure to impound instruments which are chargeable with duty, but not duly stamped. To exercise the power under Section 40 of the Indian Stamp Act, the Collector ought to have received the instrument either under Section 33 or under Section 38 (2) of that Act. Whereas in this case, the first plaintiff states in his counter affidavit that he as a party to the document applied to the District Collector to adjudicate. This is supported by the plaint document No:18 viz., the letter dated 14.06.2002 from the District Collector signed 'by Orde'r Huzur Head Assistant, dated 20.06.2002 addressed to the first plaintiff and others to furnish the original mortgage deed for process. This letter from the District Collector is in response to the application No: NIL.,

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dated NIL alleged to have received from the first plaintiff. The District Collector thereafter on receipt of the original from the Plaintiffs had adjudicated under Section 40 of the Act and the Stamp duty with penalty paid on 28.06.2002.

74. In case of adjudication as to proper stamp to be done by the Collector on the application of any person, then it can be done only in exercise of power under Section 31 of the Indian Stamp Act, 1899, which reads as below:-

“Section 31: Adjudication as to proper stamp:

—(1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than 3 [fifty naye paise]) as the Collector may in each case direct, the Collector shall determine the duty (if any) with



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which, in his judgment, the instrument is chargeable.

(2) For this purpose, the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that—

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an inquiry as to the duty with which the instrument to which it relates is chargeable;
and (emphasis added)

(b) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances



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aforesaid.”

75. The proviso to Section 31 of the Indian Stamp Act, 1899 clearly bar using such document as evidence in any civil proceedings. Therefore, the embargo in the proviso to Section 31 of the Act, prohibits the plaintiffs to use it as an evidence in a civil proceedings. Further, validation of a unstamped mortgage deed *ipso facto* is not a document for transfer of right. The power of the District Collector in respect of instrument not duly stamped confines with impounding and validating. By validating a not duly stamped instrument, it becomes a document admissible in evidence. Parties have to approach appropriate forum to enforce the terms of the instrument.

76. Being aware of the legal impediment, the plaint is cleverly couched without seeking relief directly based on the mortgage deed for



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which the liberty given by the Division Bench in W.A.No.57 of 2020, but for declaration, the proceedings of the first respondent dated 04.04.2006 as null and void and consequential relief of injunction as if their lawful possession is under threat.

77. Hence, firstly, the suit for the declaration as prayed is barred under law in view of limitation. Secondly, the consequential relief of injunction also barred under law since, for the very same property earlier Fishermen Welfare Association filed writ petition claiming the said property as promboku land but failed. Later, Puniayakodi and others through whom the plaintiffs trace their right challenged the order of the first respondent/DRO and failed upto Writ Appeal. The plaintiffs had knowledge and admittedly fought the litigation through P.K.O. Habeeb, the Power Agent of Punniyakodi and others, as their ventriloquist. The liberty given by the Division Bench is to workout the remedy available under law in respect



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of the Mortgage deed entered between the plaintiffs as mortgagees and Punniyakodi and others as mortgagors.

78. For yet another reason also the plaint has to be rejected, that is, the plaintiffs have restricted the relief of declaration in respect of the cancellation of patta in their favour and no further relief is sought. The proviso to Section 34 of the Specific Relief Act, bars the Court from making declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so.

79. For convenience Section 34 of Specific Relief Act, 1963 is extracted below:-

“Section 34:Discretion of Court as to declaration of status or right—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or



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interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

80. To sustain the plaint, the declaratory relief cannot stop with the declaration of the cancellation of patta as null and void but further relief based on the mortgage deed ought to have been prayed.

81. While mentioning mortgage, it is suffice to remind, it is a transfer of an interest in an immovable property and not the property. The mortgagor only transfers an "*interest in the property*" to the mortgagee when securing a loan for current or potential liabilities or debts. No matter what the type of mortgage is, the right to its redemption remains the most sacrosanct right.



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The Transfer of Property Act enable the mortgagor to redeem his property at any time before expiry of the restriction term set down in the Limitation Act, following payment of the principal amount and by the submission of a redemption petition, of the principal and interest as determined by the parties. In so far as the mortgagee, law provides him the relief of foreclosure and sale. In any case, the mortgage gets discharged only on redemption or by sale. Therefore, the transfer of the mortgaged immovable property should be in tune with the law and not otherwise. Without following the procedure laid under Order XXXIV of C.P.C which deals with suits relating to mortgages of immovable property or through a voluntary transfer by sale in lieu of discharge of the debts, there cannot be any presumptive transfer of right.

82. Unless there is declaration upholding the validity of the mortgage deed and transfer of title, mere declaring the cancellation of patta given in their name as null and void will not confer any right or title to the plaintiffs. The plaintiffs have ventured to file this vexation suit even after a conclusive



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finding by the High Court that the patta issued in the name of Punniyakodi and others in the year 07.07.1978 is not genuine. The right of the plaintiffs, whatsoever can not be larger than the right of Punniyakodi and others from whom the plaintiffs claim to have derived right.

83. No doubt, 'Limitation' is a mixed question of law and facts. However, when there is no dispute over the facts, it is sufficient to address the question of law alone and decide the application for rejection as plaint. In this case, in the earlier litigations between the parties over the suit property, the parties were aware of the proceedings of the first defendant cancelling the patta vide order dated 04.04.2006. The plaintiffs were aware of the revision petition filed against this order, followed by Writ Petition and Writ Appeal. The mortgage deed dated 21.03.1992 in respect of the suit property is the link between the plaintiffs and the suit property. In the counter affidavit, the plaintiffs admit that this deed of mortgage was



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executed 4 years after lending loan of Rs.6 lakhs in the year 1992. The deed was prepared on the stamp paper procured by him in the year 1992. The plaintiffs' case is that they claim title over the property on the basis of the patta, that had been validly issued. However, they have not sought for the relief of declaration as to title when there is serious cloud over the title. They claim that they were put into possession of the suit schedule property by Punniyakodi and others pursuant to the usufructory mortgage cum sale deed, but in his report dated 2nd April 1997, the Advocate Commissioner, who inspected the property pursuant to the Court direction passed in W.P. No.14288 of 1992 do not whisper about the presence of plaintiffs in the suit property.

84. Article 58 and 59 of the Schedule to the Limitation Act prescribes the period of limitation for filing a suit where a declaration is sought. These two Articles read as below:-

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property in dispute through the usufructory mortgage and not in respect of the order passed by the District Revenue Officer cancelling the patta issued erroneously by playing fraud.

86. As a result, this Court holds that the plaint as it is suffers twin legal embargo. Firstly, Articles 58 and 59 of the Schedule to the Limitation Act, 1963 and Secondly, proviso to Section 34 of the Specific Relief Act, 1963.

87. That apart, according to the plaintiffs, the cause of action for the suit commences from the Patta dated 07.07.1978 issued to Punniyakodi and 5 others. The said patta is the foundation of the plaintiffs edifice. The plaintiffs pegs their right only through the patta issued to M/s Punniyakodi and others on 07.07.1978 and the TSLR certificate dated 18.02.2000.

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Whereas, the patta issued on 07.07.1978 is declared to be obtained by fraud in collusion with Taluk Officer by the Learned Single Judge of this Court in W.P.No.22384 of 2007 and confirmed by the Division Bench of this Court in W.A.No.57 of 2020. There is a categorical finding by DRO that there is no document to show the Survey No: 170/1 was sub divided. No material record to show that the certificate dated 18.02.2000 emanated from the Taluk Office after verifying the records and register. Hence, the cause of action for the suit is also not in existence after the dismissal of W.A.No.57 of 2020.

88. As a result, **Application No.5145 of 2024 to reject the plaint is allowed.** Consequently, C.S.No.204 of 2024 and the connected applications are closed.

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Index:yes
Internet:yes/no
Speaking order/non speaking order

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delivery Common Order made in

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