



C.R.P.(PD)(MD) No.566 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 20.03.2024

ORDERS PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD) No.566 of 2020

and

C.M.P.(MD) No.3497 of 2020

1.M.Thangavel

2.B.Brindha

... Petitioners/Petitioners/
Defendants 9 & 11

Vs.

1.B.Saminathan

2.B.Arun

3.B.Mugunthan

... Respondents 1 to 3/
Respondents 1 to 3/Plaintiffs

4.K.K.Muthusamy

5.M.Ramalingam

6.N.Alagesan

7.Muthusaravanan



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8.K.Shankar

9.D.Ravikumar

10.Pa.E.Kannan

11.S.Ganesan

... Respondents 4 to 11/
Respondents 4 to 11/
Defendants 1 to 8

12.P.Thangavel

... 12th Respondent/
12th Respondent /10th Defendant

[Notice to Respondents No.4 to 12 may be
dispensed with as they have been set ex-parte]

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 20.02.2020 made in I.A.No.400 of 2019 in O.S.No.7 of 2018 on the file of the Court of the Principal District Judge, Karur.

For Petitioners : Mr.H.Lakshmi Shankar
for Mr.A.N.Ramanathan

For RR1 to 3 : Mr.K.Govindarajan

RR4 to 12 : *Ex-parte (vide EB)*

ORDER

This Civil Revision Petition is directed against an order dated 20th February, 2020 made in I.A.No.400 of 2019 in O.S.No.7 of 2018 on the file



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of the Court of the Principal District Judge, Karur dismissing the application filed under Order VII Rule 11 of the Civil Procedure Code by the petitioners herein, who are Defendants No.9 and 11 in the main suit.

2. It is settled law that an application filed under VII Rule 11 of the Civil Procedure Code is required to be decided basing upon the averments made in the plaint and on conjoint consideration of the documents filed along with the plaint and in case in spite of such consideration, the same do not show cause of action for filing the suit or in case, if the suit is found to be barred by any law, such as *res judicata*, limitation etc., then only, the power under Order VII Rule 11 of the Civil Procedure Code can be exercised. The law in this regard is well settled. In case, if the suit is found to be barred by any law, by taking the contents of the plaint as true, then the Court is left with no other option, except to reject the plaint at the threshold. In case, if the issue as to limitation requires to be decided on appreciation of evidence or interpretation of any of the documents filed along with the plaint requiring elaborate adjudication, then such an issue shall be left to be



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decided after full-fledged trial, as the issue of limitation is a mixed question of law and fact. On the contrary, if it is apparent on the face of the record that the suit is barred by limitation or barred by law of *res judicata*, then it will be well within the power of the Court to decide such an issue at the threshold itself. In the context of the above settled legal position, the averments in the plaint in question are required to be examined.

3. The case of Respondents No.1 to 3/Plaintiffs No.1 to 3 as averred in the plaint are that their father late K.P.Balu @ P.Balu has acquired the suit schedule properties by virtue of a registered sale deed dated 19.11.1996 and by virtue of release under release deed dated 06.01.1973. It is their further case that, at the instance of the 2nd plaintiff, the father of the plaintiffs executed a registered sale deed, dated 09.08.2010 in favour of Defendants No.1 and 2 *vide* Document No.3808 of 2010. However, the said document is stated to be a document executed as security for the loan availed by the 2nd plaintiff from Defendants No.1 and 2 in respect of Item No.1 of the suit schedule property. It is their further case that at the instance of Defendants



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No.1 and 2, the late father of the plaintiffs executed another sale deed dated 03.05.2013 *vide* Document No.996 of 2013 in favour of Defendants No.3 to 6 in respect of Item No.2 of the suit schedule properties. This is also stated to be the one executed for the purpose of further security at the instance of Defendants No.1 to 6. It is the further case of the plaintiffs that the plaintiffs failed to repay the alleged loan amounts and there was delay in repayment and as such, Defendants No.1 and 2 for themselves and on behalf of Defendants No.3 to 6 have preferred a criminal complaint on 02.05.2014 with the Land Grabbing Cell of Karur District Police to secure possession of the suit schedule properties from the family of the plaintiffs. However, the same is alleged to be with intention to recover the dues. It is further alleged that the plaintiffs were summoned by the said police on 10.05.2014 and there was some understanding alleged to be with force thereby, the plaintiffs and their father were made to agree to pay a sum of Rs.41,08,800/- to Defendants No.1 and 2 and an amount of Rs.59,49,000/- to Defendants No.3 to 6 on or before 10th August, 2014. Thereafter, the father of the plaintiffs passed away on 06.11.2014 leaving behind the plaintiffs and their mother



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Thangammal. Thereafter, Defendants No.1 to 6 filed O.S.No.91 of 2016 on the file of the Court of the District Munsif, Karur seeking permanent injunction against the plaintiffs and their mother and it is only on receipt of summons in the said suit on 11.03.2016, the petitioners understood the claim of the respondents over the suit property as absolute owners and thereafter, the plaintiffs claimed to have filed the present suit on 11th January, 2018 seeking for declaration to declare that the sale deeds dated 09.08.2010 and 03.05.2013 were executed as security in respect of Items No.1 and 2 of the suit schedule properties and to set aside the said sale deeds, consequently to set aside the subsequent sale deeds executed by Defendants No.1 to 6 in favour of Defendants No.7 to 11 as void, for recovery of possession of the suit schedule properties and for grant of a consequential relief of permanent injunction restraining Defendants No.9 and 11, their men and servants from interfering with the plaintiffs' peaceful possession and enjoyment along with the suit schedule properties.



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4. Heard Sri H.Lakshmi Shankar, learned counsel for Sri A.N.Ramanathan, learned counsel for the petitioners and Sri K.Govindarajan, learned counsel for Respondents No.1 to 3.

5. From the averments made in the plaint as noted above, it is evident that the plaintiffs have complete knowledge about execution of both the sale deeds dated 09.08.2010 and 03.05.2013 from the day one of execution of the said documents. It is also an admitted fact that the plaintiffs herein are the attestors of both the sale deeds.

6. Admittedly, the sale deeds do not contain any recital of executing the said documents as security for the loan transaction as alleged. The claim of executing the said sale deeds towards security of a loan transaction is not borne out from the said documents. The same is an oral assertion reduced into writing in the plaint. Under Sections 91 and 92 of the Indian Evidence Act, 1872, no oral evidence is admissible contrary to the contents of a document. The plaintiffs herein are not disputing the execution of both the



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sale deeds referred to above in favour of Defendants No.1 and 2 and Defendants No.3 to 6 respectively. In the entire plaint, there is no allegation of fraud in obtaining the said sale deeds. On the other hand, it shows that the father of the plaintiffs executed the said sale deeds voluntarily. It is not the case of the plaintiffs that there was no consideration passed under the said sale deeds. In the absence of any allegation of fraud, if at all the plaintiffs intend to question the said sale deeds, who have knowledge about the execution of the sale deeds by their father right from the date of the said documents, they can do so within a period of three years from the date of execution of such documents, as the period of limitation prescribed under Article 59 of the Limitation Act would apply. Admittedly, the suit in question is not filed within three years from the date of the documents. Further, both the documents were executed by the father of the plaintiffs herein during his life time and during his life time, he did not choose to question the documents. In respect of the sale deed dated 09.08.2010, the period of limitation had expired during the life time of the father of the plaintiffs. Thus, on the face of the averments made in the plaint, the relief



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sought in the suit to set aside both the documents is barred by limitation including the relief sought to declare that the said documents are executed as security for the loan transaction.

7. However, the further contention of the plaintiffs that on 02.05.2014, Defendants No.1 and 2 for themselves and on behalf of Defendants No.3 to 6 made a criminal complaint before the Land Grabbing Cell of Karur District Police for securing possession of the suit properties from the family of the plaintiffs is also taken as true, the claim of Defendants No.1 to 6 as on 02.05.2014 is for recovery of possession of the suit schedule properties apparently basing upon the two sale deeds obtained by them from the father of the plaintiffs. By then the father of the plaintiffs was alive and the plaintiffs also are fully aware of the claim of Defendants No.1 to 6 basing on the sale deeds. But the plaintiffs' claim is that the said complaint was made by Defendants No.1 and 2 solely with an intention to recover dues. But the fact remains that the claim was for recovery of possession basing upon the registered sale deeds obviously. At least, if the



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said complaint made on 02.05.2014 is taken as starting point of limitation, the plaintiffs ought to have filed the suit of the present nature on or before 01.05.2017, but the present suit is filed much beyond that. Therefore, the suit in question is clearly barred by limitation.

8. The next contention is that the plaintiffs and their father were forced to sign a statement agreeing to pay an amount of Rs.41,08,800/- to Defendants No.1 and 2 and an amount of Rs.59,49,000/- in favour of Defendants No.3 to 6 on or before 10.08.2014. Though the said amounts were disputed, the plaintiffs have not disputed their alleged liability to Defendants No.1 to 6. Even taking the stand of the plaintiffs as true that these sale deeds in question were executed as security for the alleged loan transaction, it is not the case of the plaintiffs herein that they have discharged their liability to Defendants No.1 to 6. It is also not their case that they are not liable to discharge such liability. It is also not their case that they have taken any steps against fixing of such liability against them either forcibly or otherwise. Even assuming that both the sale deeds are



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executed for the purpose of security for the alleged loan transaction, in the absence of any plea that the plaintiffs have discharged their alleged liability, so as to claim release of security alleged to have been created under the sale deeds in question or in the absence of any offer being made by the plaintiffs to discharge their alleged liability so as to claim the release of the security, the question of granting the relief of setting aside all the sale deeds does not arise.

9. Further, from the averments made in the plaint, it is evident that Defendants No.1 and 2 and Defendants No.3 to 6 have parted with their title over Items 1 and 2 of the suit schedule properties in favour of Defendants No.7 to 11 under registered sale deeds and the title now stands in the name of Defendants No.9 and 11 over Items 1 and 2 of the suit schedule properties. For the reasons best known, the plaintiffs have not chosen to seek relief of setting aside all the sale deeds by paying the requisite Court fees on the said documents as required under law. They have sought for a general relief to declare the sale deeds subsequently executed at the instance



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of Defendants No.1 to 6 in favour of Defendants No.7 to 11 as void. This is an attempt made to avoid payment of Court fees in respect of the sale deeds that are admittedly executed in favour of Defendants No. 7 to 11. In the absence of payment of Court fees for the relief sought in respect of the sale deeds executed by Defendants No.1 to 6 in favour of Defendants No.7 to 11, the question of granting any such relief as prayed for in Paragraph No.7(e) of the plaint does not arise. If the relief as prayed for in Paragraph No.7(e) of the plaint is not to be granted, the question of granting the relief of recovery of possession and consequential permanent injunction as against Respondents No.7 to 11, in specific Respondents No.9 and 11 also does not arise. Thus, at the end, the relief sought in the plaint of recovery of possession cannot be granted. The averment about the alleged intention of the defendants in filing a criminal complaint on 02.05.2014 only for the purpose of recovering the dues made in Paragraph No.9 of the plaint is nothing but a clever drafting of the plaint for the purpose of saving the suit from being barred by limitation.



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10. The Hon'ble Apex Court has an occasion to consider a similar aspect where a suit, which is hopelessly barred by limitation, is sought to be brought within limitation with the clever drafting of the plaint and observed as under in the decision in *N.V.Srinivasa Murthy and others vs. Mariyamma (Dead) by proposed LRs and others* reported in (2005) 5 SCC 548:

“14. After examining the pleadings of the plaint as discussed above, we are clearly of the opinion that by clever drafting of the plaint the civil suit which is hopelessly barred for seeking avoidance of registered sale deed of 5-5-1953, has been instituted by taking recourse to orders passed in mutation proceedings by the Revenue Courts.

15. Civil Suit No. 557 of 1990 was pending when the present suit was filed. In the present suit, the relief indirectly claimed is of declaring the sale deed of 5-5-1953 to be not really a sale deed but a loan transaction. Relief of reconveyance of property under alleged oral agreement on return of loan has been deliberately omitted from the relief clause. In our view,



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the present plaint is liable to rejection, if not on the ground that it does not disclose “cause of action”, on the ground that from the averments in the plaint, the suit is apparently barred by law within the meaning of clause (d) of Order 7 Rule 11 of the Code of Civil Procedure.

16. The High Court does not seem to be right in rejecting the plaint on the ground that it does not disclose any “cause of action”. In our view, the trial court was right in coming to the conclusion that accepting all averments in the plaint, the suit seems to be barred by limitation. On critical examination of the plaint as discussed by us above, the suit seems to be clearly barred on the facts stated in the plaint itself. The suit as framed is prima facie barred by the law of limitation, provisions of the Specific Relief Act as also under Order 2 Rule 2 of the Code of Civil Procedure.

17. This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant on the observations of this Court in the case of T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467] : (SCC p. 468)

“The trial court must remember that if on a meaningful – not formal – reading of the plaint it is



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manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Chapter 11) and must be triggered against them.””

11. Yet in another case in ***Ramisetty Venkatanna and Another vs. Nasyam Jamal Saheb and Others*** reported in ***2023 SCC OnLine SC 521***, wherein the Hon'ble Apex Court observed as under:

“28. Applying the law laid down by this Court in the aforesaid decisions on the applicability of Order VII Rule XI to the facts of the case on hand, we are of the opinion that the plaint ought to have been rejected in exercise of powers under Order VII Rule XI(a) and (d) of



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CPC being vexatious, illusory cause of action and barred by limitation. By clever drafting and not asking any relief with respect to partition deed dated 11.03.1953, the plaintiffs have tried to circumvent the provision of limitation act and have tried to maintain the suit which is nothing but abuse of process of court and the law.”

12. Thus, the Hon'ble Apex Court has been pleased to hold that any such attempt may bring the suit within the period of limitation by clever drafting of the plaint is an abuse of process of Court. In the considered view of this Court, the case on hand is one such case.

13. Though the learned trial Court noticed the fact that there is no allegation of fraud in execution of the sale deeds in question, having taken note of the pleading in Paragraph No.9 of the plaint, which is now considered as a result of clever drafting of the plaint by this Court, the learned trial Court carried away by the said pleading without looking into the aspect as to whether any relief can be granted in favour of the plaintiffs,



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came to an erroneous conclusion that the cause of action arose for the plaintiffs only when the summons were received by the plaintiffs in O.S.No. 91 of 2016. The learned trial Court failed to take note of the averment in Paragraph No.9 of the plaint that Defendants No.1 and 2 have themselves and for on behalf of Defendants No.3 to 6 made a criminal complaint on 02.05.2014 with the Land Grabbing Cell of Karur District Police for securing possession of the suit schedule properties. The said claim of securing possession is obviously basing upon the two registered sale deeds and not otherwise. Thus, even as per the averment in Paragraph No.9 of the plaint itself, Defendants No.1 to 6 have made a claim basing upon the two registered sale deeds as early as on 02.05.2014 itself. But the learned trial Court was successfully misled by the clever drafting of the plaint and thus, the learned trial Court fell in error in coming to the conclusion that the suit is not barred by limitation and that the suit requires to go for trial.

14. Thus, in the light of the above, this Court has no option except to come to the irresistible conclusion that the relief sought in the suit is barred



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by limitation on the face of it. Further, the relief sought in the suit, insofar as the recovery of possession of the suit schedule properties and consequential injunction cannot be granted in present frame of the suit, as no specific relief is sought by paying required Court fee in respect of the sale deeds that are executed by Defendants No.1 to 6 in favour of Defendants No.7 to 11.

15. Accordingly, this Civil Revision Petition is allowed duly setting aside the order under revision and consequently I.A.No.400 of 2019 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
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MUMMINENI SUDHEER KUMAR, J.

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To

The Principal District Judge,
Karur.

Pre-delivery Order made in
C.R.P.(PD)(MD) No.566 of 2020

26.03.2024