



A.S.(MD)No.170 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.03.2024

PRONOUNCED ON : 30.05.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

A.S.(MD)No.170 of 2015

and

M.P.(MD)No.1 of 2015

1.M.Rajasundari
2.M.Selvarajan
3.A.Arasi
4.Anu Arthi

...Appellants / Plaintiffs

Vs.

1.Silendran (Died)
2.Malathi
3.Karunagaran
4.Jeyanthi
5.Sundar
6.S.Muthulakshmi
7.S.Rajkumar

...Respondents / Defendants

(Respondents 6 and 7 are brought on record as LRS of the deceased 1st respondent, vide Court order dated 18.08.2020 made in C.M.P.(MD)No.6120 of 2019 in A.S.(MD)No.170 of 2015)

PRAYER: This Appeal Suit filed under Section 96 of C.P.C., to set aside the Judgment and Decree dated 19.01.2015, rejecting the suit in O.S.No.45 of 2014, on the file of the learned 2nd Additional District Judge, Tuticorin.



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For Appellants : Mr.S.Rajajeyachandra Paul

R-1 : Died

For R-2 to R-5 : Mr.N.Sundresan

For R-6 & R-7 : No appearance

JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No. 45 of 2014, dated 19.01.2015, on the file of the II Additional District Judge, Tuticorin.

2. The appellants/plaintiffs have filed the above suit, claiming the following reliefs:

“a) By directing the first defendant to execute the sale deed in favour of the plaintiffs, regarding the suit schedule property, failing which, the Court may execute the sale deed regarding the suit schedule property in favour of the plaintiffs.

b) For permanent injunction restraining the defendants, his men and agents in any manner interfering with the plaintiffs peaceful possession and enjoyment over the suit schedule property.

c) Cost of the suit.



circumstances of the case.”

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status / ranking in the original suit.

4. The plaintiff's case in short is as follows:-

4.1. The property shown in the schedule originally belonged to Sri.Athimoolam Nadar by purchase. As per his Will, the property devolved on the 1st defendant and he was enjoying the same. On 23.03.2005, he agreed to sell the property to Sri.K.S.N.Manoharan, husband of the 1st plaintiff, father of the 2nd plaintiff, father-in-law of the 3rd plaintiff and grandfather of the 4th plaintiff for a consideration of Rs. 19,52,500/- (Rupees Nineteen Lakhs Fifty Two Thousand and Five Hundred only) and on the same day, he executed a General Power in favour of Sri.K.S.N.Manoharan giving absolute right to manage and sell or alienate the property to 3rd parties. On the same day, the 1st defendant received the entire sale consideration. Specifically mentioned that, he has received the sum of Rs. 19,52,500/- (Rupees Nineteen Lakhs Fifty Two Thousand and Five Hundred only) as per sale agreement and executed a receipt on 24.03.2005. In the receipt he had specifically agreed that, he will not



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revoke the General Power and he handed over possession of the property to Sri.K.S.N.Manoharan. From that date, Sri.K.S.N.Manoharan was in possession and enjoyment of the property and occupying the same for wood cutting saw mill business and all other machineries in the said property were also handed over to the said K.S.N.Manoharan by receiving a sum of Rs. 1,00,000/- (Rupees One Lakh only) and he has also issued a receipt on 24.03.2005. And the schedule property was remodeled by erecting Asbestos sheet shed by spending a sum of Rs. 7,00,000/- (Rupees Seven Lakhs only) by the above said deceased K.S.N.Manoharan. In the General Power Deed as well as the receipt for Rs. 19,52,500/- (Rupees Nineteen Lakhs Fifty Two Thousand Five Hundred only), along with the 1st defendant, his family members have also signed the same i.e., 2nd and 3rd defendants and wife of the 1st defendant.

4.2. While so, Sri.K.S.N.Manoharan, on 18.11.2005, suddenly and unexpectedly died leaving behind the plaintiffs as his heirs and the plaintiffs have inherited the property and also the right to claim over it and the plaintiffs have continued the possession and enjoyment of the suit scheduled property. As Sri.K.S.N.Manoharan died, the General Power executed by the 1st defendant in his favour has lost its validity, therefore, the 2nd plaintiff on behalf of the plaintiffs requested the 1st defendant in the 2nd week of December 2005, to



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execute another General Power in his favour or to execute the sale deed in plaintiffs' expenses for the schedule property, in favour of the plaintiffs or in the name of any one of them. The 1st defendant agreed to execute the General Power of Attorney in the month of Thai, i.e., after 15th January 2006. But the 1st defendant kept delaying the same giving one or other excuse for one reason or other.

4.3. On 06.09.2008, the 2nd plaintiff came to know that the defendant illegally and fraudulently negotiated to dispose the property to 3rd parties for higher price ignoring the sale agreement entered with the deceased K.S.N. Manoharan. Immediately on 08.09.2008, the plaintiff sent a registered notice through an Advocate to the 1st defendant demanding execution of sale deed within one week and requested him to give the date of execution atleast one day before, for preparing the sale deed in stamp paper for registration. The 1st defendant knowing the matter kept delaying to receive the notice with ulterior motive. As Late. Sri. K.S.N. Manoharan, husband of the 1st plaintiff had already given the entire sale consideration to the 1st defendant and obtained a receipt signed by the 1st defendant and his family members, no amount is due as balance to fulfill the contract. Thereafter, the 2nd plaintiff, with a motive to file a suit for specific performance of contract approached one senior advocate



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Thiru.L. Subramanian at Tuticorin. He has also handed over the original power of attorney deed executed by the 1st defendant and also the original two cash receipts, one of which pertains to the total sale consideration and another one receipt for payment of money for the purchase of machinery in the schedule property. He has also instructed the above said Advocate Thiru.L.Subramanian to prepare a plaint with a view to get the relief of specific performance and has also paid a sum of Rs.1,46,437.50/- (Rupees One Lakh Forty Six Thousand Four Hundred Thirty Seven and Paise Fifty only) as court fee and also the advocate fee and expenses to the above said advocate to file the suit against the 1st defendant.

4.4. The above said advocate also prepared the plaint and obtained the signatures of the plaintiffs in the original plaint and he has filed the above said plaint along with original power of attorney deed dated 23.03.2005 and also the original payment receipts dated 24.03.2005. In that cash receipts it is clearly mentioned that the sole property in the schedule has been sold and the deceased Manoharan was directed to execute sale in favour of his family members and it is also mentioned that the total consideration of sale of Rs. 19,52,500/- (Rupees Nineteen Lakhs Fifty Two Thousand and Five hundred Only) is paid to the 1st defendant. But the plaint was returned with some corrections to represent the



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same in a specified time. At that time, the 2nd plaintiff approached the above said advocate and he demanded to mention the suit number which has been already filed before the District Court, Tuticorin. To the above said demand, the above said advocate has given the photo copy of the plaint to the 2nd plaintiff. In that photo copy of the plaint, there is a stamp impression of the District Court, Tuticorin, having the date as 16.09.2008 with the return number as No: 5353 in CR 19. Subsequently, the 2nd plaintiff approached the above said advocate many times in his office and asked him to get the suit number.

4.5. Subsequently, the 2nd plaintiff approached the above said advocate in the month of October 2008 and informed about the intention of the 1st defendant that, he was taking steps to alienate the suit property to 3rd parties. For the above said illegal act of the 1st defendant, the above said advocate had also given a paper publication on 20.10.2008 in Dinamalar daily, regarding the power of attorney executed by the 1st defendant in favour of Late. K.S.N. Manoharan, father of the 2nd plaintiff and also regarding the total payment of consideration of Rs. 19,52,500/- (Rupees Nineteen Lakhs Fifty Two Thousand and Five hundred Only) paid to the 1st defendant and also regarding the existence of the suit before the concerned Court and he has also mentioned about the theory of *lis pendens*. Since the publication was made by the above



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said advocate that the suit is pending, the 2nd plaintiff has believed the words of the above said advocate and he presumed that the suit is pending. But, suddenly, the above said advocate died on 27.04.2013.

4.6. So, the 2nd plaintiff has approached the junior Advocates of his office and also his wife Advocate Thilagavathi in the month of May 2013 and also enquired about the existence of the suit filed against the 1st defendant. None of his office members including his wife Advocate Thilagavathi answered properly for the questions of the 2nd plaintiff regarding the suit filed against the 1st defendant for the relief of specific performance of contract. Since the deceased advocate members and his wife Advocate Thilagavathi has not answered properly, the 2nd plaintiff is able to understand that the suit has not been filed and the deceased advocate has misrepresented to the 2nd plaintiff, that the suit is pending. Actually, the total mistake is only upon the deceased Advocate Late.L.Subramanian. Even then, the 2nd plaintiff has handed over the original power deed and the original receipts mentioned above to the above said advocate, the said documents were not returned to the 2nd plaintiff even after the death of the said advocate. So the words of the advocate was totally misleading and he has misrepresented to the 2nd plaintiff regarding the pendency of the suit. In addition to that in the month of October 2014, the 2nd



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plaintiff has approached the wife of the deceased Advocate L.Subramanian and demanded to return the returned plaint along with original documents in the said plaint with a view to represent the same before the District Court, Tuticorin, to get it filed. But the wife of the above said deceased Advocate did not give prompt and diligent answers.

4.7. In the meantime, the plaintiffs understood that the 1st defendant had executed a settlement in favor of his daughters, Malathi and Jeyanthi, the 2nd and 4th defendants, which is a sham and nominal one to defeat the claim of the plaintiff and the settlement deeds executed in favour of the defendants 2 and 4 are not binding on the plaintiffs. Hence, the 2nd plaintiff lodged a police complaint to the Superintendent of Police, Tuticorin and he requested to register an FIR. Following which, an FIR in Crime No.21 of 2013 dated 15.04.2014 U/s. 464, 465, 506[1] and 420 IPC was registered against the defendants in DCB [Land Grabbing Cell] Police. By understanding the helpless nature of the plaintiffs the defendants with their men on 11.06.2014 to 20.06.2014, attempted to interfere with the possession of the plaintiffs with a view to take forcible possession, which was obtained by the plaintiffs from K.S.N. Manoharan by inheritance. But the illegal attempt of the defendants was also thwarted by the 2nd plaintiff. To that effect, a complaint was lodged to the



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concerned south police at Tuticorin and FIR was registered against the defendants on 13.08.2014. Since the possession was initially with the father of the plaintiff K.S.N.Manoharan, thereafter after his death, the plaintiffs are in possession and enjoyment of the suit schedule property.

4.8. The 2nd plaintiff has paid Trade Licence Fee in the name of the 2nd plaintiff issued by Corporation, Tuticorin, for the saw mill situated in the said property. The defendants may attempt to interfere with the plaintiffs' peaceful possession and enjoyment of the suit schedule property at any time. So the plaintiffs are filing this suit for specific performance of contract and also for permanent injunction restraining the defendants his men and agents in any manner interfering with the peaceful possession and enjoyment of the plaintiffs over the suit property. Only in the month of May 2013, it came to the knowledge of the plaintiffs or plaintiffs were aware of the fact that the suit was not filed and the previous advocate L. Subramanian has misrepresented to the 2nd plaintiff. So, from that month of May 2013 itself the time starts and in the month of October 2014, the 2nd plaintiff approached Thilagavathi, wife of the deceased advocate L.Subramanian and enquired about the existence of the suit. But, she did not answer promptly and she has not returned any papers to the 2nd plaintiff. Hence, this suit.



5. The defense of the fourth defendant in short is as follows:-

5.1. Instead of filing a written statement, the fourth defendant as the petitioner has filed a petition in I.A.No. 3 of 2015 under Order 7, Rule 11, r/w section 151 of the Code of Civil Procedure, 1908. The main prayer of the said petition is to consider the issue of limitation as a preliminary issue and the gist of the same is extracted as follows:

The suit is not maintainable either in law or of facts and the same has to be dismissed in limine. The suit is barred by the Limitation Act. Therefore, issue of time bar should be considered as a preliminary issue and the suit is liable to be dismissed in the initial stage. Suit is filed by the plaintiff, by producing forged photocopy documents. As stated in the plaint, Mr.K.S.N.Manoharan and the plaintiff never enjoyed the property. Mr.K.S.N.Manoharan did not enjoy the property and the plaintiffs have not enjoyed the property even for a single day. The suit's basic document is a forged money receipt dated 24.03.2005. The said original is not produced before the court. The said document is an unregistered document and it is not accepted as per Transfer of Property Act,1882 and also by other laws. The said document



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can not transfer any valid title. Therefore, there is no cause of action for this suit.

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5.2. In fact, the 4th defendant is owner of the suit property. Her father, Mr.A.Silendran, executed a Regd. Settlement Deed Doc. No: 1343/2008 dated 01.12.2008 in her favour and her sister Malathi, the 2nd defendant. The 4th defendant, is the owner of the half share in suit property by virtue of the said Regd. Settlement Deed dated 01.12.2008. From the above said date, they are enjoying the suit property jointly by paying tax in their name. Thereafter, her sister Malathi, the 2nd defendant, executed a Registered Settlement Deed Doc No: 1008/2013 in favour of the 4th defendant on 23.09.2013. Following which, she became the absolute owner of the suit property. Now, her husband is running a Battery shop in the suit property and part of the portion was rented to one S.V.R.Sivakumar. Thereby the suit property is in her possession and enjoyment. All these facts were known to the plaintiffs. But the plaintiffs have filed a suit against the 1st defendant with regard to some other property during the year 2008 and the suit is O.S. No.67 of 2008. No suit is filed against them with regard to this property. Validity of money receipt is only three years from the date of execution. The said three years is completed on 23.03.2008. The



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plaint clearly shows that no further acknowledgement was given by the defendants.

5.3. The plaint also shows that, the plaintiff is aware of all the facts from the beginning of the transaction. If, it is so, they would have initiated legal proceedings on or before 23.03.2008. So, it is clear that, it is a false suit and the suit is time bared and it is not maintainable. With regards to the Power of Attorney dated 23.03.2005, Power of Attorney became invalid after the death of the Power Agent. It is also known that the Power of Attorney cannot convey any title to anyone. Therefore, no cause of action can be claimed from the said deed. It is informed that, Sri.K.S.N.Manoharan died on 18.11.2005. During the period between 23.03.2005 to 18.11.2005, he did not obtain any registered document in his favour with regard to the suit property. If money transaction is true he would have initiated steps during his life period. It clearly shows that, it is a forged money receipt.

5.4. The suit is filed by the plaintiff as a specific performance suit. But there is no agreement between the plaintiff and defendants. Even from the date of death of Sri K.S.N. Manoharan, the plaintiff stated that he was asking the defendant but they are dragging. They would have filed the suit on or before



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23.03.2008. The said suit is also not filed within three years. In the plaint, the plaintiff pleaded that they instructed Advocate L.Subramanian to prepare a plaint with the view to get relief of the specific performance and has also paid Rs.1,46,437.50 as court fee to file the suit against the 1st defendant and the said advocate obtained original receipt and signatures from the plaintiff to file a suit and it is also stated that advocate has given photo copies with a stamp impression of District Court dated as 16.09.2008 with number 5353 in CR 19. It is also stated in the plaint that, he asked several times about the number of suit and that he had also instructed him for a paper publication. All the above pleadings are baseless and false. If the suit is filed by the plaintiff, would have obtained number.

5.5. No such suit is filed by the plaintiff or by his advocate. If the facts which were given by the plaintiff against the advocate L.Subramanian, it is upto him to prove. If it is so he would have filed for compensation against the said advocate office. No such steps were taken by the plaintiff, which clearly shows that the said documents were forged one. In case it is considered as true, only remedy available to the plaintiff is to represent the earlier suit with delay condonation petition. No way that helps or save the limitation for a new suit.



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The negligence of the advocate and the party, cannot save limitation. Therefore, it is clear that the suit is barred by the Limitation Act.

6. Gist of the reply of the plaintiffs to I.A.No. 3 of 2015:-

6.1. The interpretation of the petitioners regarding the limitation of the suit is not legally correct. The suit has been filed within time. The averment made by the petitioner / 4th defendant that, the respondents / plaintiffs have produced forged documents is not correct. The contention that, K.S.N.Manoharan and the plaintiffs, have not enjoyed the suit properties for a single day is not correct. Actually, the suit schedule property was in the enjoyment of the said K.S.N.Manoharan. Then, after his death the plaintiffs are enjoying the suit schedule property. The contention that, the money receipt dated 24.03.2005 is forged is not correct. Actually, the money receipt is a genuine document which was issued by the 1st defendant by receiving the money through bank transactions. The bank transactions itself will prove that the money receipts are genuine documents. Actually the payment of money has been proved by the plaintiffs and it is also received by the 1st defendant, since it has been paid through bank.



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6.2. The contention that, the money receipt is an unregistered document cannot be accepted. Actually, the money receipt need not be registered.

Moreover, the receipts are lawfully notarized by the competent notary public by verifying the original documents produced before the notary at the time of attestation by the concerned notary public. The petitioner / 4th defendant cannot say that there is no cause of action for the suit. The defendants have not understood the correct principle of law regarding cause of action. Specifically, the petitioner / 4th defendant sworn the affidavit is not the owner of the property even now. Moreover, the settlement deed dated 01.12.2008 alleged to be executed by her father Silendran in favour of her sister under document No. 1343/2008 is a sham and nominal document and the settlement alleged in the said affidavit in her favour is also is sham and nominal document. The above said settlement deed alleged in the affidavit in favour of Jeyanthi, the 4th petitioner, in the petition and Malathi, the 2nd petitioner, are all created by the 1st petitioner with a view to defeat the rights of the plaintiffs over the suit schedule property.

6.3. Moreover, the fact that they are in possession of the suit property is a total false story invented by the petitioners with a view to deny the possession of the plaintiffs/ respondents in the suit. Actually, the suit property is in the



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enjoyment of the plaintiffs now and after the death of K.S.N.Manoharan. Since there is a FIR pending before the concerned magistrate, the petitioners have set up their case by saying that they are in possession of the property. This fact has been very well known to the petitioners and also the possession and enjoyment of the plaintiffs / respondents over the suit schedule property. It is no doubt that another suit is pending in O.S. No.67 of 2008 before the Sub Court, Tuticorin. Moreover, that itself is a separate transaction taken place. The plaintiffs have filed the suit for specific performance of contract alone not to declare title of the plaintiffs. The power deed is only an agreement for sale, since he received the total consideration for the sale of the suit property, earlier from the father of the 2nd plaintiff viz. K.S.N.Manoharan. The respondents have not understood the power of attorney and also the money receipts filed in the suit. The respondents have admitted the money transactions took place between the deceased K.S.N.Manoharan and the 1st defendant in the suit.

6.4. That itself is a clean admission on the part of the petitioners regarding the money receipts issued by the 1st defendant. The averment that, there is no agreement between the deceased K.S.N. Manoharan and the 1st defendant is totally false. Moreover, the affidavit has been sworn by 4th defendant for herself alone. The 1st defendant viz., Silendran, is the person who



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received the money, receipts produced in the suit to perform the contract of sale. The money receipts are not denied by the 1st defendant even now. So, 4th petitioner is not competent to say anything about the money receipt for the payment of consideration regarding the sale. Even in the reply publication made by the 1st defendant regarding the money receipts and regarding the sale agreement entered by him with K.S.N.Manoharan has already been admitted by him. The publication made by L.Subramanian regarding the existing of suit against the 1st defendant for the relief of specific performance itself shows that the plaintiffs have already instructed the above said L.Subramanian to file the suit.

6.5. Moreover, the negligence of the deceased Advocate L.Subramanian for the non-filing of the suit itself is a total wrong on his part. For the wrong committed by the said advocate, these respondents cannot loose the valuable right of specific performance. Even though it is wrong on the part of the advocate, the respondents are intended to take action against the wrong done by the said advocate. The respondents have properly explained the difficult situation of the non-filing of the suit by the deceased advocate L. Subramanian at that time. The point of limitation is a question of fact and law. The limitation can be explained through fact also. Moreover, under the provisions of Order



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VII Rule 1 of the Code of Civil Procedure, 1908, the preliminary issue of limitation cannot be decided according to the provisions, since it is a mixed question of law and fact. The respondents have properly explained the suit filed in the year 2014. Moreover, the respondents have filed the suit within 3 years from the date of non-existence of the suit which had been failed to be filed by the abovesaid deceased Advocate L.Subramanian. So, the suit is totally within time. For the negligence of the deceased advocate, this respondents cannot loose the valuable right of suit property for which the total consideration has been already paid.

7. The learned Trial Court, upon considering the above pleadings without framing the issues, proceeded to deal with I.A.No. 3 of 2015 in O.S.No. 45 of 2014 filed by the fourth petitioner / fourth defendant under Order 7, Rule 11, r/w. Section 151 of the Code of Civil Procedure, 1908, thereby allowing the said petition. Having allowed the aforesaid I.A.No.3 of 2015 on 19.01.2015, on the same day, the learned Trial Court on the same grounds rejected the plaint in O.S.No.45 of 2014.

8. Aggrieved by the impugned judgment and decree, the plaintiffs have preferred the present Appeal Suit.



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9. The learned counsel appearing for the appellant submitted that, two agreements were entered into between the parties to the suit with respect to 2/3rd and 1/3rd of the suit schedule properties. As far as 1/3rd of the suit property is concerned, already the appellants have filed O.S.No. 280 of 2010 on the file of the learned Subordinate Judge's Court, at Tuticorin and the same has been allowed in favour of the appellants herein on 28.03.2019. An appeal, which was preferred by the defendants herein as against the aforesaid judgment and decree in O.S.No. 280 of 2010 in A.S.No. 35 of 2021 on the file of the Principal District Judge, Tuticorin, came to be dismissed on 03.03.2023. The learned Trial Court ought not to have dismissed the suit on the preliminary consideration of the ground of limitation under Order 7, Rule 11 of the Code of Civil Procedure, 1908. The question of limitation is always a mixed question of fact and mixed question of law and the same cannot be decided at the very instance of the filing of the suit as a preliminary objection.

10. The appellants herein should not be penalized for the error caused by the counsel of the appellants before the learned Trial Court, especially when the appellants filed a suit in the unnumbered case in returned No.5353 in CR.19 as early as on 16.09.2008 through one Advocate late.L Subramaniam, which was returned on 17.09.2008 for certain specific reasons. It was only because of the



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negligence and callousness of the aforesaid advocate, the said suit was not further represented, however, on the guise of pendency of the said suit, the appellants herein were kept in dark as to the further developments of the aforesaid suit before the Trial Court as a result of which the plaintiffs were unaware as to the fact that the aforesaid suit was not represented and the same was not further pending till the date of death of the said advocate and even thereafter. Only during the month of October 2014, when the appellants approached the wife of Advocate late.L Subramaniam, namely, Advocate Thilagavathi, again and again, insisting for the details of the case and pressed for returning the case bundle, the appellants came to know that the same was not however, represented and the said case was not at all refiled after being returned on 17.09.2008.

11. Hence, the learned counsel for the appellants insisted categorically that the appellant should not be penalized for the error whatsoever committed by the counsel before the learned Trial Court. The learned counsel for the appellants further submitted that the delay in filing the present suit has been duly explained elaborately in the plaint along with supporting documents and hence the same has to be appreciated. Hence, the learned Trial Court ought to have appreciated the same and should have proceeded to frame issues and



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ought to have conducted the trial and thereafter, on hearing both the parties on merits ought to have decided this case on merits rather rejecting the plaint under Order 7, Rule 11 of the Code of Civil Procedure, 1908 and pressed for remanding the case back to the Trial Court for framing of appropriate issues and proceeding with the trial and deciding the case on merits.

12. Per contra, the learned counsel for the second and fourth respondents submitted that, the entire case of the appellants is based on the receipt dated 24.03.2005. However, the original receipt has not been produced by the appellants before the learned Trial Court and it is only a photo copy attested by a notary public, that has been produced by the appellants and hence the same cannot be the basis for the case on which the appellants / plaintiffs have proceeded as against the respondents / defendants. That apart, the learned counsel for the respondents categorically submitted that, the fact as to whether the legal notice dated 08.09.2008 alleged to have been issued by the appellants / plaintiffs on the defendants been received by the respondents / defendants or not has not been substantiated either in the plaint or in the complaint filed by the plaintiffs or in the counter filed by them in the IA before the learned Trial Court. He further insisted that, even assuming that the cause of action had arisen from the date of issuance of legal notice, that is, during



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November 2008, the suit is completely barred by limitation since the same has been filed after a period of 3 years from the date of issuance of the legal notice, that is, in the year 2014, after a period of nearly 6 years.

13. The learned counsel further submitted that the only remedy which was available for the appellants was to represent the returned unnumbered case which was filed by them on 16.09.2008 and which was subsequently returned on the very next day on 17.09.2008. Had the contention of the appellants that, they had filed a case in the manner which they have pleaded before the learned Trial Court been true, they ought to have represented the same. Only since they have not filed any such case, they have not represented and the same has been invented by the appellants for the purpose of filing the suit and hence, categorically contended that the learned Trial Court was very much justified in proceeding to deal with I.A.No. 3 of 2015 filed by the fourth defendant under Order 7, Rule 11 of the Code of Civil Procedure, 1908, on the basis of which the said IA came to be allowed on 19.01.2015 and the plaint in O.S.No. 45 of 2014 came to be rejected by the learned Trial Court and pressed for dismissal of Appeal.



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14. Replying the learned counsel for the respondents, the learned counsel for the appellant further submitted that, all the original title deeds have been already handed over to the power of attorney holder, that is, the husband of the first appellant, the father of the second appellant and the grandfather of the third and fourth appellants, namely, K.S.N. Manoharan. That apart, the entire payment of the total sale consideration of Rs.19,52,500/- (Rupees Nineteen Lakhs Fifty Two Thousand and Five Hundred only) was not paid in cash but the same was fully credited in the account of the first defendant through bank. That itself would prove the genuinity of the transaction and on that basis pressed for allowing the appeal.

15. The points for consideration are as follows:

- i) Whether the learned Trial Court erred in rejecting the plaint by proceeding to deal with I.A.No. 3 of 2015 in O.S.No. 45 of 2014 filed under Order 7 Rule 11 r/w Section 151 of the Code of Civil Procedure, 1908, by the fourth defendant?
- ii) Whether the learned Trial Court erred in rejecting the plaint without framing issues?



iii) Whether the judgment and decree passed in O.S.No. 45 of 2014 dated 19.01.2015 is liable to be interfered with?

iv) To what reliefs, the parties are entitled to?

16. The remedy under Order 7, Rule 11 of the Code of Civil Procedure, 1908, is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence and conducting a trial. The power conferred on the Court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to. For better understanding, Order 7 Rule 11 of the Code of Civil Procedure, 1908, is extracted as follows:

“11. Rejection of Complaint: The complaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the complaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;



(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate;]

[(f) where the plaintiff fails to comply with the provisions of rule 9.]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

17. The test for exercising the power under Order 7 Rule 11 is that, if the averments pleaded in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. Thus, 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 7, Rule 11 of the Code of Civil Procedure, 1908, must fail. Where it does not disclose a cause of action, the plaint shall be rejected. For appreciation of the facts in issue in the instant case, the dates and events on the face of the plaint of the present appeal is extracted as follows:



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Dates and Events on the face of plaint	
23.03.2005	Power of Attorney in favor of K.S.N.Manoharan
24.03.2005	Cash receipt for an amount of Rs.19,52,500/- (Nineteen Lakhs Fifty Two Thousand and Five Hundred only)
18.11.2005	Date of death of K.S.N.Manoharan
08.09.2008	Date of Legal Notice
16.09.2008	Date of filing unnumbered case in return number No: 5053 in CR 19
17.09.2008	Date of return of unnumbered case in return number No:5053 in CR 19
20.10.2008	Date of paper publication with respect to suit property
27.04.2013	Date of death of Advocate L.Subramanian
October, 2014	Approached Advocate Late.L.Subramanian's wife Advocate Thilagavathy
11.06.2014 to 20.06.2014	Date of interference of possession of suit property by defendants
13.08.2014	FIR registered against defendants
12.09.2014	Date of filing of O.S.No.45/2014

18. A careful reading of the entire plaint in O.S.No. 45 of 2014 would disclose a cause of action which had arisen on the date of legal notice issued by the plaintiffs on 08.09.2008. When the plaint in O.S.No. 45 of 2014 is read in conjunction with the plaint in the unnumbered case which has been filed by the plaintiffs as early as on 16.09.2008 before the Subordinate Judges' Court at Tuticorin, the same would reveal that for the same cause of action, the plaintiffs have already filed a suit which is unnumbered in return No. 5353 in CR 19 as



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early as on 16.09.2008. However, the said suit was filed for the relief seeking to direct the defendant to execute the sale deed in favour of the second plaintiff representing the plaintiffs at their expense. And the plaintiffs have paid a Court Fee of Rs. 1,48,438/- (Rupees One Lakh Forty Eight Thousand Four Hundred and Thirty Eight only) for a total valuation of Rs. 19,52,500/- (Rupees Nineteen Lakhs Fifty Two Thousand and Five Hundred only) in terms of para 7 of the aforesaid unnumbered plaint. However, the Court Fee Register of the Subordinate Judges' Court, Tuticorin would reveal that the said case in unnumbered serial number register of 5053 came to be filed on 16.09.2008 in which a Court Fee of Rs.5,005/- (Rupees Five Thousand and Five only) has been paid and the same was returned on 17.09.2008.

19. The said fact would give way to assume that, the counsel of the appellants before the learned Subordinate Judges' Court, Tuticorin, who filed the said unnumbered suit had obtained the signature in the plaint, from the plaintiffs as if a Court Fee of Rs.1,48,438/- (Rupees One Lakh Forty Eight Thousand Four Hundred and Thirty Eight only) had been paid, however, only by paying an amount of Rs. 5,005/- (Rupees Five Thousand and Five only). Later, after the death of the aforesaid Advocate L. Subramaniam on 27.04.2013, after consistent efforts by the appellants only after October 2014, the appellants



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herein came to understand that, the aforesaid Advocate L. Subramaniam failed to represent the said unnumbered case before the learned Subordinate Judges' Court, Tuticorin and proceed with the same. It has been pathetically pleaded by the appellants in Para 7 of the plaint in O.S.No. 45 of 2014 that even after the death of the said Advocate late L. Subramaniam, his wife Advocate Thilagavathi and his juniors failed to hand over the original receipts and other important documents which were handed over to the aforesaid deceased advocate.

20. It is only due to such extraordinary situation the appellants were forced to file a fresh suit in O.S.No. 45 of 2014 for the same cause of action. That apart, the factum of interference of the possession of the plaintiffs with respect to the suit property by the defendants during 11.06.2014 to 20.06.2014 as a result of which an FIR came to be registered as against the defendants in crime No. 21 of 2014 dated 15.04.2014 under Section 464, 465, 506(1) and 420 IPC by the land grabbing cell police and yet another FIR in Crime No. 563 of 2014 dated 13.08.2014 is also supported by documents. Since the peaceful possession of the plaintiffs over the suit property came to be interfered, the suit in O.S.No. 45 of 2014 has been filed by the appellants before the learned Trial Court not only seeking to direct the first defendant to execute a sale deed with



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respect to the suit schedule properties in favour of the plaintiffs, but also for a permanent injunction restraining the defendants, their men and agents in any manner interfering with the plaintiffs peaceful possession and enjoyment over the suit schedule property.

21. In so far as an application under Order 7, Rule 11 of Civil Procedure Code, 1908, is concerned, the learned Trial Court could proceed only to that extent to examine as to whether the plaint had disclosed a cause of action and no further. When the plaint has categorically disclosed a cause of action which has arisen on 08.09.2008 by the issuance of legal notice by the plaintiffs, and the continuing cause of action which has arisen due to the filing and return of an unnumbered case for the same cause of action due to the error / negligence / mistake committed by one Advocate Late.L.Subramaniam who conducted the case of the appellants and on 11.06.2014 to 20.06.2014 when the appellants peaceful possession and enjoyment over the suit property was interfered by the defendants, which culminated in the registration of two FIRs dated 15.04.2014 and 13.08.2014.

22. The learned Trial Court committed an error by examining the merits of the matter. It prejudged the truth, legality and validity of the receipt dated



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24.03.2005. This is not to say that, the plaintiffs have any less burden to prove their case or even that their case is probable. Simply, the learned Trial Court could not have anticipated that the cash receipt for an amount of Rs.19,52,500/- (Rupees Nineteen Lakhs Fifty Two Thousand and Five Hundred only) dated 24.03.2005 could not be genuine. There is yet another reason as to why the judgment of the learned Trial Court is not sustainable in an application under Order 7, Rule 11, Civil Procedure Code, 1908. A plaint cannot be rejected in part. Having clearly observed that, the suit has been filed seeking the reliefs of specific performance of sale as well as permanent injunction and having observed that the suit is maintainable and would not be hit by the law of limitation, if the same had been filed only with respect to the relief of permanent injunction, the learned Trial Court ought not to have proceeded to dispose of the same partly by rejecting the plaint on the basis of the ground that the same is barred by limitation. The Hon'ble Apex court in the case of ***Kum.Geetha, D/o.Late.Krishna and others .vs. Nanjunda Swamy and others in Civil Appeal No. 7413 of 2023*** has dealt with a similar case and the proposition which is relevant to the facts and circumstances of this case is extracted as below:

7. In simple terms, 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.

9. If the statements in the plaint are taken to be true, the joint family properties may enure to the benefit of its members and they may well be available for partition. This is a matter of trial, the result of which would depend upon the evidence adduced by the Plaintiff. At this stage, we are not concerned with the correctness of the averments, except to state that the plaintiffs have the carriage of the proceedings, and have to discharge the heavy burden of proving their case. In so far as the application under Order VII Rule 11 of CPC is concerned, this Court will proceed only that far, to examine whether the plaint discloses a cause of action, and no further.

11. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order VII Rule 11, CPC a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in Maqsud Ahmad v. Mathra Datt & Co. This principle is also explained in a recent decision of this Court in Sejal Glass Ltd. v. Navilan Merchants (P) Ltd, which was again followed in Madhav Prasad Aggarwal .v. Axis Bank Ltd. The relevant portion of Madhav Prasad (supra) is extracted hereinunder:

10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise



of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in *Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780: (2018) 5 SCC (Civ) 256]* is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by advertng to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on



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account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part..”

23. In yet another case of ***Bishwanath Banik and another .vs. Sulanga Bose and others reported in AIR 2022 SC 1519*** the Hon'ble Apex Court has dealt with the similar case and the relevant portion is extracted as follows:

“7.1. From the aforesaid decision and even otherwise as held by this Court in a catena of decisions, while considering an application under order VII Rule 11 CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines / passages and ignoring the other relevant parts of the plaint.”

24. In yet another case of ***Salim D. Agboatwala .vs. Shamalji Oddavji Thakkar and others reported in 2021(3) MWN (Civil) 225*** the Hon'ble Apex Court has dealt with the similar case and the relevant portion is extracted as follows:

“10. Insofar as the rejection of Plaint on the ground of



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limitation is concerned, it is needless to emphasis that limitation is a mixed question of fact and law. It is the case of the Appellants / Plaintiffs that only after making inspection of the records in connection with the Suit land available in the office of Defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The Appellants / Plaintiffs have even questioned the authority of the Court Receiver to represent them in the Tenancy proceedings.

11. The above averments may or may not be true. But if the plaintiffs succeed in establishing the above averments, the issue of limitation cannot be put against the Plaintiffs. Generally a party, who never had any notice of a particular proceeding before a Quasi – Judicial Authority, is entitled to approach the Court upon gaining knowledge of the proceedings. Limitation cannot be put against such a party.

12. We are not dealing here with a case where notices were ordered to be issued, but were not or could not, be served on necessary and proper parties. We are dealing with a case where the Plaintiffs assert in no uncertain terms that notices were never ordered to them nor served on them. Therefore, the answer to the issue regarding limitation, will depend upon the evidence with regard to the issuance and service of notice and the knowledge of the Plaintiffs. Hence, the Trial Court as well as the High Court were not right in rejecting the Plaint on the ground of limitation, especially in the facts and circumstances of this case.



13. As observed by this Court in **P.V.Guru Raj Reddy v. P.Neeradha Reddy and others**, 2014 (8) SCC 331, the rejection of *Plaint under Order 7, Rule 11*, is a drastic power conferred on the Court to terminate a Civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of *Plaint* is sought on the ground of limitation. When a Plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under *Order 7, Rule 11*.”

25. It is needless to state that always the question of limitation is a mixed question of fact and law and even in the instant case the plaintiff has successfully established through his pleadings and other documents produced along with the *plaint*, that, he has been defrauded by Advocate Late.L.Subramanian to whom the appellants have entrusted to file the unnumbered case in return number 5053 in CR.19 which was filed on 16.09.2008 on payment of a Court Fee of Rs.5,005/- (Rupees Five Thousand and Five only) on the file of the Subordinate Judge's Court, Tuticorin, which was returned on the very next day on 17.09.2008. That apart, a careful reading of the pleadings of the aforesaid *plaint* would reveal that in para 7 of the said *plaint*, it has been pleaded that a Court Fee of Rs.1,48,438/- (Rupees One Lakh Forty Eight Thousand Four Hundred and Thirty Eight only) has been paid by



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the plaintiffs. Having pleaded the same the said advocate has paid only an amount of Rs.5,005/- (Rupees Five Thousand and Five only) defrauding the appellants herein.

26. That apart, having filed a case in such manner the said advocate failed to represent the same after being returned on 07.09.2008 for certain defects. In addition to that, the said information has not been disclosed by the said advocate to the appellants, but suppressing the said fact the said advocate had even gone to the extent of making a paper publication with respect to the suit property as the said suit was pending on 20.10.2008 making the appellants to believe that the said suit is pending. It is a settled proposition of law that the litigant should not suffer for the mistakes / error / negligence of the advocate on record. This Court has no hesitation to observe that the appellants are also hapless litigants who have suffered in the hands of Late Advocate L.Subramaniam.

27. In view of the same, I am of the considered opinion that, an innocent litigant should not be penalized for the laches and inefficiency of an unscrupulous lawyer who is legally unsound. This proposition of law has been settled by various precedents, few of which are:



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i) In ***Tamilselvi Vs. A. Ramya and Ors. reported in***

MANU/TN/5565/2020, this Court observed as follows:

“It is also well settled by the Hon'ble Supreme Court in Raifq and another vs. Munshilal and another, reported in AIR 1981 SC 1400, which ratio followed in various judgments of this Court held that an innocent party shall not suffer injustice merely because his chosen advocate defaulted.”

ii) ***Ashok Kumar Vs. New India Assurance Co. Ltd., reported in AIR 2023 SC 3622***, the Hon'ble Apex Court held that

“However, for the fault of the advocate, the complainant could not be made to suffer”.

iii) ***T. Udhaykumar Vs. The Union of India and Ors., reported in MANU/TN/7765/2022***, the Hon'ble Division Bench of this Court held that,

“accepting the bona fide reasons, in the light of the settled legal position that a litigant should not suffer for the fault committed by the Advocate, as the appellant who is aspiring to pursue the medical course during the academic year 2022-23, we are inclined to entertain the writ appeal”.

28. In view of the same, the learned Trial Court having observed that the suit is maintainable had it been filed only for the relief exclusively for



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permanent injunction ought not to have proceeded to dismiss the same at its threshold by deciding I.A.No. 3 of 2015 in O.S.No. 45 of 2014 filed under Order 7 Rule 11 r/w Section 151 of the Code of Civil Procedure.

29. For the reason stated above, the Appeal Suit arising out of O.S.No. 45 of 2014 on the file of the 2nd Additional District Judge, Tuticorin, is allowed and the impugned judgment and decree of the learned Trial Court in O.S.No. 45 of 2014 dated 19.01.2015 is here by set aside.

30. In view of the fact that the present proceedings arise out of the suit instituted as early as in the year 2014, I direct the Trial Court to take up the trial and dispose of the suit as expeditiously as possible within a period of six (6) months from the date of receipt of a copy of this order. The parties will bear their own costs. Consequently, connected miscellaneous petition is closed.

30.05.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml



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To

1. The II Additional District Judge,
Tuticorin.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

Sml

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30.05.2024