



C.R.P.(MD)No.2457 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.12.2023

Pronounced on : 15.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2457 of 2023

and

C.M.P.(MD)No.12808 of 2023

1. Guru Venkatasubramaniam
2. Muthulakshmi

... Petitioners

Vs.

1. V.Palanichamy
2. Govindammal @ Rajammal
3. Bagavathiammal @ Saroja
4. Rajammal
5. Govindammal
6. Meenakshi
7. Periyasamy
8. Samiyappan
9. Sakkarairaj
10. Subbiramani
11. Ramasamy
12. Ramar
13. Rani
14. Subbaiah
15. Thiruppathi
16. Murugeswari
17. Easwari



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18. Nagaraj
19. Pandiyammal
20. Palanimuthu
21. Erranaga Gounder
22. Alagiri Gounder
23. Nagalakshmi
24. Sikku Nagammal
25. Subbiramani
26. Veeruthiyammal
27. Sundararaj
28. Mariappan
29. Padaya Gowder
30. Thasirivarkula Sri Nagammal Kovil,
Kunnampatti,
Vedasandur Taluk,
represented through its President Thiruppathi
31. Thandapani
32. Palanichamy
33. Sakthivel
34. Muthulakshmi
35. Ramuthayee
36. Amasavalli
37. Subbammal
38. Venkatachalam
39. Thiruppathi

... Respondents

(Respondents 2-39 are given up as they are not necessary parties)

Prayer : This Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 23.06.2022 passed in I.A.No.1 of 2022 in O.S.No.336 of 2022 on the file of the Additional District Judge, Dindigul and allow the present Civil Revision Petition.



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Gounder and his wife Sikku Nagammal had died issueless, that the said Thottiyappa Gounder and his wife Padammal had two sons Periya Govinda Raj and Chinna Govinda Raj and two daughters Nagammal and Govindammal @ Rajammal (D1), that the said Periya Govinda Raj and his wife Bhagavathi Ammal @ Saroja (D2) had two daughters Rajammal (D3) and Govindammal (D4) and a son Guru Venkata Subramanian (D5), that the said Chinna Govinda Raj had a wife by name Muthulakshmi (D6), that the said Nagammal and her husband Venkittan had two sons Palanichamy (plaintiff) and Krishnasamy and that the said Krishnasamy and his wife Meenakshi (D7) had a son Periyasamy (D8).

4. The case of the first respondent/plaintiff is that Venkitti Gounder has purchased some of the properties in his name and in the name of his wife and some other properties were purchased by him in the name of his daughter-in-laws Padammal, W/o.Thottiyappa Gounder and Sikku Nagammal, W/o.Perumal Gounder, that the suit properties were purchased out of the income derived from the ancestral properties and the same were enjoyed as joint family properties, that Venkitti Gounder and his wife Thummayee Ammal had died intestate leaving behind their two sons and a



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daughter, that after the death of Venkitti Gounder and Thummayee Ammal, their children Thottiyappa Gounder, Perumal Gounder and Veeruthimmammal were enjoying the properties jointly, that Perumal Gounder had subsequently died without issues, that Veeruthimmammal has filed a suit in O.S.No.78 of 1999 claiming partition and allotment of half share in the suit properties, that the case was subsequently transferred to Dindigul Fast Track Court and thereafter to the Subordinate Court, Dindigul and the same was taken on file in O.S.No.400 of 2011, that Veeruthimmammal has appointed the first respondent/plaintiff Palanichamy and his brother Krishnasamy as her power agents to prosecute the suit, that since the first respondent/plaintiff's brother Krishnasamy died, the first respondent/plaintiff alone had been contesting the case on behalf of Veeruthimmammal, that Veeruthimmammal, during the pendency of the said suit in O.S.No.400 of 2011, had executed a registered Will in favour of the first respondent/plaintiff dated 11.06.2012 bequeathing her half share in the suit scheduled properties, that the first respondent/plaintiff's mother Nagammal had also executed a registered Will dated 06.05.2016 bequeathing her 1/8 share in the suit scheduled properties, that Veeruthimmammal and Nagammal died on 09.05.2019 and



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21.05.2016 respectively and thereafter, the above two Wills came into force and the first respondent/plaintiff got the right of 5/8 shares in the suit properties, that the defendants in O.S.No.400 of 2011 have filed an application in I.A.No.400 of 2010 challenging the validity of the evidence given by the first respondent/plaintiff and the said application was dismissed, that they have challenged the said dismissal order before this Court in C.R.P.(MD)No.894 of 2011 and this Court, by observing that P.W.1 can be treated as plaintiff side witness, directed the trial Court to dispose of the suit within four months, that pending suit, original plaintiff in O.S.No.400 of 2011 Veerathimmammal and the first respondent/plaintiff's mother Nagammal had died, the first respondent/plaintiff was impleaded as second plaintiff and 46th defendant, that the said order passed in I.A.No.597 of 2016 was challenged by the defendants in O.S.No.400 of 2011 in C.R.P.(MD)No.1546 of 2019 before this Court, that this Court, by observing that the first respondent/plaintiff cannot act in three different roles as second plaintiff, 46th defendant and power agent of the original plaintiff and that if the first respondent/plaintiff (46th defendant in that suit) has any individual right over the suit properties, he is at liberty to file a fresh suit, disposed of the revision, that the first respondent/plaintiff has



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thereafter filed two restoration applications in O.S.No.400 of 2011, but the same were returned by the trial Court endorsing that as per the order of the High Court in C.R.P.(MD)No.1546 of 2019, he has to file a fresh suit and that therefore, the first respondent/plaintiff was constrained to file the above suit claiming partition and allotment of 5/8 shares on the basis of the Wills executed by Veerathimmammal and Nagammal.

5. Pending above suit, the revision petitioners/defendants 5 and 6 have filed an application under Order 7 Rule 11 C.P.C. for rejection of plaint mainly on the grounds that the suit does not disclose any cause of action and that in view of the dismissal of the earlier suit in O.S.No.400 of 2011 filed by Veerathimmammal as abated, the present suit is barred under Order 22 Rule 9(1) C.P.C. Before this Court, the revision petitioners/defendants 5 and 6 have taken another ground that the suit is barred by limitation.

6. Let us first take the ground of want of cause of action. Before entering into factual aspects, it's time to consider the legal position. The Hon'ble Supreme Court, in cantena of cases, has specifically observed that



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the idea underlying the provision of Order 7 Rule 11(a) C.P.C. is that when no cause of action is disclosed in plaint, the Court will not unnecessarily protract the hearing of the suit and that a party should not be unnecessarily harassed in a suit, but at the same time, arriving at such a decision, the Court has to read the plaint in entirety to find out whether it discloses a cause of action. Cause of action is a bundle of facts and whether a plaint discloses a cause of action is a question of fact, which has to be gathered based on the averments made in the plaint in its entirety by taking those averments to be correct. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in the case of ***Liverpool and London S.P. & I Association Ltd. Vs. M.V.Sea Success I*** reported in **2004 (9) SCC 512** and the relevant passages are extracted hereunder:

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

Cause of action



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140. *A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence.*

146. *It may be true that Order 7 Rule 11(a) although authorises the court to reject a plaint on failure on the part of the plaintiff to disclose a cause of action but the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the suit. The approach adopted by the High Court, in this behalf, in our opinion, is not correct.*

149. *In D. Ramachandran v. R.V. Janakiraman, 1999 (3) SCC 267, it has been held that the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action.*

151. *In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate*

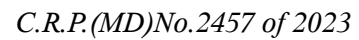


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enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. In Vijai Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941 : 1962 All LJ 634 this Court held: (AIR pp. 943-44, para 9)

“By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated



152. *So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars. (See Mohan Rawale, 1994 (2) SCC 392)*

155. *The reason for the aforementioned conclusion is that if a legal question is raised by the defendant in the written statement, it does not mean that the same has to be decided only by way of an application under Order 7 Rule 11 of the Code of Civil Procedure which may amount to prejudging the matter.”*

7. It is also settled law that while deciding the application filed under Order 7 Rule 11 C.P.C., the Courts are duty bound to consider the



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averments raised in the plaint and the documents annexed along with the plaint and not the defence raised in the written statement or in the petition for rejection of plaint to find out as to whether the plaint discloses any cause of action or not.

8. The Hon'ble Supreme Court in ***Kamala Vs. K.T.Eshwara Sa*** reported in ***2008 (5) MLJ 617 (SC)*** has held that whether the plaint discloses a cause of action or not, is a question of fact depending upon the facts and circumstances of each case and the same must be found out from a reading of the plaint itself. No doubt, the Hon'ble Supreme Court in the case of ***I.T.C. Ltd. Vs. Debts Recovery Appellate Tribunal*** reported in ***AIR 1998 SC 634*** has also held that the basic question to be decided while dealing with an application filed under Order 7 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 7 Rule 11 C.P.C. It is also settled law that while deciding the application filed under Order 7 Rule 11 C.P.C., the whole plaint has to be read, that there cannot be any compartmentalization, dissection, segregation of various paragraphs/averments in the plaint, that the substance not the form that has



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to be looked into and that the plaint pleading has to be construed as it stands and the intention of the party concerned has to be gathered primarily from the tenor and the terms of the pleadings. The Hon'ble Supreme Court in *T.Arivandandam Vs. T.V.Satyapal* reported in *AIR 1977 SC 2421* has also specifically held that if clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code.

9. In the light of the settled legal position above referred, let us consider the facts of the case on hand. As already pointed out, the first respondent/plaintiff in the plaint has specifically pleaded that the suit properties were originally belonging to his maternal grandfather Venkitti Gounder, that Venkitti Gounder and his wife Thummayee Ammal had died intestate leaving behind Thottiyappa Gounder, Perumal Gounder and Veeruthimmammal, that Perumal Gounder and his wife had died issueless and that therefore, the suit properties came to be inherited by Veeruthimmammal and her brother Thottiyappa Gounder.

10. The learned Senior Counsel appearing for the revision petitioners would contend that the first respondent/plaintiff himself has



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pleaded that Venkitti Gounder had purchased some of the properties in the name of his wife Thummayee Ammal and his daughter-in-laws Padammal and Sikku Nagammal and that therefore they will not constitute Hindu Joint Family and on that ground, the suit for partition is liable to be rejected.

11. The learned Senior Counsel appearing for the revision petitioners would further contend that the above averment raised in the plaint is clearly hit by Section 4(1) of Prohibition of Benami Transactions Act, that a Division Bench of this Court in the decision reported in **2023 (5) LW Page 1** had categorically held that women will not come under the Hindu Joint Family and if any properties stand in their name, the same can only be considered their own property and not that of Hindu Joint Family property, that even according to the first respondent/plaintiff, the properties are in the name of Padammal and Sikku Nagammal/sister-in-laws of Veeruthimmammal and as such, Veeruthimmammal cannot make any claim in the properties of her sister-in-laws and that since Veeruthimmammal has no right whatever in the suit properties, the first respondent/plaintiff has no cause of action to file the above suit.



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12. As rightly contended by the learned counsel appearing for the first respondent, the first respondent/plaintiff in the plaint has specifically stated that all the properties were purchased by Venkitti Gounder out of the income derived from the ancestral properties and the same were enjoyed as joint family property. In the judgment relied on by the learned Senior Counsel appearing for the revision petitioners reported in **2023-5-L.W. 1 (Rajendran and another Vs. Radhakrishnan and others)**, the Hon'ble Division Bench has reiterated the well settled position of Hindu Law that there is no presumption that properties possessed by members of the Joint Hindu Family are joint family properties and in case of properties standing in the name of the Manager of a Joint Hindu Family, there is a presumption that the properties are joint family properties, once the basic foundational fact i.e., the fact that the acquisition was aided by income from the joint family properties or by a detriment to the joint family properties is established and as regards junior members and female members, there is no such presumption.

13. No doubt, as per the above settled legal position, there cannot be any presumption that the properties standing in the name of daughter-in-



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laws of Venkitti Gounder are joint family properties. But at the same time, the party pleading that those properties are joint family properties are entitled to prove that those properties were purchased out of the income derived from the ancestral properties or other joint family properties and the purchase was for the benefit of the joint family. As rightly contended by the learned counsel appearing for the first respondent, the above aspects can only be gone, into at the trial. Even assuming for arguments sake, as rightly contended by the learned counsel appearing for the first respondent that that properties purchased in the name of wife and daughter-in-laws of Venkitti Gounder are not the joint family properties, then Veeruthimmammal being the daughter of Thummayee Ammal is certainly entitled to get a share in the properties of her mother. It is pertinent to note that at this stage, the Court has to see as to whether the first respondent/plaintiff has shown any cause of action for the suit and not whether the cause of action alleged is genuine or false. As rightly observed by the learned trial Judge, the first respondent/plaintiff has raised necessary averments to infer that he has a cause of action to file the suit and the defendant can very well challenge the same and prove that the cause of action alleged in the plaint is not genuine.



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14. Now turning to the next ground of bar under Order 22 Rule 9(1)

C.P.C., as already pointed out, since the earlier suit filed by Veeruthimmammal was dismissed as abated, the present suit filed by the first respondent/plaintiff claiming partition also through Veeruthimmammal is clearly barred under Order 22 Rule 9(1) C.P.C. At the outset, it is necessary to refer Order 22 Rule 9 C.P.C.;

“9. Effect of abatement or dismissal – (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.”

15. Order 22 Rule 9 C.P.C. specifically contemplates that when the suit was abated or dismissed under Order 22, no fresh suit shall be brought on the same cause of action. As already pointed out, the first respondent/plaintiff has prosecuted the earlier suit in O.S.No.400 of 2011 as power agent of Veeruthimmammal, who filed the suit for partition and allotment of half share in the suit properties against the legal heirs of her deceased brother Thottiyappa Gounder, which also includes Nagammal-mother of the first respondent/plaintiff, who is the daughter of Thottiyappa Gounder. It is not in dispute that pending above suit in O.S.No.400 of 2011, Nagammal had died and hence, the first respondent/plaintiff was



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impleaded as 46th defendant as legal representative of his mother Nagammal along with defendants 43 to 45-the other legal heirs of Nagammal. It is pertinent to note that in the application filed in I.A.No. 597 of 2016 in O.S.No.400 of 2011, the learned trial Judge, vide order dated 29.06.2017, has impleaded the first respondent/plaintiff as 46th defendant and also as power agent of the original plaintiff and as well as second plaintiff in his individual capacity, that the said order was challenged before this Court in C.R.P.(MD)No.1546 of 2019 and a learned Judge of this Court, by observing that no person can appear in three different ways in a single suit, has allowed the revision and thereby setting aside the order of the trial Court passed in I.A.No.597 of 2016 in O.S.No. 400 of 2011 dated 29.06.2017 and it is necessary to refer the order of this Court hereunder for better appreciation:

“16.The claim of the 39th respondent herein is based on a Will dated 06.05.2016, it was executed by the fourth defendant. The status of the second plaintiff is different from the status of power of attorney of the then sole plaintiff. The plaintiff died intestate without any class 1 legal heirs. The power of attorney ceases to exist further. Though the order to implead the 39th respondent as the 46th respondent was passed by the trial Court, the



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39th respondent did not come forward to implead himself as the 46th defendant. The claim of the 39th respondent in I.A.No.597 of 2016 is the Will executed by the fourth defendant. Now the entire property belongs to one link of the family that is the family of Thotiyappa Goundar. The 39th respondent is the grandson of Thotiyappa Goundar through the fourth defendant.

17.The suit is of the year 1999 and is still pending. So many amendments were made in the plaint and so many persons were impleaded as defendants. The 39th respondent cannot be impleaded as the second plaintiff, as there is an order to implead him as the 46th defendant. As such nothing survives for adjudications. If at all the 46th defendant/39th respondent has any individual right over the property. He is at liberty to file a fresh suit.

18.With the above observation, this Civil Revision Petition is allowed and the order passed in I.A.No.597 of 2016 in O.S.No.400 of 2011 dated 29.06.2017 on the file of the learned Additional Sub Judge, Dindigul is set aside. No Costs. Consequently, connected miscellaneous petition is closed.”



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16. The learned counsel appearing for the first respondent would submit that subsequent to the said order of this Court, he filed an application under Order 9 Rule 9 C.P.C. to restore the suit in O.S.No.400 of 2011, which was dismissed as abated on 05.12.2020 and the said application was returned by the trial Court. He would refer the return endorsement dated 02.02.2022 and the same is extracted hereunder;

“As per the order passed the Honourable High Court of Madurai Bench in C.R.P.(MD)No.1546 of 2019 and C.M.P. (MD)No.8208 of 2019 dated 05.02.2020, the 46th defendant is at liberty to file a fresh suit. Hence, this petition is returned.”

17. The learned counsel appearing for the first respondent would further contend that in view of the order of this Court granting liberty and in view of the orders returning the restoration application by the trial Court, the first respondent/plaintiff was constrained to file the present suit.

18. The learned Senior Counsel appearing for the revision petitioners would submit that the civil Courts cannot grant leave to file another suit and that since the Sub Court has become *functus officio* in



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respect of the suit in O.S.No.400 of 2011, there cannot be any liberty to file a suit can be given on the application for setting aside the abatement by the said Court.

19. The learned Senior Counsel appearing for the revision petitioners would rely on the decision of the Hon'ble Supreme Court in ***Shiv Kumar Sharma Vs. Santosh Kumari*** reported in (2007) 8 SCC 600, wherein, the Hon'ble Apex Court has observed that a civil Court does not grant leave to file another suit and if the law permits, the plaintiff may file another suit but not on the basis of the observations made by a superior Court. But in the case on hand, as rightly observed by the learned counsel appearing for the first respondent, this Court in the order passed in C.R.P. (MD)No.1546 of 2019 by observing that since the suit was pending from 1999 and so many amendments were made in the plaint and so many persons were impleaded as defendants and that the 39th respondent (first respondent/ plaintiff herein) cannot be impeaded as second plaintiff as there was an order to implead him as 46th defendant and as such, nothing survived for adjudication, has stated that 46th defendant was at liberty to file a fresh suit, if at all he has any individual right over the property.



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20. As already pointed out, it is the specific case of the first respondent/ plaintiff that during the pendency of the suit in O.S.No.400 of 2011, the original plaintiff Veeruthimmammal had executed a registered Will in favour of the first respondent/plaintiff dated 11.06.2012 bequeathing her half share in the suit properties and that the first respondent/plaintiff's mother Nagammal had also executed a registered Will dated 06.05.2016 bequeathing her 1/8 share in his favour in the suit properties. The first respondent/plaintiff on the basis of the above two Wills referred has claimed ownership over 5/8 shares in the suit properties and laid the present suit for partition. It is not the case of the revision petitioners that they have filed any appeal or review, challenging the observations made and liberty granted to the first respondent/plaintiff, in the order passed in C.R.P.(MD)No.1546 of 2019 by this Court.

21. It is evident from the records that this Court has passed the order in C.R.P.(MD)No.1546 of 2019 dated 05.02.2020 and the said order came to be amended vide order dated 19.02.2020 and that thereafter the present suit in O.S.No.336 of 2022 came to be filed on 16.08.2022.



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22. Order 7 Rule 11(d) C.P.C. contemplates that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. It is settled law that in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Hon'ble Supreme Court in the case of ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and others*** reported in ***2021 (3) MWN (Civil) 243***, after perusing various authorities, has summarized the following guiding principles for deciding an application under Order 7 Rule 11(d) C.P.C.:

1. *To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;*
2. *The defense made by the defendant in the suit must not be considered while deciding the merits of the application;*
3. ...
4. ...
5. *Since an adjudication on the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous Suit', such a plea will be beyond the scope of Order 7, Rule 11(d), where only the statements in the plaint will have to be perused.*



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23. It is settled law that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments raised in the plaint and the pleas taken by the defendant in the written statement or in the application for rejection of plaint are wholly irrelevant and the matter is to be decided only on the plaint averment. In the case on hand, though this Court has referred the stands taken by both the parties as to what had happened in the earlier suit, those aspects cannot be gone into in detail at this stage and are matter for trial.

24. It is pertinent to note that the present plea under Order 22 Rule 9(1) C.P.C., which is similar to that of the plea under Rule 11 C.P.C. (*res judicata*) and the plea under Order 2 Rule 2 C.P.C., cannot be taken as grounds for rejection under Order 7 Rule 11 C.P.C. if the Court is of the view that some more materials or evidence are necessary to decide as to whether the subsequent suit is barred under the above pleas. No doubt, the learned trial Judge has observed that the plea of bar under Order 22 Rule 9 C.P.C. also falls under the category of *res judicata* and the same involves the mixed question of facts and law, the same could be gone into only after trial and cannot be decided at this point of time, but in the last paragraphs,



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he has come to a decision that the suit is not barred by law under Order 22 Rule 9(1) C.P.C. and that the said decision is not in tune with the discussion and observation made in the earlier paragraphs of the order.

25. Now turning to the new plea raised before this Court that the suit is barred by time, the learned Senior Counsel appearing for the revision petitioners would submit that Veeruthimmammal in her plaint in O.S.No.400 of 2011 has specifically admitted that she was out of possession of the suit properties and in the absence of any specific averment by the first respondent/plaintiff in respect of possession, and admission of execution of documents by Padammal and Sikku Nagammal and by the revision petitioners/defendants 5 and 6 and in the presence of the purchasers of the revision petitioners/defendants 5 and 6 in the party array and their possession, the suit is liable to be rejected under Article 65 of Limitation Act. As rightly contended by the learned counsel appearing for the first respondent, Veeruthimmammal in her plaint has nowhere whispered that she was not in the possession of the suit properties and more importantly, she has specifically pleaded that being a co-owner she was in joint possession of the suit properties. Moreover,



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Veeruthimmammal has valued the suit under 37(2) of Tamil Nadu Court Fees and Suits Valuation Act. As rightly contended by the learned counsel appearing for the first respondent, Veeruthimmammal in her plaint has pleaded about the various alienations made by the defendants therein and also impleaded the purchasers.

26. The learned Senior Counsel appearing for the revision petitioners has relied on the decision of this Court in ***V.Gowrishankar and another Vs. S.Balakumar and others*** reported in (2021) 2 CTC 829 and the relevant passages are extracted hereunder;

“20. In the decision of Dahiben case, reported in 2020 SCC OnLine 562, the Hon'ble Apex Court has categorically held that when a suit is barred by limitation and the sole point that has to be considered is only the point of limitation without any factual interference. In other words, when the plea of limitation is simplicitor, the said plea for limitation whether the suit is barred by limitation, simplicitor without any intervention of the factual position, that is, without recording evidence can be taken for consideration in the petition for rejection of the plaint.



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21. *In the instant case, as extracted supra, the Sale Deed is dated 16.02.2012 and the plaintiffs have filed the present suit in O.S.No.310 of 2015 before the Additional District Judge, Salem, on 23.11.2015 and the prayer in the suit is to declare the Sale Deed as ab-initio null and void and for challenging the Sale Deed, three years is limitation period and three years is already gone and therefore, the very main prayer in the suit is hit on a plea of limitation simplicitor. The plea of limitation simplicitor is that the suit is barred by limitation on ex facie cannot be brush aside lightly and hence, in view of the ratio laid down by the Hon'ble Apex Court in the above decisions, I am inclined to hold that the present suit is barred by limitation."*

27. The learned counsel appearing for the first respondent has relied on the decision of this Court in **Kolli Venkata Mohan Rao and another Vs. J.M.Patricia and others** reported in (2015) 1 MLJ 573 and the relevant passage is extracted hereunder;

"20. As I have already pointed out that the plaintiffs are bona-fidely prosecuting the matter all throughout, Section 14 of the Limitation Act would certainly come to their rescue, and therefore, by applying Section 14 as well as the above decision of the Honourable Supreme Court reported in 2014 (1) SCC 648 (cited supra), I am of the view that the



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petitioners/defendants 3 and 4 are not entitled to seek for rejection of the plaint on the ground that the suit is barred by limitation, especially when there is no admission in the plaint averment, as contended by the petitioners.”

28. Considering the above, it is very much clear that the Court has to see only the plaint averments to find out as to whether a real cause of action has been set out and as to whether the suit is barred by limitation and as to whether the same is evident on the face of the plaint. In V.Gowrishankar's case above referred, the plaintiffs therein have filed the suit to declare that the sale deed dated 16.02.2012 as ab-initio null and void and the suit came to be filed on 23.11.2015 and that since three year limitation period was already over, the Court has held that the very main prayer in the suit is hit on a plea of limitation. The learned Judge has specifically observed that the plea of limitation simplicitor is that the suit is barred by limitation on ex facie cannot be brush aside lightly and held that the suit was barred by limitation. But the earlier suit and the present suit are for partition, wherein, Veeruthimmammal has claimed partition alleging that the suit properties are joint family properties and after the death of her brother, she was entitled to get half share in the suit properties



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and in the present case, the first respondent/plaintiff has claimed partition on the basis of the Wills executed by Veeruthimmammal and by his mother Nagammal and that all the alienations made in between are not binding on the first respondent/plaintiff. Considering the above, as rightly contended by the learned counsel appearing for the first respondent, the limitation plea now raised by the revision petitioners/defendants 5 and 6, by no stretch of imagination, can be considered as pure question of law that can be decided at the stage itself, but are only mixed question of law and facts that can only be considered at the trial.

29. The learned Senior Counsel appearing for the revision petitioners would submit that the present suit is a clear abuse of process of Court and as such, the plaint is liable to be struck off from the plaint and relied on the judgments of this Court in *Saraswathy Ammal and others Vs. Govindan and another* reported in 2020 (5) CTC 781, *M.Devaprakash Vs. P.P.Devaraj and others* reported in 2022 (3) CTC 154 and *M.Venkatachalam Vs. Karunkarapandian and another* reported in 2022 (6) CTC 339. In the second decision referred above, a learned Judge of this Court, by holding that the subsequent suit is barred under



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Order 2 Rule 2 C.P.C. and also its abuse of process of Court, allowed the revision and the plaint was ordered to be struck off from the file. In the decisions 1 and 3 referred above, the learned Judges of this Court, by holding that the subsequent suit is a re-litigation and the same would amount to abuse of process of Court, has allowed the revisions and the plaints were ordered to be struck off from the file. In the present case, except the grounds raised in the application filed under Order 7 Rule 11 C.P.C. and also the additional plea of limitation, the revision petitioners/defendants 5 and 6 have not shown as to how and in what way, the first respondent/plaintiff has abused the process of Court/law. Technically speaking, the grounds of re-litigation and abuse of process of law cannot be considered as grounds or reasons for rejection of plaint under Order 7 Rule 11 C.P.C., but if the Court is satisfied that it is a case of re-litigation and the plaintiff is guilty of abuse of process of law, this Court, by invoking Article 227 of the Constitution of India, can order striking off the plaint from the file of the concerned Court at any point of time. In the present case, on a closed scrutiny of the plaint averments and the documents filed along with the plaint, this Court cannot observe or conclude at this point of time that the first respondent/plaintiff is guilty of



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re-litigation and is abusing the process of law. Hence, the impugned order of the learned trial Judge in dismissing the application filed under Order 7 Rule 11 C.P.C. cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

30. In the result, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

15.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Additional District Court,
Dindigul.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

**Pre-Delivery Order made in
C.R.P.(MD)No.2457 of 2023
and
C.M.P.(MD)No.12808 of 2023**

Dated : 15.03.2024