



A.S.No.522 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2025

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CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No.522 of 2011

Dr.Gurusamy Mudaliar Thondamandala
Thuluva Vellala Higher Secondary School,
Managing Committee,
Represented by its present Secretary-cum-Correspondent,
No.108, Amman Koil Street,
Chennai – 600 079. ... Appellant

Versus

1. Malleeswari
2. K.Dhanasekar
3. K.Kesavalu
4. D.Manohar (Abated vide Court order
dated 18.07.2022 in A.S.No.522 of 2011)
5. K.Nandakumar ... Respondents

Appeal Suit is filed under Section 96 of Civil Procedure Code to set aside the Order dated 29.04.2011 passed in I.A.No. 2611 of 2011 in O.S.No. 10802 of 2010 (C.S.No. 1038 of 2008) on the file of the learned V Additional Judge, City Civil Court, Chennai.

For Appellant : Mr. S. Sadasharam
For Respondent 1 : Mr. V. Kannan



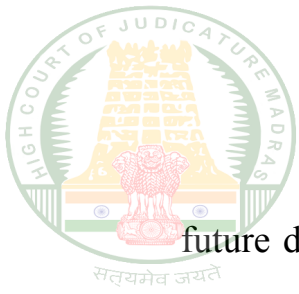
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JUDGMENT

This Appeal Suit is filed to set aside the Order dated 29.04.2011 passed in I.A.No. 2611 of 2011 in O.S.No. 10802 of 2010 (C.S.No. 1038 of 2008) on the file of the learned V Additional Judge, City Civil Court, Chennai.

2. The suit was filed by Dr.Gurusamy Mudaliar Thondamandala Thuluva Vellala Higher Secondary School Managing Committee represented by its Secretary-cum-Correspondent, as Plaintiff seeking the relief of declaration that the sale deed dated 29.06.2007 registered as Document No.697 of 2007 on the file of the Sub Registrar, Sowcarpet, Chennai executed by the Defendants 1 to 4 to and in favour of the fifth Defendant is null and void and vitiated by fraud and collusion played by the Defendants with respect to the suit property; directing the fifth Defendant to quit and deliver vacant possession of the first floor of the suit property; for consequential permanent injunction restraining the Defendants herein, their men, agents, servants or any other person or persons claiming through them from interfering with the Plaintiff's peaceful possession, occupation and enjoyment of the suit property; directing the fifth Defendant to pay a sum of Rs.1,50,000/- towards past damages for wrongful use and occupation of the first floor of the suit property; directing the fifth Defendant to pay a sum of Rs.15,000/- per month towards



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future damages from the date of plaint till the date of handing over of vacant possession of the suit property; for cost of the suit and such other further orders as this Court may deem fit and proper in the circumstances of the case.

3. The brief averments in the plaint are extracted as follows:-

3.1. The Plaintiff's School is run by a Trust. The property bearing Old No.15, New No.8, Rathina Mudali Street, Kondithope, Chennai - 600 079 namely an extent of 1152 sq.feet of house site with a building thereon is the suit property. It belonged to late Rajammal daughter of Venkatarayalu Thevar who was a spinster. She had purchased the suit property from one Bansilal, under a registered Sale Deed dated 25.09.1933 bearing Document No. 1118 of 1933 registered on the file of the Sub Registrar Office, Sowcarpet. The above said Rajammal had no issues to succeed to her estate. The said Rajammal had executed a registered will dated 31.01.1963 by which she had given disposal of her estate namely the suit property and she had also appointed one Mr.S.Chandrasekara Mudaliar as the Executor to administer the suit property. Under the said Will, the Testatrix, Rajammal, had directed the Executor to pay a part of the rental income after deduction of expenses towards repairs, taxes etc to her own blood brother, late Subramania Thevar, and after his death, to his wife late Sivammal, till her life time on the one part, and another part of the

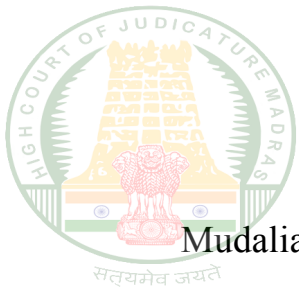


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rental income is to be given to Mrs. Varalakshmi, the daughter of the brother of the Testatrix, namely Sundara Ramanajulu Thevar. She had also imposed a condition that both Subramania Thevar and Varalakshmi have only life interest over the suit property. Therefore, there was no condition in the Will to the effect that after the life time of Varalakshmi, the legal heirs of late Varalakshmi are entitled to the said life interest. Under the Will, the Testatrix had stated that after the life time of Subramania Thevar and his wife Sivammal, the Executor shall sell the suit property and purchase a property in the name of Mrs. Varalakashmi for a sum not exceeding Rs. 15,000/- or shall pay a sum of Rs. 15,000/- in cash to Varalakshmi or deposit in GP notes. The said sum of Rs. 15,000/-, and from and out of the balance sale proceeds, an immovable property should be purchased in the name of the Plaintiff School, and the rental income derived therefrom shall be utilized for feeding the poor boys studying in the Plaintiff School; or otherwise the balance sale proceeds should be invested in GP notes and handed over to the Board of Directors of the Plaintiff School. The interest derived therefrom shall be used for feeding the poor and education of poor students studying in the Plaintiff School.

3.2. On the demise of the Testatrix, Ms. Rajammal on 11.10.1963, the Will dated 31.01.1963, was duly probated by the Executor, late Chandrasekara



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Mudaliar, by filing a case in O.P.No. 193 of 1964 on the file of this Hon'ble

Court and probate order was granted on 26.04.1964. It is further stated that

Mrs. Varalakshmi died on 03.03.1974 prior to the death of Subramania Thevar and his wife Sivammal. There was no provision in the will dated 03.01.1963 that her legal heirs shall be entitled to any benefits and rights. Since Varalakshmi died prior to the death of Subramania Thevar and Sivammal on 03.03.1974, the right of late Varalakshmi had abated. The life interest holder by name Subramania Thevar died on 09.09.1974 and his wife Sivammal died on 26.05.1980. As such, as per the stipulations, in the registered Will dated 31.01.1963, since Varalakshmi had died prior to the death of Subramania Thevar and his wife Sivammal, the provision in the Will to purchase an immovable property in the name of Varalakshmi after selling the suit property could not be given effect. There was no provision in the Will dated 31.01.1963 to confer the benefits under the Will on the legal heirs of Varalakshmi and the question of selling the suit property subsequent to the demise of Subramania Thevar and his wife Sivammal does not arise. Therefore, the legal heirs of late Varalakshmi, if any, could not stake claim for any right or interest in the suit property. As there was a provision in the said will dated 03.01.1963, for purchasing an immovable property in the name of the Plaintiff School. Since the Plaintiff was the only beneficiary remaining to



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avail the benefits under the will, the Plaintiff School has become the absolute owner of the suit property from 26.05.1980 onwards i.e., when late Sivammal died. It was the wish and will of the testatrix that the suit property should be enjoyed absolutely by the Plaintiff School even though there was a provision for purchasing an immovable property from and out of a sum of Rs. 15,000/- namely a portion of the sale proceeds of the suit property. Since the late Varalakshmi, pre-deceased the other beneficiaries namely Subramania Thevar and Sivammal, the provisions relating to purchase of immovable property in the name of Varalakshmi had become nugatory. The entire suit property remained the property of the Plaintiff School. Therefore, the Plaintiff had filed the suit seeking declaration that the sale deed dated 29.06.2007 registered as Document No.697 of 2007 on the file of the Sub Registrar, Sowcarpet, Chennai executed by the Defendants 1 to 4 to and in favour of the fifth Defendant is null and void and vitiated by fraud and collusion played by the Defendants with respect to the suit property; directing the fifth Defendant to quit and deliver vacant possession of the first floor of the suit property; for consequential permanent injunction restraining the Defendants herein, their men, agents, servants or any other person or persons claiming through them from interfering with the Plaintiff's peaceful possession, occupation and enjoyment of the suit property; directing the fifth Defendant to pay a sum of



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Rs.1,50,000/- towards past damages for wrongful use and occupation of the first floor of the suit property; directing the fifth Defendant to pay a sum of Rs.15,000/- per month towards future damages from the date of plaint till the date of handing over of vacant possession of the suit property; for cost of the suit and such other further orders as this Court may deem fit and proper in the circumstances of the case.

4. The brief averments in the written statement filed by the Defendants 1 to 4 are as follows:

4.1. There is no cause of action for the suit. The Plaintiff had approached the Court after 27 years. The Plaintiff is making an illegal claim that the sale deed is null and void. The cause of action as stated by the Plaintiff is not at all correct. The suit is barred by limitation. The Plaintiff has no right to file the present suit. The Plaintiff had not filed the suit for declaration of title. Therefore, without a prayer for declaration of title, the consequential prayer declaring the sale deed and other reliefs is not valid in law. The valuation by the Plaintiff is not correct. In the legal notice dated 20.12.2007, the Plaintiff claimed that the value of the building alone is Rs.40,00,000/-, and the doors and windows is worth Rs.8,00,000/-. The Plaintiff had not stated anything about the value of the land. The Plaintiff



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valued the relief at Rs.10,00,000/-. The Plaintiff had not paid the proper Court

fee. The Defendants 1 to 4 are the absolute owners. They sold the suit property to the fifth Defendant. The fifth Defendant is residing in the suit property as absolute owner. Therefore, the question of quitting and delivering the vacant possession does not arise. With regard to the relief of permanent injunction, the Plaintiff was never in possession of the suit property nor was the Plaintiff in constructive or active possession through any tenants. Therefore, the suit has to be dismissed as the Plaintiff had not chosen to seek declaration of title.

5. The brief averments in the written statement filed by the fifth Defendant are as follows:-

5.1. The Executor filed C.S.No.125 of 1984 for the relief as to what will be the equitable mode of complying with the directions of the testatrix in her will dated 31.01.1963 in the light of the change of circumstances. The suit was dismissed for default on 17-11-1997 for not taking steps to serve Defendants 1 to 4 (Defendants 2 to 5 in C.S.). The Defendants 1 to 4 filed Application No. 4138 of 1986 in O.P.No. 193 of 1964 to direct the executor to sell the suit property and direct him to purchase house property for the 3/4th value of the sale proceeds in the name of the Defendants 1 to 4. The High



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Court passed an order dated 5-10-1990 directing the executor to issue proper advertisement to sell the suit property. Thereafter, the executor made publications in 'Dhina Thanthi' and he did not take steps to comply with the order passed by the High Court. The Defendants 1 to 4 have been in peaceful possession and enjoyment of the suit property without any interruption or obstruction. Also the Executor died in 1997. The Plaintiff had not filed any suit claiming any amount for mid-day feeding of poor students. Since the executor has not complied with the directions stated in the Will immediately and the directions as stated in the Will become unexecutable after the death of the executor, the suit property therefore devolved upon Varalakshmi and Defendants 1 to 4 as legatees of Rajammal are entitled to the suit property to the knowledge of the Plaintiff. As the legatees of Rajammal, the property devolves upon Defendants 1 to 4. The Defendants 1 to 4 had become absolute owners of the suit property.

5.2. The Defendants 1 to 4 had sold the suit property to the 5th Defendant by way of a registered Sale deed dated 29-6-2007. The Defendants 1 to 4 have put the 5th Defendant in possession of the suit property. The Defendants 1 to 4 had also handed over the certified copies of the parent title deed to the 5th Defendant. The 5th Defendant filed O.S. No. 1050 of 2008

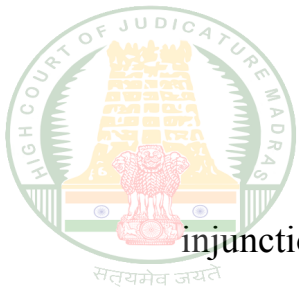


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before XVI Asst. City Civil Court, seeking permanent injunction restraining the Plaintiff from interfering with the peaceful possession and enjoyment of the suit property. The same was made absolute by the XVI Assistant Judge. After this only the Plaintiff had filed the suit in O.S.No.10802 of 2010 for a declaration to declare the sale deed as null and void and other reliefs as stated above. Therefore, the suit has to be dismissed.

6. The learned Counsel for the Appellant submitted that the suit was originally filed by this Appellant as Plaintiff before the Original Side of the High Court as C.S.No.1038 of 2008. Subsequently, on raising of the pecuniary jurisdiction of the District Courts, the case was transferred to the file of the City Civil Court and re-numbered as O.S.No.10802 of 2010 on the file of the learned V Additional Judge, City Civil Court, Chennai. According to the Plaintiff, the suit property belonged to the Plaintiff School by virtue of the provisions of the Will dated 31.01.1963 probated by the order dated 26.04.1964 in O.P.No.193 of 1964 on the file of the original side of this High Court. The Plaintiff had set out various averments substantial in nature constituting substantial cause of action to maintain the suit. The suit involves various issues to adjudicate. Pending suit, the Plaintiff had filed two applications in Application Nos.1170 of 2008 and 1168 of 2008 for interim



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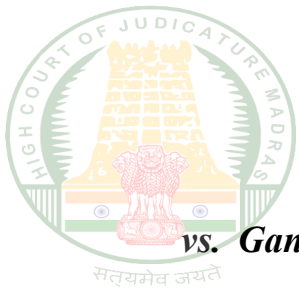
injunction. The interim injunction was contested by the fifth Defendant.

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Therefore, by order dated 19.03.2010, the injunction applications were allowed granting injunction till the disposal of the suit recording the undertaking given by the fifth Defendant. The fifth Defendant took out an application under Order VII, Rule 11(a)(b)(d) of the Code of Civil Procedure for rejection of the plaint stating that there is no cause of action for the Plaintiff/Appellant to maintain the suit and in the affidavit particularly, paragraph 4 of the plaint was chosen to be referred to. The said application was contested by the Plaintiff/Appellant on legal grounds stating that the averments in the plaint do constitute the cause of action and that the application under Order VII, Rule 11 of Code of Civil Procedure is not maintainable. The learned V Additional Judge, City Civil Court, by order dated 29.04.2011 allowed the application and rejected the plaint referring paragraph 4 of the plaint without considering the other allegations and averments set out in detail in the plaint which constitute the substantial cause of action. The trial Court passed the order under challenge.

7. In support of his contention, the leaned Counsel for the Appellant relied on the following rulings:

7.1. In **(1998) 7 SCC 184** in the case of **Raptakos Brett & Co. Ltd.**,



vs. Ganesh Property wherein the Hon'ble Supreme Court has relied on the decision of the Hon'ble Supreme Court in **Udhav Singh v. Madhav Rao Scindia**

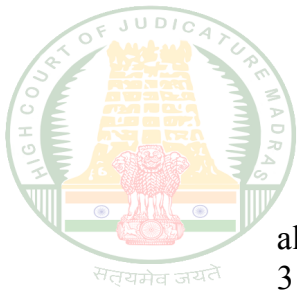
[1976] 2 SCR 246. In the said report at page 254, Sarkaria, J, speaking for the Court made the following pertinent observations :

"We are afraid, this ingenious method of construction after compartmentalisation, dissection, segregation and inversion of the language of the paragraph, suggested by Counsel, runs counter to the cardinal canon of interpretation, according to which, a pleading has to be read as a whole to ascertain its true import. It is not permissible to can out a sentence or a passage and to read it out of the context; in isolation, Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole."

7.2. In **2020 (5) CTC 47 SC** in the case of **Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) through LRs and Others** wherein the Hon'ble Supreme Court has observed as follows:

"12.6. ... The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was [laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I & Anr.](#),⁴ which reads as :

"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." In [Hardesh Ores \(P.\) Ltd. v. Hede & Co.](#)⁵ the [Court further held](#) that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the



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allegations in the plaint prima facie show a cause of action, the court 3 [Sopan Sukhdeo Sable v. Assistant Charity Commissioner](#), (2004) 3 SCC 137 4 (2004) 9 SCC 512. 5 (2007) 5 SCC 614. cannot embark upon an enquiry whether the allegations are true in fact.6 12.8 If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under [Order VII Rule 11 CPC](#). 12.9 The power under [Order VII Rule 11 CPC](#) may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the Defendant, or before conclusion of the trial, as held by this Court in the judgment of [Saleem Bhai v. State of Maharashtra](#).7 The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in [Azhar Hussain](#) (supra).

7.3. In *2023 (2) MWN (Civil) 342* in the case of *Rajendra Bajoria and others vs. Hemant Kumar Jalan and others* wherein the Hon'ble Supreme Court has observed as follows:

“13. No doubt that, it is rightly contended on behalf of the plaintiffs that, only on the basis of the averments made in the plaint, it could be ascertained as to whether a cause of action is made out or not. It is equally true that for finding out the same, the entire pleadings in the plaint will have to be read and that too, at their face value. At this stage, the defence taken by the Defendants cannot be looked into.”

7.4. In *AIR 2022 Supreme Court 1519* in the case of *Sri Biswanath Banik vs. Sulanga Bose* wherein the Hon'ble Supreme Court has observed as follows:

“7. Now, so far as the issue whether the suit can be said to be barred by limitation or not, at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order VII Rule 11(d) [CPC](#) on the ground of limitation. At this stage



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what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole. As observed and held by this Court in the case of [Ram Prakash Gupta](#) (supra), rejection of a plaint under Order VII Rule 11(d) [CPC](#) by reading only few lines and passages and ignoring the other relevant parts of the plaint is impermissible. In [the said decision](#), in paragraph 21, it is observed and held as under:-

“21. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The abovementioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the Plaintiff in the year 1986, when Suit No. 424 of 1989 titled *Assema Architect v. Ram Prakash* was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for declaration and in the alternative for possession. It is not in dispute that as per [Article 59](#) of the [Limitation Act, 1963](#), a suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed by the High Court. While deciding the application under Order 7 Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint.” 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.”

8. In the light of the above rulings of the Hon'ble Supreme Court, in an application under Order VII, Rule 11 of Civil Procedure Code to reject the plaint, the trial Court is not at liberty to pick and choose a particular paragraph and deal with the applications, but the entire allegations and averments set out in the plaint have to be looked into with reference to the documents referred to in the plaint. The decision of the trial Court in disposing the application under



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Order VII, Rule 11 of CPC by referring to a particular paragraph without perusing the plaint in its entirety and without appreciating other applications and averments in the plaint had been deprecated by the Hon'ble Supreme Court. Therefore, in the light of the above rulings relied on by the learned Counsel for the Appellant, the order passed by the learned V Additional Judge, City Civil Court, Chennai rejecting the plaint in C.S.No.1038 of 2008, renumbered as O.S.No.10802 of 2010 in I.A.No.2611 of 2011 in O.S.10802 of 2010 is to be set aside and the subject matter of the suit has to be remanded to the trial Court for fresh disposal on merits and in accordance with law.

9. The learned Counsel for the first Respondent submitted that the Plaintiff had wantonly suppressed the fact that the Respondents had obtained prior permission from the probate Court which had probated the Will of Rajammal. To seek clarification, the children of Varalakshmi had approached the probate Court for seeking clarification. Accordingly, on the basis of the order dated 06.05.1990, passed by the Probate Court in Application No.4138 of 1986 in O.P.No. 193 of 1964, the Defendants 1 to 4 were permitted to sell the property to fifth Defendant. According, the suit property was sold to the fifth Defendant. The fifth Defendant on the strength of the sale deed had caused notice to the tenants to evict and render accounts. Accordingly, they



had been evicted based on the orders of the Rent Control Appellate Authority.

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10. The learned Counsel for the first Respondent further submitted that in this Appeal, the Appellant claims to be the absolute owner of the suit property, and seeks the relief of declaration of the sale deed dated 19.06.2007 executed by the Defendants 1 to 4 in favour of the fifth Defendant as null and void and also for possession. As per the pleadings of the Appellant, the Appellant became absolute owner of the suit property from the date of death of Sivammal, on 26.05.1980. Hence, admittedly the Appellant's cause of action arose on 26.05.1980. Under Article 65 of the Limitation Act, the Appellant is bound to file the suit within 12 years from the date of cause of action. Admittedly, the suit was filed only on September, 2008, after the lapse of nearly 3 decades. Hence, under Section 27 of the Limitation Act, the Appellant's right, if any, got extinguished.

11. He further submitted that as per the statutory mandate under Section 211 of the Indian Succession Act, on the death of the testator, the property vests with the executor. Under Section 87 of the Indian Succession Act, Courts have got to sit in the chair of the testator and give effect to the intention of the testator. Also under Section 336 of the Indian Succession Act,



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only the executor's assent to a legacy gives effect to it from the death of the testator. In the present case, admittedly the Appellant pleaded in paragraphs 9 and 10 of his plaint that the executor assented to the legacy in favour of the Defendants 1 to 4. On the assent given by the executor, the probate Court was pleased to grant permission to Defendants 1 to 4 by an order dated 06.05.1990 in Application No.4138 of 1986 in O.P.No. 193 of 1964. Therefore, it will not be open to any other Court to question the probate proceedings. The Appellant had deliberately suppressed the important fact that the probate Court has granted the permission to the Respondents to execute the disputed sale deed. Therefore, he is not entitled to be heard.

12. The learned Counsel for the Respondent raised a legal question involved in this Appeal as to whether the trial Court had jurisdiction to entertain the suit. As admitted by the Appellant himself, there were several previous litigations in judicial forums, between himself and the Respondents, in which the Appellant's title was disputed and his claim of title was rejected. In such circumstances, as there is a cloud over his title, it is the obligation on the Appellant to file the suit for the declaration of the Plaintiff's assumed title. The Plaintiff must prove his/her title in the declaration suit as per Sections 101 and 102 of the Indian Evidence Act. In the absence of title the Plaintiff must

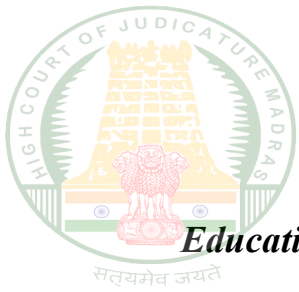


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be non-suited. Further, as per Order 2, Rule 2 of CPC omitted cause of action bars subsequent claim. Also, if the documents conferring cause of action on the Plaintiff are not filed along with the suit, the same is liable to be rejected under Order VII, Rule 11 of CPC. Hence, the learned V Additional Judge, City Civil Court, had properly appreciated the entire materials on record and rightly rejected the plaint in O.S.No.10802 of 2010 by the order dated 29.04.2011 in I.A.No. 2611 of 2011 in O.S.No.10802 of 2010, which is a well reasoned order which does not warrant any interference by this Court.

13. The learned Counsel for the first Respondent relied on the following decisions:

- (i) ***AIR 1984 SC 1866 [Rukmani Devi vs. Narendra Lal Gupta]***
- (ii) ***1999-1-L.W. 315 [Viswanathan and 6 others vs. David and 6 others.]***
- (iii) ***(2008) 11 SCC 306*** in the case of ***Corporation of City of Bangalore vs. Zulekha Bi and others.***
- (iv) ***2009 (2) LW (Crl) 364 SC [Rajiv Mod vs. Sanjay Jain and others]***
- (v) ***2010 (2) SCC 114 [Dalip Singh vs. State of Uttar Pradesh and others]***
- (vi) ***2012 (4) CTC 308 SC [The Church of Christ Charitable Trust Y***



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***Educational Charitable Society, Represented by its Chairman vs.
Ponnamman Educational Trust, Represented by its Chairperson/managing
Trustee]***

***(vii) 2013 (2) CTC 347 SC [State of AP and others vs. Star Bone Mill
& Fertiliser Co.]***

***(viii) 2014 (2) SCC 269 [Union of India and others vs. Vasavi
Cooperative Housing Society Ltd and others]***

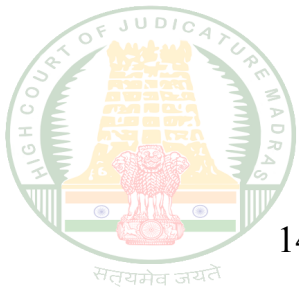
(ix) 2017 (1) SCC 622 [Robust Hotels (P) Ltd., vs. EIH Ltd]

***(x) 2019 (4) SCC 592 [Gopalakrishna (Dead) By Legal
Representatives and others vs. Narayanagowda (Dead) By Legal
Representatives and others]***

***(xi) 2020 2 (2) LW 681 [Promod Kumar & another vs. Zalak Sing &
others]***

Point for determination:

***Whether the order dated 29.04.2011 passed in I.A.No. 2611 of
2011 in O.S.No. 10802 of 2010 (C.S.No. 1038 of 2008) by the
learned V Additional Judge, City Civil Court, Chennai, rejecting
the plaint is proper?***



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14. Heard the learned Counsel for the Appellant Mr. S. Sadasharam

and the learned Counsel for the first Respondent Mr. V. Kannan.

15. Perused the plaint, written statements filed by the Defendants 1 to 4, written statement filed by the fifth Defendant and the order passed by the learned V Additional Judge, City Civil Court, Chennai in I.A.No. 2611 of 2011 in O.S.No. 10802 of 2010.

16. On perusal of the plaint averments, it is found that the Plaintiff in the pleadings claim that the suit property devolved on the Plaintiff in the year 1987 after the death of Varalakshmi. Therefore, late Chandra Sekara Mudaliar had approached the probate Court. Therefore, the Plaintiff School sent an objection letter to the Defendants 1 to 4 on 23.03.1983 as per the plaint averments. If that be so, from 1983 within three years, the Plaintiff ought to have approached the Court for the relief now sought in the suit in the year 2008. Therefore, the suit is barred by limitation as per Article 65 of the Limitation Act. The Plaintiff had suppressed the fact that the Defendants 1 to 4 had approached the probate Court seeking clarification since the executor Chandra Sekara Mudaliar also died. Therefore, based on the application of the sons of Varalakshmi, the Court had granted order in I.A.No. 4138 of 1986 in



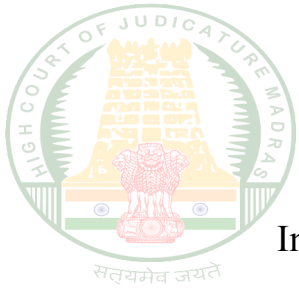
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O.P.No. 193 of 1964, dated 05.10.1990. This fact was not stated in the plaint.

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The plaint averments if read will give a presumption that from the date of issuance of legal notice by the Plaintiff after the death of Subramania Thevar and Sivammal, the Defendants 1 to 4 issued notice on 09.03.1983. The Plaintiff School had issued objection letter on 23.03.1983. In the light of the exchange of notice between the Plaintiff and Defendants 1 to 4, the Plaintiff ought to have approached the Court within three years, but they had not done so. The suit was filed in the year 2008. Therefore, the suit is hopelessly barred by limitation. The cause of action as stated in the plaint does not arise. Therefore, as stated by the learned Counsel for the Respondents, it is a case of the Plaintiff approaching the Court belatedly.

17. In the light of the above discussion, **the point for consideration is answered in favour of the Respondents and against the Appellant.** The order dated 29.04.2011 passed in I.A.No. 2611 of 2011 in O.S.No. 10802 of 2010 (C.S.No. 1038 of 2008) by the learned V Additional Judge, City Civil Court, Chennai, rejecting the plaint is found proper which does not warrant any interference by this Court.



A.S.No.522 of 2011

In the result, **this Appeal Suit is dismissed.** The order dated

29.04.2011 passed in I.A.No. 2611 of 2011 in O.S.No. 10802 of 2010

(C.S.No. 1038 of 2008) by the learned V Additional Judge, City Civil Court,

Chennai, is confirmed. No costs.

24.06.2025

srm

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order



A.S.No.522 of 2011

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To

1. The V Additional Judge, City Civil Court, Chennai.
2. The Section Officer, V.R. Section, High Court Madras.



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A.S.No.522 of 2011

SATHI KUMAR SUKUMARA KURUP, J.,

srm

Judgment made
in A. S. No.522 of 2011

24.06.2025