IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.04.2025
Pronounced on	18.07.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.S.No.757 of 2016

V.T.C.Selvaraj ... Plaintiff

Vs.

1.Hameetha Amir
2.Tahira Amir
3.Zaheeda Parveen
4.Noor-ui-Nissa
5.Amir Jamal ... Defendants

Prayer: This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908, pleased to pass a Judgment and Decree as against the defendants

(a) To declare the Sale Deed dated 31.03.2006 in Doc.No.324 of 2006 as sham, nominal, null and void and vitiated by fraud;
(b) awarding the costs of the suit and
(c) grant such other relief.

For Plaintiff : Mr.V.Srikanth

For Defendants : Mr.A.Thiyagarajan
Senior Counsel

JUDGMENT

The Plaintiff has filed the present suit for the following relief:-

(a) to declare the Sale Deed dated 31.03.2006 in Doc.No.324/2006 as sham, nominal null and void and vitiated by fraud;
(b) awarding the costs of the suit and
(c) to grant such other reliefs.

2. Suit Schedule Property in the plaint pertains to the land and building, which are given below:-

Schedule

All that piece and parcel of land and building bearing Door No.59 and 60 Nungambakkam High Road, another Door No.34. Kutty street, now new door No. 305, Valluvarkottam High Road, Nungambakkam, Chennai 600 034, bearing Old Survey No. 375 and 386 and Re-Survey No. 509/1, Block No. 29, covered by Collector's Certificate No.38 and Patta dated 20.05.1986.

<u>Ad-measuring</u>

North to South on the Eastern Side: 89 feet

North to South on the western Side: 93 feet

East to West on the Northern Side : 37 feet

East to West on the Southern Side : 28 feet

<u>Bounded on the</u>:

North By : Balakrisana mudaliar's House

South By : Kutty Street

East By : Valluvarkottam High Road,

West By : Chidambaram's House

to an extent of 1 ground 522 Sq.ft totaling 2922 Sq.ft.

FACTS OF THE CASE:-

3. The Plaintiff claims that the Plaintiff borrowed a sum of Rs.90,00,000/- from the Defendants through two cheques dated 18.07.2005, one for Rs.81,00,000/- and another for Rs.8,53,370/-, and the balance amount in cash for a sum of Rs.43,630/-.

4. It is the case of the plaintiff that the Plaintiff was taken by surprise at the knowledge of Ex.P4 Registered Sale Deed dated 31.03.2006, executed by the Defendants based on the signatures obtained from the Plaintiff on various blank papers at the time of advancing a loan of Rs.90,00,000/- to the Plaintiff and that the Defendants attempted to take possession of a small shop owned by the Plaintiff later.

5. It is alleged that Ex.P4, the Sale Deed dated 31.03.2006, was registered as if the Plaintiff had sold the suit schedule property to the Defendants, even though the intention of the Plaintiff was only to offer the suit schedule property as a collateral security for the said loan amount of Rs.90,00,000/-.

6. It is the further case of the Plaintiff that the Plaintiff had filed O.S.No.7741 of 2012 for a permanent injunction to restrain the Defendants from interfering with the peaceful possession of the said shop.

7. The Defendants filed their Written Statement in O.S.No.7741 of 2012 on 26.07.2013 [Ex.P8]. It is the case of the Plaintiff that the Plaintiff became aware of the execution of Ex.P4, Registered Sale Deed, dated 31.03.2006, for the first time only on 26.07.2013 when the defendants filed Ex.P8 Written Statement in the above Suit.

8. It is the case of the Plaintiff that Ex.P4 Registered Sale Deed dated 31.03.2006 was made to look as if the Plaintiff had voluntarily executed the same, conveying suit schedule property. However, Ex.P4 Sale Deed dated 31.03.2006, without the knowledge of the Plaintiff was registered as Document No.324 of 2006 before the Sub-Registrar-II, Thousand Lights as if the Plaintiff executed Ex.P4 Registered Sale Deed dated 31.03.2006. It is submitted that the Plaintiff was under the impression that the Plaintiff was executing a Mortgage Deed in respect of the property and not a Sale Deed in Ex.P4 Registered Sale Deed dated

31.03.2006.

9. In the plaint, the Plaintiff has stated that one Mr.Aliyar, who is related to the 5th Defendant, namely Mr.Amir Jamal was running a Appollo Colour Studio in one of the shops located along with the suit schedule property which is a commercial property owned by the Plaintiff voluntarily offered to help the Plaintiff.

10. It is submitted that the Defendants through the said Amir Jamal approached the Plaintiff and orally promised to help the Plaintiff after coming to know that the Plaintiff was in dire need of finance. It is the further case of the Plaintiff that the Defendants were thus allowed to collect the rentals from the other shops and that the rentals were to be adjusted towards the dues under the mortgage created in favour of the Defendants by the Plaintiff.

11. The Plaintiff filed Proof Affidavit by himself while the Defendants have filed a Proof Affidavit through their Power of Attorney, namely one Mohammed Ibrahim before the learned Additional Master's

Court. During trial, the Plaintiff has marked Exs.P1 to P9, whereas the Defendants on the other hand have filed and marked Exs.D1 to D6.

EXHIBITS MARKED:-

12. Details of the Exhibits filed on behalf of the Plaintiff and Defendants are as under:-

Table I - Exhibits marked by the Plaintiff:-

Sl.No.	Date	Ex.No.	Description
1.	07.12.1959	Ex.P1	Certified Copy of Partition Deed (Online Printout)
2.	07.04.1978	Ex.P2	Certified Copy of Sale Deed bearing No.306/1978
3.	15.12.1984	Ex.P3	Certified Copy of Sale Deed bearing No.567/1984
4.	31.03.2006	Ex.P4	Certified Copy of Sale Deed bearing No.324/2006
5.	08.08.2005	Ex.P5	Paper Publication published in Malai Malar
6.	12.08.2005	Ex.P6	Paper Publication published in Malai Malar
7.	-	Ex.P7	Office Copy of Plaint in O.S.No.7741/2012 on the file of XVI Assistant City Civil Court, Chennai.
8.	-	Ex.P8	Served copy of Written Statement in O.S.No.7741/2012 on the file of XVI Assistant City Civil Court, Chennai.
9.	-	Ex.P9	Patta (Online printout)

Table II - Exhibits marked by the Defendants:-

Sl.No.	Date	Ex.No.	Description
1.	14.07.2023	Ex.D1	Power of Attorney
2.	31.03.2006	Ex.D2	Certified Copy of Sale Deed bearing No.324/2006
3.	-	Ex.D3	Carbon copy of receipts issued by the defendants acknowledging monthly rents for the period from February 2012 to April 2012.
4.	03.10.2012	Ex.D4	Certified Copy of the Letter from the Plaintiff to the 1st Defendant
5.	05.05.2016	Ex.D5	Certified Copy of the Letter addressed to the Inspector of Police, Nungambakkam Police Station
6.	-	Ex.D6	Certified Copy of CSR bearing No.164 of 2016 issued by Nungambakkam Police Station.

ARGUMENTS OF THE PLAINTIFF:-

13. Arguing the case on behalf of the Plaintiff, the learned counsel for the Plaintiff would attempt to substantiate the case of the Plaintiff and states that the signatures on Ex.P4 Registered Sale Deed dated 31.03.2006 was obtained from the Plaintiff in blank sheets and that there was no proof of receipt of any sale consideration for the balance sale consideration for a sum of Rs.33,46,630/- being the difference in the value declared in Ex.P4 Registered Sale Deed dated 31.03.2006 and that the amount for which deficit stamp duty for Rs.5,34,000/- was paid.

14. It is therefore the case of the Plaintiff that the Plaintiff has filed the present suit for declaring that the aforesaid Ex.P4 Registered Sale Deed dated 31.03.2006 registered as Doc.No.324/2006 executed in favour of the Defendant was null and void and as it was not supported by a valid sale consideration.

15. The learned counsel for the Plaintiff would submit the fact that Ex.P4 Registered Sale Deed dated 31.03.2006 was registered after deficit stamp duty of Rs.5,34,000/- was paid which indicates that the property was of much higher value and was never intended to be sold to the Defendants.

16. The learned counsel for the Plaintiff would submit that the Plaintiff had also taken steps for issuance of subpoena summons to the bank, namely HDFC Bank to substantiate that the aforesaid amount was not received by the Plaintiff.

17. It is further submitted by the learned counsel for the Plaintiff that the Bank has given documents regarding Account details DD/MC,

instrument details and the accounts maintained by the 5th Defendant, namely Amir Jamal in Account No.00822000011509. The 5th Defendant Amir Jamal acted as the Power of Attorney of the 1st to 4th Defendant during the execution of Ex.P4 Registered Sale Deed dated 31.03.2006.

18. It is submitted that the Cheque Number given in the Written Statement is 0419997 dated 29.03.2006, whereas, the cheque of Rs.33,46,630/- has been given as Cheque No.034803 dated 29.03.2006. It is further submitted that the Plaintiff has not received the aforesaid sum and therefore on this count also it has to be held that the Ex.P4 Registered Sale Deed dated 31.03.2006 was nothing but a sham, and nominal documents which were vitiated by fraud.

19. That apart, the learned counsel for the Plaintiff also compared the signature in Ex.P4 Registered Sale Deed dated 31.03.2006 and the signature in Ex.D4 Letter dated 03.10.2012 of the Plaintiff to the 1st Defendant. It is submitted that there is a marked difference in the signature of the Plaintiff in these two documents.

20. While admitting that the Ex.P4 Registered Sale Deed dated 31.03.2006 was signed by the Plaintiff, it is submitted that the admission in Ex.D4 Letter dated 03.10.2012 of the Plaintiff to the 1st Defendant cannot be assumed as there is a variance in the signature. In other words, it is submitted that Ex.D4 Letter dated 03.10.2012 was not signed by the Plaintiff.

21. That apart, it is submitted by the learned counsel for the Plaintiff that during the cross examination of the Defendants' witness by the counsel for Plaintiff on 11.03.2024, the Defendants have not been able to establish that Ex.D4 Letter dated 03.10.2012 of the Plaintiff to the 1st Defendant was indeed sent by the Plaintiff.

22. It is submitted that Ex.D4 Letter dated 03.10.2012 of the Plaintiff to the 1st Defendant was a fabricated document and does not contain the Plaintiff's signature.

23. That apart, it is submitted that even as on date, the patta for

the property stands in the name of the Plaintiff. In this connection, a reference was made to Ex.P9 Patta dated 14.02.2023. It is therefore submitted that Ex.P4 Registered Sale Deed dated 31.03.2006 did not convey any valid title in favour of the 1st to 4th Defendants as otherwise the Defendants would have taken steps to alter the Revenue Records.

24. As far as the Plaintiff under Order II Rule 2 of the Code of Civl Procedure not reserving any right to further relief is concerned, it is stated that on the date when the suit for declaration was filed in the year 2012, the Plaintiff was unaware of Ex.P4 Registered Sale Deed dated 31.03.2006 executed in favour of the Defendants. It is submitted that the Plaintiff was only under the impression that the Plaintiff had executed only Mortgage Deed and not Sale Deed. Further, it is submitted that the cause of action of the present suit is different from the cause of the action of the earlier suit and therefore the Plaintiff was not required to obtain leave of the Court under Order II Rule 2 of the Code of Civil Procedure.

ARGUMENTS ON BEHALF OF THE DEFENDANTS:-

25. Arguing the case on behalf of the Defendants, the learned Senior Counsel for the Defendants would submit that the suit is time barred and therefore on this count alone the suit is liable to be dismissed.

26. In the Written Statement, the Defendants have denied the averments in the Plaint and have raised an objection regarding limitation as the Suit for Declaration based on Ex.P4 Registered Sale Deed dated 31.03.2006 was filed for the first time before this Court only on 12.01.2016. It is submitted that the present suit was hopelessly time barred and therefore on this ground alone, the present suit was liable to be dismissed.

27. That apart, the Defendants in their Written Statement have further stated that in Ex.P4 Registered Sale Deed dated 31.03.2006, the Plaintiff's wife herself was a witness. Therefore, the stand of the Plaintiff was unaware of the execution of Ex.P4 Registered Sale Deed dated 31.03.2006 cannot be countenanced.

28. It is therefore submitted that the Plaintiff cannot plead ignorance that the Plaintiff was executing Ex.P4 Registered Sale Deed dated 31.03.2006 in favour of the Defendants.

29. That apart, it is submitted by the learned Senior Counsel for the Defendants that the suit schedule property was in possession of the

Defendants No.1 to 4 and that the Plaintiff was illegally occupying 325 sq.ft of built up area in the ground floor and was creating nuisance for the other shop owners and the customers who visited the complex and that the Plaintiff was a illegal occupier and the Defendants were taking legal steps to evict the Plaintiff from the property. It is stated that *post facto* RLTOP No.114 of 2023 has been filed and is pending before the 11th Small Causes Court at Chennai to evict the Plaintiff.

30. It is further submitted by the Defendants that the present suit is mischievous and that earlier the Defendants have registered Ex.D5 Police Complaint dated 05.05.2016 before Nungambakkam Police Station. However, the said complaint was closed on the ground that the dispute between the Plaintiff and the Defendants was civil in nature and therefore the dispute has to be resolved only through a Civil Court.

31. That apart, it is submitted by the learned Senior Counsel for the Defendants that the signature in Ex.P4 Registered Sale Deed dated 31.03.2006, the signature in Ex.D4 Letter dated 03.10.2012 of the Plaintiff to the 1st Defendant and the signature of the Plaintiff during the examination in chief in the Proof Affidavit and during the cross examination before the learned Additional Master – II are identical and

therefore it is not open for the Plaintiff to allege that the signature in Ex.D4 Letter dated 03.10.2012 of the Plaintiff to the 1st Defendant was forged and fabricated.

32. It is further submitted by the learned Senior Counsel for the Defendants that the documents given by the Bank pursuant to the subpoena summons issued to the Bank itself indicates the beneficary of Cheque drawn was for a sum of Rs.33,46,630/- in the HDFC Bank.

33. The learned Senior Counsel for the Defendants would submit that the same documents would also reveal that vide Cheque No.034803 dated 29.03.2006, a sum of Rs.33,46,630/- received by the Plaintiff and that it was issued on the strength of Bankers Cheque vide MC.No.082120036029.

34. It is therefore submitted by the learned Senior Counsel for the Defendants that on this count also the present suit was to be dismissed. That apart, it is submitted that the Defendants are in possession of the shops in the commercial complex which was the subject matter of conveyance in Ex.P4 Registered Sale Deed dated 31.03.2006.

35. That apart, it is submitted by the learned Senior Counsel for the Defendants that all the documents are in possession of the Defendants and therefore on this count also it cannot be argued that Ex.P4 Registered Sale Deed dated 31.03.2006 was either sham, nominal and vitiated by fraud. That apart, it is submitted that there are no indications either on facts or in law to infer that there was a mortgage within the meaning of Section 58 of the Transfer of Property Act, 1882.

36. That apart, the learned Senior Counsel for the Defendants also reiterated that the Plaintiff's wife is also on the witness of Ex.P4 Registered Sale Deed dated 31.03.2006. It is submitted that no attempt has been made to send Ex.D4 Letter dated 03.10.2012 of the Plaintiff to the 1st Defendant for any forensic examination and therefore on this count also the suit is liable to be dismissed.

37. The learned Senior Counsel for the Defendants also submitted that the present besides being barred by limitation is also hit by the provisions of Order II Rule 2 of the Code of Civil Procedure. It is submitted that the Plaintiff had relinquished his right at the time of filing of the other suit for declaration in the year 2012 and had not challenged the validity of the Ex.P4, Registered Sale Deed dated 31.03.2006. It is

stated that the Plaintiff had relinquished a portion of claim that was available to the Plaintiff at the time of filing of the suit for declaration.

38. Further, it is submitted by the learned Senior Counsel for the Defendants that the submission of the Plaintiff that a power agent cannot depose evidence on behalf of the Defendants will not apply to the facts of the present case. It is submitted that the Hon'ble Supreme Court has held that if the power agent has personal knowledge of the proceedings that had transpired between the parties to any dispute, the evidence of the power agent is valid and that it will bind on the Principal and that it is not necessary that only the Principal should depose under such circumstances.

39. Therefore, it is submitted by the learned Senior Counsel for the Defendants that the documents relied on by the Defendants would prove a valid transfer of title from the Plaintiff to the Defendants and that all the amounts mentioned in the Ex.P4, Registered Sale Deed dated 31.03.2006 has been accounted for.

40. By way of rejoinder, the learned counsel for the Plaintiff would submit that the Defendants have not examined themselves and that

only Power of Attorney had rendered evidence during the trial.

ISSUES FRAMED:-

41. The Court had framed the following issues on 18.12.2020:-

i. Whether the plaintiff is entitled for the relief of declaration to declare the sale deed dated 31.03.2006 in Doc.No.324 of 2006 as sham, nominal null and void and vitiated by fraud ?

ii. Whether the claim of the plaintiff is a false one as alleged by the defendants ?

iii. Whether the suit is barred by limitation ?

iv. To what other relief the plaintiff is entitled to ?

42. Although, this Court had framed the above four issues vide Order dated 18.12.2020, supplementary issues which go to the root of the issues are to be decided. Therefore, the following supplementary issues are framed:-

i. Whether the present suit is maintainable in the light of Order 2 Rule 2 of CPC, as the Plaintiff had earlier instituted O.S.No.7741 of 2012 before the XVI Assistant City Civil Court, Chennai for a bare injunction before reserving the rights to file another suit?

ii. Whether the Plaintiff ought to have filed a suit for redemption of mortgage?

DISCUSSION:-

43. I have considered the arguments advanced by the learned counsel for the Plaintiff and the learned Senior Counsel for the Defendants.

44. The cause of action in Ex.P7 Plaint in O.S.No.7741 of 2012 on the file of the 16th Assistant City Civil Court, Chennai, as well as in the present suit is set out below:-

O.S.No.7741 of 2012 **(Ex.P7)**	**C.S.No.757 of 2016** **(Present Suit)**
10. The cause of action for the suit property arose at Nungambakkam, Chennai, which is within the jurisdiction of this Honourable Court, when the plaintiff purchased the property through Doc.No.567/1984 dated 15.12.1984 and when the defendant threatened the plaintiff on 10.12.2012 and on 10.12.2012 the plaintiff gave complaint before the Nungambakkam Police Station and subsequence dates the defendants have threatened the plaintiff.	26. The cause of action aroused in the year 2006 at Nungambakkam, Chennai when the defendants had promised to help the plaintiff by lending a loan amount and to receive the rent from the commercial premises till the mortgage is cleared by the plaintiff and in the month of March 2006 when the plaintiff signed a document projected by the defendants as mortgage deed stated to be the mortgage deed and when the defendants started giving troubles to the plaintiff and on 26.07.2013 when the written statement in O.S.No.7741 of 2012 was filed by the defendants pointed out the alleged sale deed dated 31.03.2006 in Doc.No.324/2006 and on all

O.S.No.7741 of 2012 **(Ex.P7)**	**C.S.No.757 of 2016** **(Present Suit)**
	subsequent days and the suit transaction took place within the jurisdiction of this Court.

45. In this case, the attempt of the Plaintiff is to have Ex.P4 Registered Sale Deed dated 31.03.2006 executed by the Plaintiff in favour of the Defendants, declared as sham, nominal, null and void and vitiated by fraud. Since Ex.P4 Registered Sale Deed is dated 31.03.2006, the present suit for a declaration of Ex.P4 Registered Sale Deed dated 31.03.2006 as sham, nominal, null and void and vitiated by fraud should have been filed within three years from the date when the right to sue first accrued.

46. This is the requirement under Article 58 of Part III, First Division – Suits of the Limitation Act, 1963. Article 58 reads as under:-

(PERIODS OF LIMITATIONS)

[See Sections 2(j) and 3]

FIRST DIVISION – SUITS

PART III – SUITS RELATING TO DECLARATIONS

Description of suit	**Period of limitation**	**Time from which period begins to run**
58. To obtain any other declaration.	Three years	When the right to sue first accrues

47. The expression used in Article 58 of Part III, First Division – Suits, of the Limitation Act, 1963 makes it clear that the suit has to be filed within three years from the date when the right to sue first accrues.

48. Thus, for the purpose of limitation, the present suit ought to have been instituted when the "right to sue" first accrued to the Plaintiff.

49. In this connection, a reference is made to Paragraph No.30 of a recent decision of the Hon'ble Supreme Court in **Rajeev Gupta and others** Vs. **Prashanth Garg and others**, **2025 INSC 552**, rendered on **23.04.2025** wherein it has been observed as follows:-

> ***"30. Insertion by the Parliament of the word "first" under the column 'Time from which period begins to run' in Article 58 is not without a purpose. Such word, which was not there in the Limitation Act, 1908, has been designedly used in Article 58 to signify that a suit to obtain declaration (other than those referred to in Articles 56 and 57) has to be instituted within three years of 'when the right to sue first accrues'. In simpler terms, if cause of action to sue means accrual of the right for an actionable claim, it is the moment from which such right first accrues that the clock of limitation would start ticking. Thus, even though cause of action for instituting a suit might arise on varied occasions and/or at differenct times, what is material and assumes relevance for computing the period of***

> ***limitation under Article 58 is the date when the right to sue first accrues to the aggrieved suitor. Though dominus litus, a suitor cannot pick and choose a time for approaching court. The period of limitation in terms of Article 58 being 3 (three) years, the prescribed period has to be counted from that date of the right to sue first accruing and the suit, if not instituted within 3 (three) years therefrom, would become barred by time."***

50. In fact, the Court held that once the suit is barred by limitation, the Court is not required to dwell into other questions urged by the parties.

51. In the present case, the right to sue first accrued on 31.03.2006, when Ex.P4 Registered Sale Deed dated 31.03.2006 was executed by the Plaintiff, conveying the suit schedule property in favour of the Defendant Nos.1 to 4.

52. The "right to sue" first accrued to the Plaintiff on 31.03.2006 and not on 26.07.2013, when the Plaintiff was served with the Written Statement in O.S.No.7741 of 2012, which is/was pending before the 16th Assistant City Civil Court, Chennai, in which the Plaintiff had prayed for a bare injunction to restrain the Defendants from interfering with his

peaceful possession and enjoyment over the suit schedule property.

53. Order II Rule 2 of the Code of Civil Procedure contemplates that the Plaintiff must obtain leave of the Court if the Plaintiff intends to initiate separate proceedings in respect of the same cause of action.

54. In Paragraph 8 of Ex.P7 Plaint in O.S.No.7741 of 2012 on the file of the XVI Assistant City Civil Court, Chennai, the Plaintiff has also stated that the Defendants attempted to grab the property at a lower price, and that one of the Defendants' men assaulted the Plaintiff's liftman and watchman at the premises. Consequently, the Plaintiff lodged a complaint with the Nungambakkam Police Station on 10.12.2012. However, the complaint was not registered, and the Plaintiff was directed to approach the civil Court. Paragraph 8 of Ex.P7 Plaint in O.S.No.7741 of 2012, is reproduced below:-

> "8. The plaintiff states that at the critical juncture he was about to sell the property to the defendants but the intention of the defendant's is to grab the property for lower price. At one situation the defendant's men bet the plaintiff's lift man and also the premises watchman. The plaintiff's gave complains before the Nungambakkam police dated 10.12.12 but the police has not received the complaint and directed the plaintiff to get remedy through this Honourable court."

55. Thus, it is clear that the cause of action first arose in the year 2006, when Ex.P4 Registered Sale Deed dated 31.03.2006 was executed. That apart, the Plaintiff has alleged that fraud was played upon him by the Defendants.

56. It cannot be contended that the cause of action arose for the first time only on 26.07.2013, when Ex.P8 Written Statement in O.S.No.7741 of 2012 was served on the Plaintiff. The Plaintiff, having executed Ex.P4 Registered Sale Deed dated 31.03.2006, in person and having registered the same before the Sub-Registrar-II, Thousand Lights, ought to have ascertained its contents by obtaining a certified copy, if the Defendants had failed to furnish one. Nothing prevented the Plaintiff from applying for an Encumbrance Certificate at an earlier point of time.

57. Thus, the said suit in O.S.No.7741 of 2012 before the XVI Assistant City Civil Court, Chennai was time barred.

58. Order II Rule 2(1) of the Code of Civil Procedure states that every suit shall include the whole of the claim which the Plaintiff is

entitled to make in respect of the cause of action. It also states that the Plaintiff may relinquish any part of his claim in order to bring the suit within the jurisdiction of any Court.

59. As per Order II Rule 2(2) of the Code of Civil Procedure, where a Plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

60. As per Order II Rule 2(3) of the Code of Civil Procedure, a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs. However, if the Plaintiff omits to sue for all such reliefs, he shall not afterwards sue for any relief so omitted, except the leave of the Court is obtained.

61. Order II Rule 2(3) of the Code of Civil Procedure reads as under:-

> **2. Suit to include the whole claim.**
>
> **(1)** Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of

action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

62. The Hon'ble Supreme Court in **Cuddalore Powergen Corporation Limited** Vs. **Chemplast Cuddalore Vinyls Limited and another**, **2025 SCC OnLine SC 82**, has merely summarized the position as far as Order II Rule 2 of the Code of Civil Procedure is concerned, it has no relevance in the light of the discussions in this order.

63. In this case, the Plaintiff has not obtained any leave of the Court. The cause of action arose as early as 31.03.2006, when Ex.P4 Registered Sale Deed dated 31.03.2006 was executed. Although the Plaintiff states that an attempt was made in the year 2012 to grab the suit schedule property from him, the Plaintiff is/was not entitled to fragment

the relief without obtaining appropriate leave of the Court under Order II Rule 2 of the Code of Civil Procedure, 1908. Therefore, on this ground also, no case is made out for granting relief in favour of the Plaintiff.

64. Even if the Plaintiff has claimed that he had signed blank documents which was subsequently registered as Ex.P4 Registered Sale Deed dated 31.03.2006 and that the document was wrongly drawn as a Sale Deed instead of a Mortgage Deed with usufructuary rights, same is not relevant as the present suit is time barred. Therefore, Court is really not required to decide all other issues as per the above decision of the Hon'ble Supreme Court in **Rajeev Gupta case** (cited *supra*).

65. Further, it was not even the Plaintiff's case when the Plaintiff filed Ex.P7 Plaint in O.S.No.7741 of 2012 before the XVI Assistant City Civil Court, Chennai, for a permanent injunction to restrain the Defendants from interfering with his peaceful possession and enjoyment over the suit schedule property and the Defendants were playing fraud on the Plaintiff.

66. The averments in Ex.P7 Plaint in O.S.No.7741 of 2012 on

the file of the XVI Assistant City Civil Court, Chennai, merely states that the Plaintiff had mortgaged the suit schedule property for a sum of Rs.90,00,000/-, and that his signatures on various blank papers, stamp papers, green sheets etc., were obtained. Paragraph No.6 of Ex.P7 Plaint in O.S.No.7741 of 2012 is reproduced below for the sake of clarity:-

> "6. The plaintiff submits that the said property is now worth about 12 crores. The defendants have jointly given mortguaged amount Rs. 90 Lakhs to the plaintiff. Except the mortguaged amount the defendants have no other right over the suit property. In the year 2006 the plaintiff mortguaged his property for 90 lakhs to the defendants herein and the said amount was received from the defendants by 2 cheques. At the said situation **the defendant obtained signatures on various papers as stamp papers, white sheets, green sheet, postal cards and Inland letters etc**."

67. That apart, Ex.P4 Registered Sale Deed dated 31.03.2006 was executed by the Plaintiff in person and was duly witnessed by the Plaintiff's wife. It was not executed by virtue of any Power of Attorney. Therefore, the Plaintiff cannot feign ignorance of the execution of Ex.P4 Registered Sale Deed dated 31.03.2006.

68. Ex.P5 Paper Publication dated 08.08.2005 also indicates that there was an Agreement dated 23.05.1988 between the Plaintiff and his

father, V.T.C. Chinnaraj Nadar, along with three others, namely, V.T.C. Wilson Varnaraj, V.T.C. Dhanraj, and V.T.C. Sundaraj, who are the Plaintiff's brothers.

69. It further states that the suit property was purchased for the benefit of the family that the Plaintiff was only a name lender, and that the Plaintiff held the property in trust for all. Each of the brothers were stated to hold a $1/5^{th}$ share, and they intended to claim $4/5^{th}$ share in the property. Ex.P5 was issued by Mr.S.Rathnasabapathy, counsel for Mr.D.Divyan and Ms. D. Deepika Chakaravarthi @ Kamatchi.

70. The Plaintiff has also issued Ex.P6 Paper Publication dated 12.08.2005, as a reply to the aforesaid Ex.P5 Paper Publication dated 08.08.2005. In Ex.P6 Paper Publication dated 12.08.2005, the Plaintiff has not denied the allegation made in Ex.P5 that he proposed to sell the suit property.

71. The Plaintiff has merely denied the rival claim made by Mr.D.Divyan and Ms.D.Deepika Chakaravarthi @ Kamatchi, the son and daughter of the Plaintiff's brother, Mr. V.T.C. Dhanraj. However, the

Plaintiff has not specifically denied the proposal for sale of the suit schedule property, nor has he clearly stated that Mr.D.Divyan and Ms.D.Deepika Chakaravarthi @ Kamatchi have no right over the said property.

72. In this background, Ex.P4 Registered Sale Deed dated 31.03.2006 has to be considered.

73. To prove fraud, the Plaintiff must prove that representation made was false or that the party could have no reasonable belief that it was true. An ambiguous statement cannot per se make the representor guilty or fraud.

74. The law on the subject is well settled. The Hon'ble Supreme Court in **A.C. Ananthaswamy and others** Vs. **Boraiah (dead) by legal heirs**, (2004) 8 SCC 588, has clearly held as under:-

> "5. We do not find any merit in this appeal. Firstly, in the present case, Patel Chikkahanumaiah had moved an application under Order 9 Rule 13 CPC for setting aside the ex parte decree on the ground of non-service of summons in which fraud was not alleged. As stated above, Patel Chikkahanumaiah had moved RA No. 54 of 1977 in which there was no such allegation. Secondly, the present suit has

> been instituted to set aside the ex parte decree on the ground that the decree was obtained by fraud and misrepresentation. **Fraud is to be pleaded and proved. To prove fraud, it must be proved that representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. The level of proof required in such cases is extremely higher. An ambiguous statement cannot per se make the representor guilty of fraud. To prove a case of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation. [See Pollock & Mulla:** ***Indian Contract & Specific Relief Acts*** **(2001), 12th Edn., p. 489.**]"

75. In **Sunil Hiraman Thakur** Vs. **The State of Maharashtra and others**, AIR OnLine 2021 Bom 520, the Hon'ble Bombay High Court has observed that "Fraud must be proved following inquiry and tendering of evidence. Mere allegation of fraud or drawing an inference of fraud will not suffice".

76. In this case, the Plaintiff has merely alleged fraud but has not proved it. That apart, Ex.P4 Registered Sale Deed dated 31.03.2006 was witnessed by two individuals, namely Mrs.Saraswathi Selvaraj, the wife of the Plaintiff and Mr.M.Mohamed Ibrahim, Manager of Apollo Dubai Plaza, Nungambakkam.

77. Further, Ex.P5 Paper Publication dated 08.08.2005 in Malai Malar was issued by the Plaintiff's nephew and niece, Mr.D.Divyan and Ms.D.Deepika Chakaravarthi @ Kamatchi, who are the son and daughter of the Plaintiff's brother, Mr.V.T.C.Dhanraj, it has been clearly indicated that the suit property was a joint family property and that the Plaintiff was attempting to sell the joint family property without the consent of Mr.D.Divyan and Ms.D.Deepika Chakaravarthi @ Kamatchi. Thus, it is highly improbable that the Plaintiff had no intention to sell the suit schedule property vide Ex.P4 Registered Sale Deed dated 31.03.2006.

78. Therefore, it is not open to the Plaintiff to contend that Ex.P4 Registered Sale Deed dated 31.03.2006 was executed in a fraudulent manner. The Plaintiff ought to have been vigilant and should have obtained a certified copy of the Mortgage Deed, if indeed Ex.P4 was intended to be a mortgage.

79. The argument of the Plaintiff that the Defendants were represented by their Power of Attorney and that the Defendants cannot delecate their power to Power of Attorney to appear in the witness box,

and has clarified that the Power of Attorney Holder can depose evidence on oath before the Court but he must have witness the transactions and must have due knowledge about it and that the Power of Attorney Holder who has no knowledge regarding transactions cannot be examined as a witness is also irrelevant as the view of the Court is that the suit is hopelessly time barred in view of the discussions above.

80. In fact, the Court could have *suo moto* also rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure. Therefore, the decision of the Court in **Manisha Mahendra Gala and others** Vs. **Shalini Bhagwan Avatramani and others**, **(2024) 6 SCC 130**, is also no relevance to the facts of the case.

81. That apart, if it is the case of the Plaintiff that a mortgage was created, the Plaintiff ought to have filed a suit for redemption of mortgage in time. This has not been done. Therefore, on this ground as well, no case is made out by the Plaintiff for grant of declaratory relief.

82. The argument of the learned Senior Counsel for the Defendants is that the Plaintiff has not sent Ex.D4 Letter dated 03.10.2012 for forensic examination by an expert. In my view, it is irrelevant in the

light of the above reasonings.

83. In any event, the Courts have repeatedly held that evidence of expert is a weak evidence and Courts do not generally come to a conclusion based on such evidence. The Hon'ble Supreme Court in **S.Gopal Reddy** Vs. **State of Andhra Pradesh**, **(1996) 4 SCC 596**, held that the evidence of an expert is a rather weak type of evidence and the Courts do not generally consider it as offering 'conclusive' proof. The Court therefore stated that "Thus, the evidence of PW3 is not definite and cannot be said to be a clinching nature to connect the appellant with the disputed letters. The evidence of an expert is a rather weak type of evidence and the Courts do not generally consider it as offering 'conclusive' proof and therefore safe to rely upon the same without seeking, independent and reliable corroboration."

84. Therefore, the issues framed by this Court are answered as follows:-

<u>Primary Issues</u>:

i. Whether the plaintiff is entitled for the relief of declaration to declare the sale deed dated 31.03.2006 in Doc.No.324 of 2006 as sham, nominal null and void and vitiated by fraud?

Answer: No. The plaintiff is not entitled to a declaration that the sale deed dated 31.03.2003, registered as Document No.324 of 2006 (Ex.P4), is sham, nominal, null and void, and vitiated by fraud. Therefore, this issue is answered against the plaintiff.

ii. Whether the claim of the plaintiff is a false one as alleged by the defendants?

Answer: In view of the above answer to Issue No.I, this issue is also answered against the plaintiff.

iii. Whether the suit is barred by limitation?

Answer: Yes. The suit is barred by limitation under Article 58 of Part III, First Division-Suits, of the Limitation Act, 1963.

iv. To what other relief the plaintiff is entitled to?

Answer: No

Supplementary Issues:

i. Whether the present suit is maintainable in the light of Order 2 Rule 2 of CPC, as the Plaintiff had earlier instituted O.S.No.7741 of 2012 before the 16th Assistant City Civil Court, Chennai for a bare injunction before reserving the rights to file another suit?

Answer: Yes. The suit is barred by limitation under Order II Rule 2 of the Code of Civil Procedure, 1908.

ii. Whether the Plaintiff ought to have filed a suit for redemption of mortgage?

Answer: Not relevant.

85. In the result, this Civil Suit is dismissed. No costs.

18.07.2025

Neutral Citation : Yes/No

jas/jen/arb

C.SARAVANAN, J.

jas/jen/arb

Pre-Delivery Judgment in C.S.No.757 of 2016

18.07.2025