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SA No. 912 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 912 of 2023

1. Bharagath Thunnisa

Abdul Wahab (died)

Abdul Majeed (died)

2. Najimunnisa

3. Rasheedha

4. Beer Mohammed Dharvesh

Appellant(s)

Vs

1. Mohd Abdul Khader

S/o.Abdul Ajeez, No.15, A.K.Nagar,
Vatta Thaikkal Road, Portonovo Post,
Chidambaram Tk.

2.Mohd Ali

S/o.Rahamathulla Maracayar, No.40,
V.P.St, Portonovo Post, Bhuvangiri Tk.

3.Sub Registrar

Portonovo.

Respondent(s)



PRAYER

Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree of the learned II Additional District and Sessions Judge, Chidambaram in A.S.No. 22/2021 dated 29.07.2022 and reversing the fair and decretal order in I.A.No. 386/2020 in O.S.No. 178/2017 dated 11.02.2021 passed by the learned Subordinate Judge, Chidambaram.

For Appellant(s): M/s.V.Mythili

For Respondent(s): M/S R. RAGAVELAVAN

For Rr1 and 2

Mr.R.Siddharth

Government Advocate for R-3

JUDGMENT

The appellants have filed this Second Appeal against the Judgment and Decree of the learned II Additional District and Sessions Judge, Chidambaram, in A.S. No. 22 of 2021 dated 29.07.2022, which reversed the fair and decretal order in I.A. No. 386 of 2020 in O.S. No. 178 of 2017 dated 11.02.2021 passed by the learned Subordinate Judge, Chidambaram.

2. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.



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3. The appellants herein are the defendants 1 to 6 in O.S. No. 178 of 2017. They are challenging the impugned order passed by the first appellate court (II Additional District & Sessions Judge, Chidambaram) in A.S. No. 22 of 2021, which reversed the fair and decretal order passed in I.A. No. 386 of 2020 in O.S. No. 178 of 2017. The respondents 1 and 2 herein are the plaintiffs in the said suit.

4. Brief Facts of the Case:

The plaintiffs filed O.S. No. 178 of 2017 before the Subordinate Court, Chidambaram, against seven defendants, seeking a declaration of their right and title over the suit property as described in the plaint schedule in R.S. No. 6/3, measuring 1 acre and 67 cents in Old Survey No. 1A/22 of Parangipettai Village, Chidambaram, along with a permanent injunction or, alternatively, recovery of possession. Upon receiving summons, defendants 1 to 6 appeared through counsel, while the 7th defendant (the Sub-Registrar) remained ex parte. Subsequently, defendants 1 to 6 filed I.A. No. 386 of 2020 under Order VII Rule 11 CPC seeking rejection of the plaint, which was contested by the



plaintiffs by filing their counter. After hearing both sides, the learned trial Judge allowed the application, holding that the cause of action was not properly described and that the relief claimed by the plaintiffs was barred by limitation. Consequently, the plaint was rejected.

5. Aggrieved by the said order, the plaintiffs filed A.S. No. 22 of 2021 before the II Additional District Judge, Chidambaram. The first appellate court, after hearing both sides, held that the grounds for rejection of the plaint were not sustainable in law. The appellate Judge observed that the rejection of the plaint on the ground of limitation was improper since limitation is a mixed question of law and fact and cannot be decided without proper material evidence. The trial court's rejection of the plaint was thus found to be illegal and was set aside. The appeal was allowed.

6. Challenging the said reversal, the defendants have preferred this Second Appeal and raised the following grounds:



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i. The first appellate court failed to see that the plaint filed by respondents 1 and 2 in O.S. No. 178 of 2017, along with the documents filed, did not disclose any cause of action.

ii. The lower appellate court ought to have seen that the documents filed along with the plaint do not indicate that the land in Old Survey No. 1A/22 corresponds to the present Resurvey No. 6/3.

iii. The appellate court below should have appreciated that when a plaint does not disclose a cause of action, it is incumbent upon the court to reject it under Order VII Rule 11 CPC.

iv. The plaintiffs in O.S. No. 178 of 2017 are land grabbers, and the appellate court ought to have rejected the suit filed by such persons.

v. The lower appellate court failed to see that the suit in O.S. No. 178 of 2017 sought inconsistent and mutually destructive reliefs—declaration of title, permanent injunction, and, alternatively, recovery of possession—which cannot constitute a valid cause of action.



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vi. The first appellate court failed to see that the absence of cause of action cannot be camouflaged by clever and cunning drafting. A meaningful reading of the plaint in its entirety fails to disclose any cause of action.

vii. The additional district court failed to see that the suit in O.S. No. 178 of 2017 was barred by limitation.

viii. The appellate court below failed to observe that the plaint did not disclose a cause of action, as there was no averment regarding how and when the plaintiffs took possession of the suit property or how they were entitled to seek alternative relief of recovery of possession.

7. This Court admits the Second Appeal on the following substantial questions of law:

" A. Whether a plaint should be rejected if it does not disclose a cause of action?

B. Whether, in deciding an application under Order VII Rule 11 CPC, the court is bound to consider whether the averments in the plaint and the accompanying documents disclose a cause of action?



C. *Whether a suit constituting an abuse of the process of law should be rejected by invoking Order VII Rule 11 CPC?"*

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8. The learned counsel for the appellants submits that before the trial court, the plaintiffs failed to produce any parent title deed to establish their right and title over the suit property. They also failed to disclose the date on which the defendants allegedly interfered with their possession. Accordingly, the trial court rightly held that the cause of action had not been properly disclosed and that the plaintiffs were unaware of the *Hibba* deed dated 09.10.1954, which was relied upon by the defendants. Therefore, the trial judge rightly rejected the plaint for being silent on when the plaintiffs' right to sue accrued.

9. However, the learned first appellate Judge erroneously reversed those findings, holding that although the issue of limitation was not raised by the defendants, it is a mixed question of law and fact and hence not a valid ground for rejection of the plaint under Order VII Rule 11. Furthermore, the appellate court held that the entire pleadings in the plaint disclosed a cause of action,



which the appellants argue is erroneous. The appellants maintain that only the plaint and its accompanying documents can be looked into while deciding an application under Order VII Rule 11, and that the trial judge correctly applied this principle. Hence, the appellants pray that the findings of the first appellate court be set aside.

10. By way of reply, the learned counsel appearing for the respondents 1 and 2 (plaintiffs) argues that before the trial court, the plaintiffs had filed the suit for declaration by producing relevant documents. They also narrated how they traced their title and disputed the false claims made by the defendants through the alleged *Hibba* deed dated 09.10.1954. Immediately upon learning of the said settlement deed, they issued a notice on 27.05.2016. Upon receiving a reply containing false allegations, and learning of the defendants' attempts to subdivide the property by fraudulently transferring the *patta*, they immediately approached the court seeking declaratory relief with consequential reliefs, as the cause of action arose in the year 2016.



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11. Though this was not properly appreciated by the learned trial Judge, the first appellate court considered the plaint averments in their entirety and rightly set aside the findings of the trial court. Thus, the appellate judgment is sustainable in law, and the counsel prays for dismissal of the present appeal, stating it is without merits.

12. Upon consideration of both submissions, the facts reveal that the plaintiffs filed the suit for declaration and other consequential reliefs against defendants 1 to 6, claiming title through one Haji Mohamed Abdul Kadar Maraicaair. They asserted that the said Maraicaair was in possession and enjoyment of the suit property bearing Survey No. 1A/22 (re-surveyed as R.S. No. 6/3), measuring 1 acre and 67 cents, and the same was recorded in the Adangal, which further showed that Maraicaair had purchased the property from one Kabir Kandu Maraicaair on 26.10.1874.

13. The plaintiffs contended that defendants 1 to 6 were total strangers to the property. Upon discovering that the patta had been fraudulently changed in



their names, they issued a legal notice. The defendants replied with false claims,

asserting that they derived title to the property under a settlement deed dated

09.10.1954 and admitted their intention to lay out the land.

14. The plaintiffs disputed the validity of the said settlement deed, contending that the settlor had no right to execute it, and therefore, the deed was void. The plaintiffs, consequently, filed the present suit after receiving the defendants' reply, which brought the 1954 settlement deed to their attention. The suit was filed based on this newly discovered interference with their title.

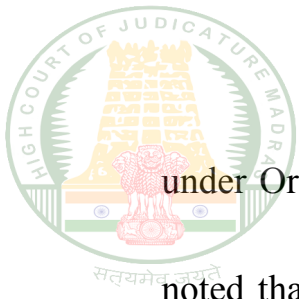
15. The defendants 1 to 6 admitted their claim of title over the suit property based on the 1954 settlement deed. However, according to the plaintiffs, the said deed was neither proved nor valid, and the settlor lacked the legal authority to execute such a document. As the plaintiffs' title was thus brought into dispute, they had rightly come forward with the suit for declaration and consequential reliefs.



16. On perusal of the plaint documents, including the *Adangal* extract relating to the suit property, it is evident that the plaintiffs have produced records showing their ancestors' title. The plaint also disclosed that the defendants attempted to interfere with the property and fraudulently changed the *patta*. Upon receiving the defendants' reply, the plaintiffs came to know about the 1954 settlement deed, thereby disturbing their title and giving rise to the present cause of action.

17. Thus, considering the plaint averments in their entirety, as rightly observed by the learned first appellate judge, the plaintiffs had narrated various facts and disputed the defendants' alleged right and title. The plaintiffs also contended that the settlement deed relied upon by the defendants was not true or valid. Moreover, the defendants failed to explain how they acquired title prior to the execution of the said *Hibba* deed.

18. Therefore, the right and title of both parties can only be determined during the trial. Furthermore, upon examining the defendants' application filed



under Order VII Rule 11 CPC to reject the plaint (I.A. No. 386 of 2020), it is

noted that the sole reason stated was non-production of supporting documents by the plaintiffs. However, the defendants neither stated nor prayed for rejection of the plaint on the ground of absence of cause of action or limitation.

19. The trial court rejected the plaint solely on the ground of limitation, holding that since the plaintiffs had relied upon a 1954 settlement deed, the suit should have been filed within three years from the date of knowledge. However, as per the plaint averments, the plaintiffs only became aware of the alleged *Hibba* deed in the year 2016 through the defendants' reply notice. Consequently, the suit was filed in 2017, well within the limitation period.

20. It is settled law that the issue of limitation is a mixed question of law and fact and cannot be a valid ground for rejection of a plaint under Order VII Rule 11 CPC without a full trial. The learned first appellate judge rightly relied on the legal ratio laid down in the decisions reported in: **(i)** 2015 (4) MLJ 538, and **(ii)** 2015 (1) CTC 385, to set aside the erroneous finding of the trial court.



Therefore, the plaintiffs' institution of the suit, when their rights were disturbed, does not amount to abuse of process of law.

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21. Accordingly, the substantial questions of law A, B, and C are answered against the appellants. **The appeal is dismissed.** The findings of the first appellate judge are confirmed. No costs.

22. Consequently, I.A. No. 386 of 2020 stands dismissed. The plaint in O.S. No. 178 of 2017 is ordered to be restored. Liberty is granted to the defendants to raise all available defences before the trial court.

23. The learned trial Judge is directed to dispose of the suit on merits, uninfluenced by the observations made by this Court in the present appeal.

07.07.2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

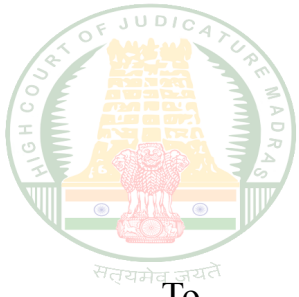
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To
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1. The II Additional District and
Sessions Judge, Chidambaram.

2.The Subordinate Judge,
Chidambaram.

3.The Sub-Registrar
Portonovo.



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T.V.THAMILSELVI, J.
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