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CRP. PD. No.4544 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:07.07.2025

Pronounced on:14.07.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. PD. No.4544 of 2023
and CMP. No.27181 of 2023**

1.K.Ravikumar
2.S.N.Mohanasundaram
3.K.M.Karthishankar
4.K.Mohanraj
5.K.Srinivasan
6.K.Jayachandran

Petitioner(s)

Vs

1.A.Lakshminarayanan
2.Sub-Registrar,
Komarapalayam,
Sub Registrar Office,
Komarapalayam Post and Taluk,
Namakkal District.
3.The Branch Manager,
Axis Bank Limited, Erode Branch.
4.N.Unnikrishnan
5.M.Kamalamani

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 21.08.2023 passed by the Subordinate Judge at Thiruchengode in I.A. No.301 of 2019 in O.S. No.217 of 2018 filed by the Petitioners/defendants under Order VII Rule 11 of CPC seeking for rejection of plaint.



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For Petitioners : Mr.M.L.Joseph
for M/s.Chennai Law Association

For Respondents : Mr.N.Manoharan for R1
Mr.N.Muthuvel
Government Advocate for R2
No Appearance for R3 to R5

ORDER

The Defendants in O.S.No.217 of 2018 took out an Application in I.A.No. 301 of 2019 seeking to reject the plaint under Order VII Rule 11 of CPC. The said Interlocutory Application has been dismissed by the Trial Court as against which the present revision has been filed.

2. I have heard Mr.M.L.Joseph, for Chennai Law Associates, learned counsel for the petitioner, Mr.N. Manoharan learned counsel for the 1st respondent/plaintiff and Mr.N.Muthuvel, learned Government Advocate for the 2nd respondent.

3. The learned counsel for the petitioners would contend that the cause of action for the present suit is illusory and the plaintiffs have suppressed the factum of dismissal of an earlier suit. Mr.Joseph would therefore contend that the present suit is clearly barred by provisions of



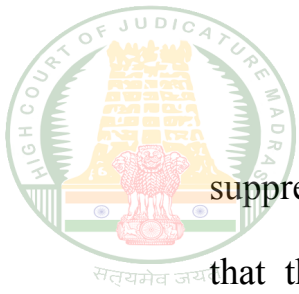
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Order II Rule 2 CPC. The learned counsel would also invite my attention to the reliefs in the suit where registered deeds of the year 2013 are challenged, alleging that the plaintiff/first respondent had knowledge of these documents only on 07.08.2018. He would further refer to Interlocutory Applications filed by the 1st respondent/plaintiff even in 2013, where he has clearly referred to the said documents.

4. The learned counsel for the petitioners would therefore state that, by clever drafting, alleging as if the plaintiff had knowledge of the documents only in August 2018, the present suit has been filed. He would therefore state that the Trial Court has erroneously dismissed the Application.

5. The learned counsel would also rely on the decision of the Hon'ble Supreme Court in *Ramisetty Venkatanna and anr vs Nasyam Jamal Saheb and Ors*, in *Civil Appeal No.2717 of 2023 dated 28.04.2023* and *Indian Evangelical Lutheran Church Trust Association vs Sri Bala and Co*, reported in 2025 INSC 42.

6. Referring to the said decisions the learned counsel for the petitioners would state that the Trial Court ought to have imputed



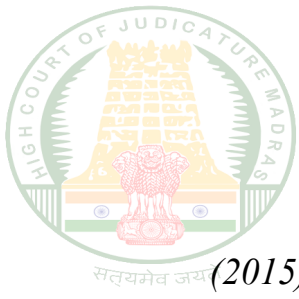
suppression of material facts and also furnishing a wrong date alleging that the plaintiff had knowledge only in August 2018 and he would therefore seek for the revision being allowed.

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7. Per contra, Mr.N.Manoharan, the learned counsel for the 1st respondent/ plaintiff would state that there was an agreement between the parties and an injunction suit was filed in O.S.No. 305 of 2012 before the Principal District Munsif Court, Tiruchengode.

8. Referring to the present plaint, Mr.N.Manoharan would state that the plaintiff has clearly averred about the earlier suit and there is no suppression. He would also point out to the relief sought for in the present suit and contend that besides the relief of declaration, the plaintiff has also sought for refund of advance and therefore, the plaintiff cannot be non-suited on the ground of limitation, as under Article 62 of the Limitation Act, 1963, the plaintiff has 12 years time to file a suit for recovering the monies advanced based on an agreement for purchase of the property.

9. He would rely on the following decisions in support of his contentions.:



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1. *Rathnavathi and another vs Kavita Ganashamdas*, reported in (2015) 5 SCC 223.

2. *Gurbux Singh v. Bhooralal*, reported in 1964 SCC Online SC 101.

10. In reply, Mr. Joseph, learned counsel for the petitioners would submit that the very case of the petitioners is that the agreement on which reliance is placed on by the 1st respondent/ plaintiff is a forged agreement and therefore, it is not open to the 1st respondent/plaintiff to seek for refund of alleged amounts paid under a forged agreement, execution of which has been stoutly denied by the revision petitioners. He would further state that the earlier suit was dismissed for non-prosecution and even in the said suit, apart from the relief of permanent injunction, the 1st respondent herein wanted to create a charge over the subject property. Only in this connection, the learned counsel has contended that the bar under Order II Rule 2 of CPC would operate against the plaintiff.

11. I have carefully considered the submissions advanced by the learned counsel on either side.



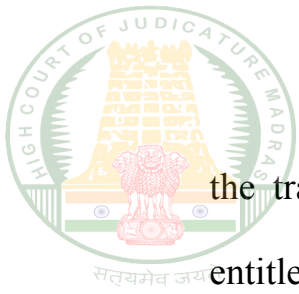
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12. It is not in dispute that the 1st respondent herein as plaintiff has claimed that there was an agreement between the parties. In respect of the very same agreement, the 1st respondent had filed a suit, though not for specific performance, but for a bare injunction and also for relief to create a charge over the immobile property for the alleged advance paid. The said suit was not tried and admittedly, it was dismissed for non-prosecution. Therefore, no Court, as on date has found that the said agreement of sale is genuine or forged. The said issue would have to be necessarily tried in the present suit. Equally as pointed out by the learned counsel for the respondent, Mr.Manoharan, one of the reliefs sought for is for refund of alleged advance paid to the revision petitioners under the disputed agreement.

13. Article 62 of the Limitation Act is extracted for easy reference:

<i>“62. To enforce payment of money</i>	<i>When the</i>	
<i>secured by a mortgage or otherwise</i>	<i>Twelve years</i>	<i>money sued</i>
<i>charged upon immovable property.</i>		<i>for becomes due.”</i>

14. Under the provisions of the Transfer of Property Act, 1882 Section 55(6)(b), there is a charge created for the advance amount paid by

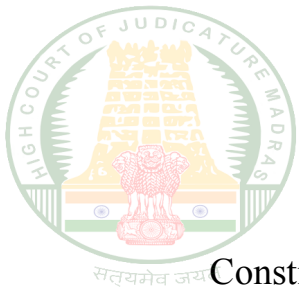


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the transferee towards purchase of the property. Therefore, Article 62 entitles the plaintiff to seek recovery of the advance amount within a period of 12 years. As already discussed above, even in the earlier proceedings, there is no finding with regard to the genuineness of the agreement between the parties and this issue has to be necessarily tested in the second suit.

15. Even insofar as relief of declaration, the question of the plaintiff having date of knowledge only on 07.08.2018 is certainly a mixed question of fact and law. The rejection of plaintiff under Order VII Rule 11 CPC can be only based on the plaint averments and allegations and documents filed along with the plaint. It is a settled proposition of law that even the averments in the affidavit in support of an Application to reject the plaint are alien for consideration.

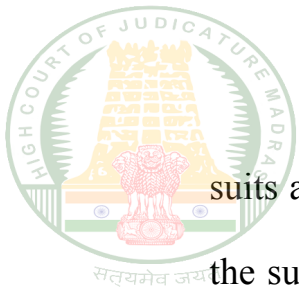
16. Therefore, I cannot find fault with the Trial Court for not referring to the various orders passed in the Interlocutory Applications, imputing knowledge on the 1st respondent/ plaintiff about the registered settlement deeds even in the year 2013.



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17. With regard to Order II Rule 2, CPC also, as held by the Constitution mentioned in the *Gurbux Singh's* case, (referred herein supra) in order to succeed in a plea of a bar under Order II Rule 2(3) of the Civil Procedure Code, the same has been held to be a technical bar and it has to be established satisfactorily and cannot be presumed on the basis of inferential reasoning. The Constitution Bench has further held that, a plea of a bar under Order II Rule 2 of CPC can be established only if the defendant files in evidence, the pleadings in the previous suit and proves to the Court the identity of the cause of action in the two suits. The moment the requirement is for the defendant to plead evidence, there is no question of invoking powers under Order VII Rule 11 CPC.

18. Even in *Rathnavathi's case*, (referred herein supra) the Hon'ble Supreme Court, with regard to applicability of Order II Rule 2 has held that, it is for the defendant of the second suit to establish that the second suit was also in respect of same cause of action as that on which previous suit was based and since the plea of Order II Rule 2 CPC results in depriving the plaintiff to file the second suit, it is necessary for the Court to carefully examine the entire factual matrix of both the suits, the cause of action on which both the suits are founded, reliefs claimed in the said



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suits and apply the legal provisions applicable for grant of reliefs in both the suits. All this would necessarily involve the parties to lead evidence and a decision cannot be arrived at merely based on one plaint alone.

19. Insofar as the decisions that have been relied on by the learned counsel for the Petitioners, in *Ramisetty Venkatanna's* case, (referred herein supra), the Hon'ble Supreme Court has held that when it is found that the cause of action is illusory or barred by limitation and by mere clever drafting, the plaintiffs have tried to circumvent the provision of Limitation Act and attempted to maintain the suit, it would necessarily entail rejection. However, I cannot see how the ratio laid down in this case would apply to the facts of the present case. As already discussed, both the plea of Order II Rule 2 bar as well as considering the relief of refund of advance, there is no scope for rejection of the plaint.

20. Even insofar as the declaratory reliefs, though the contention of the revision petitioners is that the plaintiff had prior date of knowledge and had given a false date in the plaint, it is again a matter which cannot be culled out from the plaint alone, necessarily in order to arrive at a presumption that the plaintiffs had knowledge of the deeds even in 2013,



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this Court has to consider the various other documents that have been relied down by the revision petitioners which is not permissible while considering an Application under Order VII Rule 11 CPC.

21. Insofar as the decision in *Indian Evangelical Lutheran Church's* case, (referred herein supra) the Hon'ble Supreme Court finding that an earlier suit for specific performance had been filed by the plaintiff in July 1993 and same was rejected on 12.01.1998 and the second suit was filed for the very same cause of action, held that when subsequent suit was barred by limitation, as once time has begun to run, it will run continuously but time ceases to run when the plaintiff commences legal proceedings in respect of the cause of action in question. Under such circumstances, finding that the second suit was hopelessly barred by limitation, especially Article 113 of the Schedule to the Limitation Act, the Hon'ble Supreme Court held that the provisions of Order VII Rule 11(d) would apply and consequently plaint was rejected. I do not find this decision also helping the revision petitioners since not only the plea of Order II Rule 2 bar requires evidence, but in view of the prayer for refund of advance and 12 years being available to the plaintiff for availing this relief, the plaint cannot be rejected under Order VII Rule 11 CPC.



Moreover, a plaint also cannot be rejected in part.

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22. In view thereof, I do not find any perversity or illegality in the findings arrived by the Trial Court and dismissing the application to reject the plaint. Accordingly, this Civil Revision Petition is dismissed. Considering the suit is of the year 2018, the learned Sub Judge at Thiruchengode, is directed to expedite the trial and dispose of the suit, on merits and in accordance with law, within a period of six (6) months from the date of receipt of the copy of the order. No costs. Connected Miscellaneous Petition is also closed.

14.07.2025

rkp
Index : Yes / No
Internet : Yes / No
To:

The Sub Judge,
Thiruchengode.

P.B.BALAJI, J.,

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Pre-delivery order in
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