

A.S.No.703 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 27.06.2025

CORAM:

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No.703 of 2023
and
C.M.P. Nos.24362 and 24363 of 2023

N. Manjunath

... Appellant

Versus

1. A. Harish
2. Prabhu

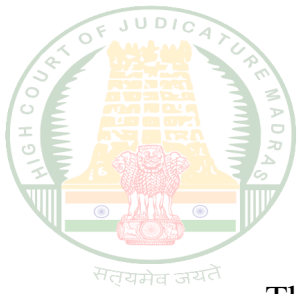
... Respondents

Appeal Suit is filed under Order XLI, Rule 1 r/w. Section 96 of Civil Procedure Code praying to set aside the order and decretal order dated 20.09.2023 passed in I.A.No.11 of 2023 in O.S.No.66 of 2022 by the learned Additional District Judge, Hosur.

For Appellant : Mr. Ravi Kumar Paul
for M/s. Paul & Paul J Hudson Samuel & Partners.

For Respondents : Mr. M.S. Krishnan
Senior Counsel
for Mr. R.Sagadevan

JUDGMENT



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This Appeal Suit had been filed to set aside the order and decreetal order dated 20.09.2023 passed in I.A.No.11 of 2023 in O.S.No.66 of 2022 by the learned Additional District Judge, Hosur.

2. The brief averments in the plaint are as follows:

2.1. The Plaintiff is the son of Vinodha. Vinodha is the wife of Nanjundappa. Nanjundappa is the son of Venkataswamy. Venkataswamy is the son of Sonnappa. As per the plaint averments, Sonnappa had three sons by name Chinnappa, Venkataswamy and Goopalliyappa and as per oral family arrangement between Sonnappa sons 1/4th share of 13.36 acres i.e., 3 acres and 34 cents and certain other properties fell to the share of Venkataswamy and his brothers Chinnappa and Goopalliyappa. The said Venkataswamy's children Nanjundappa, Gowramma and Narayanappa were in possession and enjoyment of 3 acres 34 cents in Survey No.345. The Plaintiff is the grandson of Venkataswamy through his son Nanjundappa. The Plaintiff's paternal grandfather Venkataswamy had obtained a mortgage loan of Rs.600/- from one Thimmaiah Setty by mortgaging his share of properties inclusive of 1/4th extent in Survey No.345 as per the mortgage deed bearing Doc. No.1335/1961, dated 20.04.1961. During the life time of said Venkataswamy,



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he had orally gifted an extent of 1.91 acres out of 3.34 acres in Survey No.345 to his daughter-in-law N.Vinodha and the remaining extent of 3/4th i.e., 1 acre and 44 cents orally divided among his two sons viz., Nanjundappa and Narayanappa.

2.2. It is the claim of the Plaintiff that Venkatasamappa's son Muniyappa had sold his share of properties that fell to his share in the partition deed dated 05.02.1959 to one Thippa Reddy as per sale deed dated 04.01.1960. Thippa Reddy sold it to Ramakka as per sale deed dated 26.07.1962. Muniyappa had got right and title only to an extent of 3.34 acres to his share, as per the registered partition deed in Survey No.345 i.e. 1/4th share of 13.36 acres but without any basis, right and title, he had illegally conveyed an extent of 5.20 acres in Survey No.345 and executed sale deed dated 04.01.1960 in excess of his right. Subsequently, the said Thippa Reddy also executed sale deed dated 26.07.1962 mentioning the same extent of 5.20 acres as per the previous Sale Deed without physically verifying the exact extent available on ground. Therefore, the above said two sale deeds dated 04.01.1960 and 26.07.1962 are invalid in respect of the extent in excess of 3.34 acres in Survey No.345. It is the further submission of the Plaintiff that after some years of purchase of property by Ramakka herself and her husband Jogi Chinnasamy had passed away leaving behind



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them, Jogi Chinnaswamy's second wife's children – Gurrappa,

VENKATASWAMY, RAMASAMY, MUNIYAPPA, GOOPALLIYAPPA, GURRAMMA and

Yellamma who are the Defendants 1, 6 to 9, 15 and 16 in the suit as their legal heirs to succeed to their estates. The said Ramakka and Jogi Chinnasamy's legal heirs had approached the Plaintiff's mother Vinodha with the proposal to sell their property in suit Survey No. 345, which was subsequently divided as Survey Nos. 345/1A2, 345/1A3 and 345/1C and after verifying the records as well as after physically verifying the extent, Plaintiff's mother had purchased the properties in the above said Survey numbers, totalling to an extent of 3.29 acres as per sale deed bearing Document No.2606/2002, dated 19.04.2002. The Plaintiff further states that though an extent of 5.20 acres was mentioned in the sale deed in favour of Jogi Chinnasamy's first wife Ramakka, on physical verification of the property as well as on tracing of the title, it was found that Ramakka's vendor Thippa Reddy as well as Thippa Reddy's vendor Muniyappa had valid right and title to convey only an extent of 3.34 acres in Survey No.345 and accordingly Ramakka had purchased an extent of 3.29 acres in the new Survey Nos.345/1A2, 345/1A3 and 345/1C and in all the legal heirs of Ramakka and Jogi Chinnasamy namely Defendants 1, 6 to 9, 15 and 16 have jointly executed the sale deed dated 19.04.2002 in favour of N.Vinodha and



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handed over all the original parent deeds. It is further stated in the plaint that

the Plaintiff's mother Vinodha had already got an extent of 1.91 acres in

Survey No.345 and she had purchased a total extent of 3.29 acres as per sale

deed dated 19.04.2002 and in all she was entitled to 5.20 acres and she was

granted Patta for the said extent in Patta No.33 mentioning new subdivided

survey numbers. The Plaintiff's mother gifted her property to Plaintiff on

07.02.2007. On 21.05.2007 when 17th Defendant had obtained an illegal sale

deed in his name for the suit property. On 06.01.2020 the 17th Defendant

executed an illegal sale deed in favour of Defendants 18 and 19 and

subsequent period when the Defendants 17 to 19 have got change of

computer chitta and trying to disturb the peaceful possession and enjoyment

of the suit property by the Plaintiff at Avalappalli Village of Hosur Taluk,

where the suit properties are situate. There, the Plaintiff had sought

declaration of title to his suit properties and granting consequential

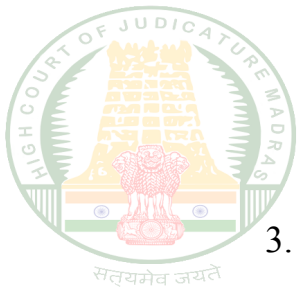
injunction; declaration of sale deed dated 21.05.2007 executed by

Defendants 1 to 16 in favour of Defendant No.17 registered as Document

No.8358/2007 and declaration of sale deed dated 06.01.2020 executed by 17th

Defendant in favour of Defendants 18 & 19 registered as Document

No.233/2020 on the office of the Sub Registrar, Hosur as null and void.



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3. During the pendency of the above mentioned suit, the Defendants had filed I.A.No. 11 of 2023 in OS No 66 of 2023 under Order VII, Rule 11 (d) of CPC seeking rejection of the Plaint on the ground that the suit is barred by law. The Appellant herein had filed a counter to the said application by denying all the averments set forth in the petition. After hearing the arguments of the respective Counsels, the trial Court had allowed I.A. No. 11 of 2023 and rejected the plaint filed by the Appellant herein stating that the Appellant herein has no right and title over the suit subject property and therefore, there is no cause of action to file the Suit.

4. Aggrieved, the Plaintiff had filed this Appeal Suit seeking to set aside the order and decretal order dated 20.09.2023 passed in I.A.No.11 of 2023 in O.S.No.66 of 2022 by the learned Additional District Judge, Hosur.

5. The learned Counsel for the Appellant submitted that though the application filed by the Respondents is under Order VII, Rule 11 (d) of CPC by claiming that the suit is barred by law, the trial Court had misdirected itself and allowed the same without due consideration by concluding that the Appellant does not have cause of action to file the suit and rejected the Plaint under the provision of Order VII, Rule 11(a) of CPC. The trial Court had

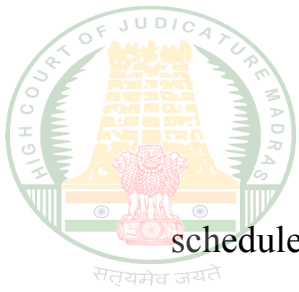


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extensively discussed in detail regarding the title of the parties and had erroneously concluded that the Appellant does not have title over the suit schedule property, without any trial and failed to afford an opportunity to the Appellant to establish his title by adducing evidence. The Trial Court had come to an erroneous conclusion based on assumption that "the 1/4th share in 5 properties means that the 4 sharers can get their 1/4th share from any of the 5 properties" which is not permissible in law. The trial Court erroneously concluded that Muniyappa had sold 5 acres 20 cents in S.No. 345/1 to Thippa Reddy in 1960 and that the said sale deed showed that sub-division of S.No. 345 as 345/1 had taken place even in the year 1960 and contrary to the fact as the said sale deed dated 04.01.1960 executed by Muniyappa to Thippa Reddy contained only Survey No. 345, and without referring to any sub-division much less as S.No 345/1.

6. The learned Counsel for the Appellant further submitted that though the Respondents allege that the Appellant claims title over the extent of 1.91 acres on the basis of the oral gift and there is no registered gift deed in respect of the schedule property, the Respondents have failed to note that entire reading of the averments in Para V of the Complaint would show that there was a family arrangement in respect of several properties including the suit



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schedule property which was given to the Appellant's mother by her father-in-

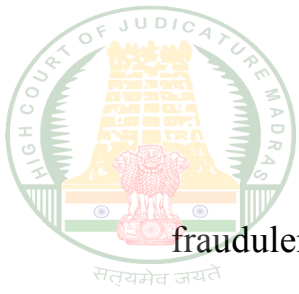
law. The relevant portion of the averment in the plaint explaining the family

arrangement is extracted below:

“ ... It is further submitted during the life time of the said Venkataswamy, he has orally gifted an extent of acre 1.91 out acre 3.34 in S. No 345 to his daughter-in-law N. Vinodha (son Nanjundappa's wife) out of affection and the remaining extent in S.No. 345, that was acre 1.44 were orally divided among his two son's Nanjundappa and Narayanappa along with other properties and there are no dispute among them in respect of the said division of properties.”

That apart, mere mis-terming the family arrangement as gift would not invalidate the legal transfer of ownership from Appellant's grandfather to his mother and from his mother to the Appellant.

7. The learned Counsel for the Appellant also submitted that the Respondents erroneously claim that suit instituted by the Appellant is barred by limitation as the time for the Appellant to sue starts from the year 2007 without any basis where the Appellant had gained knowledge of the fraudulent sale deed Nos.83581/2007 and 233/2020 (which was executed after the execution of the settlement deed dated 07.02.2007 in his favour) only during the year 2022 when the Respondents trespassed into the Appellant's land and claimed title over the same. The encumbrance certificate filed by the Appellant in the suit would clearly show that the above



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fraudulent sale deeds were executed after the settlement deed. In any event, in the circumstance of the case, limitation is a mixed question of law and fact to be tested only during trial.

8. It is his further submission that the the trial Court was not right in holding that the Appellant has no title over the suit schedule property without any trial and failed to afford an opportunity to the Appellant to establish his title by adducing evidence and further erred in concluding that there is no cause of action for the Appellant by applying Order VII, Rule 11 (a) of CPC though the application was filed by the Respondents under Order VII, Rule 11 (d) of CPC. Moreover, all the observations and reasonings of the trial Court were made on the basis of assumption without any documentary support, more specifically the observation that Muniyappa had sold 5.20 acres in S.No. 345/1 to Thippa Reddy in 1960 while the Plaint document only show the survey number to be S.No 345. Therefore, it is evident that the trial Court has failed to consider the plaint averment as a whole and proceeded to reject the plaint without proper consideration of the plaint documents. In any event since the interim injunction restraining the respondents from disturbing the peaceful possession and enjoyment of the schedule property is sought the plaint cannot be rejected.



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

(i) *Mayar (H.K.) Ltd., vs. Owners & Parties, Vessel M.V.Fortune*

Express reported in (2006) 3 SCC 100 wherein it is held as under:

“So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.”

(ii) *P.V.Guru Raj Reddy vs. P. Neeradha Reddy* reported in (2015) 8

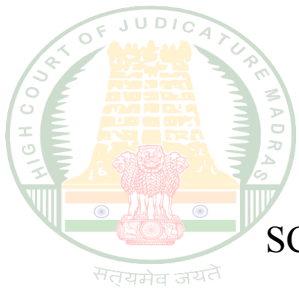
SCC 331 wherein it is observed as follows:

"6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant.”

(iii) *Kuldeep Singh Pathania vs. Bikram Singh Jaryal* reported in

(2017) 5 SCC 345 wherein it has been observed as follows:

“12. it is not necessary to load this judgment with other judgments dealing with this first principle of Order 7 Rule 11(a) of the Code. As held by this Court in *Virender Nath Gautam v. Satpal Singh* (*Virender Nath Gautam v Satpal Singh*, (2007) 3



SCC 617], at para 52 (SCC p 632)

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52 The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside.”

(iv) Kum. Geetha, D/o. Late Krishna & Others vs. Nanjundaswamy

and others in ***C.A.No.7413 of 2023*** wherein it is observed as follows:

“9. If the statements in the plaint are taken to be true, the joint family properties may enure to the benefit of its members and they may well be available for partition. This is a matter of trial the result of which would depend upon the evidence adduced by the Plaintiff. At this stage, we are not concerned with the correctness of the averments except to state that the Plaintiffs have the carriage of the proceedings, and have to discharge the heavy burden of proving their case in so far as the application under Order VII, Rule 11 of CPC is concerned, this Court will proceed only that far, to examine whether the plaint discloses a cause of action, and no further.”

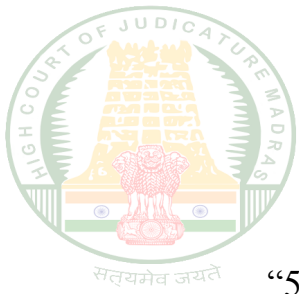
(v) Astral Cables Ltd., vs. National Small Industries Corporation

Ltd., reported in ***2011-2-LW-332*** wherein it is observed as under:

“... The question whether the plaint discloses any cause of action is to be decided by looking at the plaint averments and not the defence set up in the written statement”

(vi) M. Chinnaiyah vs. Naina Mohammed and another reported in

2012-5-LW-250 wherein it is observed as follows:



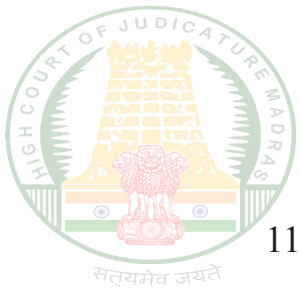
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“5 The trial court has gone into the merits of the case and rejected the plain on the ground that the averments stated in the plaint have not been substantiated by documentary evidence which is clearly a matter of trail The trial court can ascertain as to whether the plaint discloses cause of action or not, but cannot ascertain as to whether the Plaintiff would be entitled to get the relief prayed for in the facts and circumstance disclosed in the plaint.”

(vii) *P. Rajkumar and others vs. Mary Saroja and others* reported in **2013 (2) MWN (Civil) 89** wherein it is observed as follows:

“14. According to me whether the Plaintiff has got title over the property or the Defendants have got little over the property can be considered only during trial and even assuming that the Plaintiff has no title over the property, the same has to be established by the Respondent before the Trial Court and along with the Plaint the Plaintiff has filed the Mortgage Deed dated 27.10.2004 executed by her husband in favour of one Selvaraj and the Plaintiff has traced her title to the suit property in the Plaint and whether the title traced by the Plaintiff is legally acceptable one or not can be considered only during trial Therefore, on that ground the Plaint cannot be rejected”

10. In the light of the above rulings, the learned Counsel for the Appellant seeks to allow this appeal and to set aside the order rejecting the plaint passed by the learned Additional District Judge, Hosur in I.A.No.11 of 2023 in O.S.No.66 of 2022 dated 20.09.2023.



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11. The learned Senior Counsel for the Respondents submitted that the Respondents were arrayed as the Defendants 18 and 19 in O.S.No.66 of 2022 in which the Respondents had filed the rejection of plaint application in I.A. No 11 of 2023 in O.S.No.66 of 2022 and the plaint was rejected by the learned Additional District Judge, Hosur by judgment and decree dated 20.09.2023 and against which the Appellant herein had filed this Appeal.

12. The learned Senior Counsel for the Respondents further submitted that on perusal of the plaint and plaint documents, it is submitted that as per the Sale Deed executed by legal heirs of Ramakka in favour of N.Vinodha (Appellant's mother) had purchased an extent of 3.29 Acres in Survey Nos.345/1A2, 345/1A3, 345/1C registered as Doc. No.2606 of 2002 dated 19.04.2002 at Sub Registrar's Office, Hosur (Plaint Document No.5). There is no dispute about the ownership of N.Vinodha over S. Nos.345/1A2, 345/1A3 and 345/1C.

13. The learned Senior Counsel for the Respondents invited the attention of this Court to Para 5 of the Plaint averment which is extracted as follows:

“It is further submitted during the life time of the said



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Venkataswamy he has orally gifted an extent of 1 Acre 91 Cents out of 3 Acres 34 Cents in S. No. 345 to his daughter-in-law N.Vinodha (wife of Nanjundappa) out of affection and the remaining extent in S.No. 345 that was 1 Acre 44 Cents were orally divided among his two son's Nanjundappa and Narayanappa along with other properties and there are no disputes among them in respect of the said division of Properties"

The land measuring an extent of 1 Acre 91 Cents in S. No. 345 acquired by N. Vinodha under an oral gift is the suit property comprised in S. No 345/1D and 345/16.

14. The learned Senior Counsel for the Respondents further submitted that on the perusal of the Complaint averments made in Para-5 of the Complaint, the Appellant's mother N. Vinodha claims ownership in respect of Survey. Nos 345/10, 345/1E an extent of 1 Acre 91 Cents based on the oral gift made by her father-in-law namely Venkataswamy. An oral gift is invalid in view of the provisions of Section 123 of the Transfer of Property Act and Sections 17 and 19 of the Registration Act, a gift of immovable property can only be made by way of registered document and it is a compulsory registrable document as such the claim of oral gift is untenable in law.

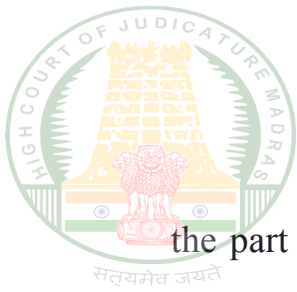
15. The learned Senior Counsel for the Respondents also submitted



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that on perusal of the documents filed by the Plaintiff along with the plaint clearly demonstrates that suit filed is without cause of action and the suit is barred by limitation. Thus, it is clear that the Appellant who had acquired his title through his mother N. Vinodha will be legally entitled to only 3 Acres 29 Cents and not for 1 Acre 91 Cents which was orally gifted to his mother N. Vinodha by her Father-in-law Venkataswamy. There is no cause of action for the suit since the Appellant is not having title for the suit schedule property in respect of Survey Nos.345/1D, 345/1E measuring an extent of 1 Acre 90 Cents as such the Appellant mother Vinodha has no right and title to convey the suit properties in favour of the Appellant herein by way of the settlement deed dated 07.02.2007. On perusal of the plaint and plaint documents, the suit is filed without cause of action as such the trial Court has rightly rejected the plaint by applying the provisions of Order VII, Rule 11 of C.P.C.

16. Further, the learned Senior Counsel for the Respondents submitted that on the perusal of the plaint and plaint documents the suit is barred by limitation in view of Section 3 and Article 58 of the Limitation Act for a declaration of sale deed of the year 2007 now the suit has been filed in the year 2022 as such from the date of right to sue accrues the suit filed after 15 years as such the suit relief is barred by limitation and it is mandatory on



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the part of the Court to invoke Section 3 of the Limitation Act to reject the
WEB.COMplaint if it is barred by limitation.

17. In support of his contention, the learned Senior Counsel for the Respondents relied on the following rulings:

17.1. **(2020) 7 SCC 366** in the case of ***Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) dead through Legal Representatives and others***

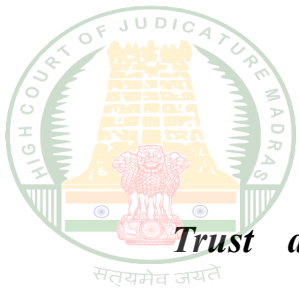
wherein the Hon'ble Supreme Court has held as follows:

“C. Civil Procedure Code, 1908 – Order VII, Rule 11(a) – Cause of action – Meaning – Court has to find whether plaint discloses real cause of action or illusory cause of action created by clever drafting – Court must be vigilant against camouflage or suppression and if suit found to be vexatious and an abuse of process of Court, it should exercise its drastic power under Rule 11 to reject the plaint – Words and Phrases - “Cause of action”.

17.2. **(2022) 8 SCC 633** in the case of ***Frost International Limited vs. Milan Developers and Builders Private Limited and another*** wherein the Hon'ble Supreme Court has held as under:

“F. Civil Procedure Code, 1908 – Order VII, Rule 11(a) – Existence of cause of action – Determination of – 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 and 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 its entirety, a decree would be passed.”

17.3. **(2012) 8 SCC 706** in the case of ***Church of Christ Charitable***



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**Trust and Educational Charitable Society rep by Chairman vs.
Ponniamman Educational Trust rep by its Chairperson/Managing Trustee**

wherein it has been held as under:

“D. Civil Procedure Code, 1908 – Order VII, Rule 11 of CPC and Order I, Rules 3 and 4 - Rejection of plaint as a whole in respect of one only of the Defendants - Permissibility – Held, rejection permissible where Defendant sought rejection of plaint as a whole for non-disclosure of cause of action or non-fulfillment of statutory requirement.”

17.4. 1992 SCC OnLine Del 446 in the case of *Wg. Cdr. (Rtd) R.N.*

Dawar vs. Shri Ganga Saran Dhama wherein it has been observed as follows:

“A person who claims title to a property by adverse possession must definitely allege and prove as to how and when the adverse possession commenced and what was the nature of his possession and whether the fact of his adverse possession was known to the real owner. The mere fact that he was in uninterrupted possession for several years and it that way he acquired absolute right and title is not enough to raise such a plea. Long possession is not necessarily adverse possession.

Under Articles 64 and 65 of the Limitation Act long possession is not necessarily adverse possession.”

18. The learned Senior Counsel for the Respondents submitted that the trial Court had rightly rejected the plaint on the ground of no cause of action for the suit since the Appellant has no right, title or interest in respect of the suit schedule property and allowed the rejection of plaint application filed by the Respondents herein in I.A.No.11 of 2023 in O.S. No.66 of 2022



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and the plaint was rejected by the learned Additional District Judge, Hosur by

its judgment and decree dated 20.09.2023. The Appeal is devoid of merits

and the appeal may be dismissed and the trial Court judgment may be confirmed by this Court.

Point for consideration:

Whether the order and decreetal order dated 20.09.2023 passed in I.A.No.11 of 2023 in O.S.No.66 of 2022 by the learned Additional District Judge, Hosur, is perverse warranting interference by this Court?

19. Heard the learned Counsel for the Appellant Mr. Ravi Kumar Paul and the learned Counsel for the Respondents Mr. M.S. Krishnan, Senior Counsel for Mr. R.Sagadevan.

20. Perused the documents filed in the typed set and the order and decreetal order dated 20.09.2023 passed in I.A.No.11 of 2023 in O.S.No.66 of 2022 by the learned Additional District Judge, Hosur.

21. It is to be noted that only if the averments in the plaint does not disclose the cause of action, the learned Judge shall reject the plaint under



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Order VII, Rule 11 of CPC. For better appreciation Order VII, Rule 11 CPC

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"11. Rejection of plaint The plaint shall be rejected in the following cases:

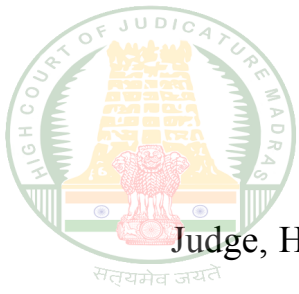
- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

Madras High Court amendment to clause (c) reads as follows:

" (c) where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any, granted by the Court;"

22. On perusal of the order passed by the learned Additional District



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Judge, Hosur, in I.A.No.11 of 2023 in O.S.No.66 of 2022, it is found that the

learned Judge had exceeded the provisions of Order VII, Rule 11 of CPC

thereby entered the restricted area of analysing evidence before the trial which is prohibited in exercising discretion under Order VII, Rule 11 CPC.

23. The Plaintiff is the son of Vinodha. Vinodha is the wife of Nanjundappa. Nanjundappa is the son of Venkataswamy. Venkataswamy is the son of Sonnappa. As per the plaint averments, Sonnappa had three sons by name Chinnappa, Venkataswamy and Goopalliyappa and as per oral family arrangement between Sonnappa sons 1/4th share of 13.36 acres i.e., 3 acres and 34 cents and certain other properties fell to the share of Venkataswamy and his brothers Chinnappa and Goopalliyappa. The said Venkataswamy's children Nanjundappa, Gowramma and Narayanappa were in possession and enjoyment of 3 acres 34 cents in Survey No.345. The Plaintiff is the grandson of Venkataswamy through his son Nanjundappa. The Plaintiff's paternal grandfather Venkataswamy had obtained a mortgage loan of Rs.600/- from one Thimmaiah Setty by mortgaging his share of properties inclusive of 1/4th extent in Survey No.345 as per the mortgage deed bearing Doc. No.1335/1961, dated 20.04.1961. During the life time of said Venkataswamy, he had orally gifted an extent of 1.91 acres out of 3.34



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acres in Survey No.345 to his daughter-in-law N.Vinodha and the remaining extent of 3/4th i.e., 1 acre and 44 cents orally divided among his two sons viz., Nanjundappa and Narayanappa.

24. It is the claim of the Plaintiff that Venkatasamappa's son Muniyappa had sold his share of properties that fell to his share in the partition deed dated 05.02.1959 to one Thippa Reddy as per sale deed dated 04.01.1960. Thippa Reddy sold it to Ramakka as per sale deed dated 26.07.1962. Muniyappa had got right and title only to an extent of 3.34 acres to his share, as per the registered partition deed in Survey No.345 i.e. 1/4th share of 13.36 acres but without any basis, right and title, he had illegally conveyed an extent of 5.20 acres in Survey No.345 and executed sale deed dated 04.01.1960 in excess of his right. Subsequently, the said Thippa Reddy also executed sale deed dated 26.07.1962 mentioning the same extent of 5.20 acres as per the previous Sale Deed without physically verifying the exact extent available on ground. Therefore, the above said two sale deeds dated 04.01.1960 and 26.07.1962 are invalid in respect of the extent in excess of 3.34 acres in Survey No.345. It is the further submission of the Plaintiff that after some years of purchase of property by Ramakka herself and her husband Jogi Chinnasamy had passed away leaving behind



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them, Jogi Chinnaswamy's second wife's children – Gurrappa,

VENKATASWAMY, RAMASAMY, MUNIYAPPA, GOOPALLIYAPPA, GURRAMMA and

Yellamma who are the Defendants 1, 6 to 9, 15 and 16 in the suit as their legal heirs to succeed to their estates. The said Ramakka and Jogi Chinnasamy's legal heirs had approached the Plaintiff's mother Vinodha with the proposal to sell their property in suit Survey No. 345, which was subsequently divided as Survey Nos. 345/1A2, 345/1A3 and 345/1C and after verifying the records as well as after physically verifying the extent, Plaintiff's mother had purchased the properties in the above said Survey numbers, totalling to an extent of 3.29 acres as per sale deed bearing Document No.2606/2002, dated 19.04.2002. The Plaintiff further states that though an extent of 5.20 acres was mentioned in the sale deed in favour of Jogi Chinnasamy's first wife Ramakka, on physical verification of the property as well as on tracing of the title, it was found that Ramakka's vendor Thippa Reddy as well as Thippa Reddy's vendor Muniyappa had valid right and title to convey only an extent of 3.34 acres in Survey No.345 and accordingly Ramakka had purchased an extent of 3.29 acres in the new Survey Nos.345/1A2, 345/1A3 and 345/1C and in all the legal heirs of Ramakka and Jogi Chinnasamy namely Defendants 1, 6 to 9, 15 and 16 have jointly executed the sale deed dated 19.04.2002 in favour of N.Vinodha and



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handed over all the original parent deeds. It is further stated in the plaint that

the Plaintiff's mother Vinodha had already got an extent of 1.91 acres in

Survey No.345 and she had purchased a total extent of 3.29 acres as per sale

deed dated 19.04.2002 and in all she was entitled to 5.20 acres and she was

granted Patta for the said extent in Patta No.33 mentioning new subdivided

survey numbers. The Plaintiff's mother gifted her property to Plaintiff on

07.02.2007. On 21.05.2007 when 17th Defendant had obtained an illegal sale

deed in his name for the suit property. On 06.01.2020 the 17th Defendant

executed an illegal sale deed in favour of Defendants 18 and 19 and

subsequent period when the Defendants 17 to 19 have got change of

computer chitta and trying to disturb the peaceful possession and enjoyment

of the suit property by the Plaintiff at Avalappalli Village of Hosur Taluk,

where the suit properties are situate. There, the Plaintiff had sought

declaration of title to his suit properties and granting consequential

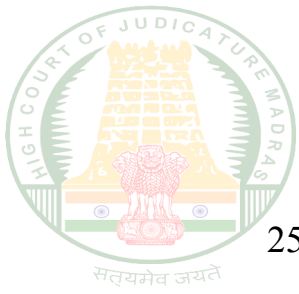
injunction; declaration of sale deed dated 21.05.2007 executed by

Defendants 1 to 16 in favour of Defendant No.17 registered as Document

No.8358/2007 and declaration of sale deed dated 06.01.2020 executed by 17th

Defendant in favour of Defendants 18 & 19 registered as Document

No.233/2020 on the office of the Sub Registrar, Hosur as null and void.



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25. The petition was filed under Order VII, Rule 11 of C.P.C.

claiming that the Plaintiff's prayer for declaration that the sale deed dated 21.05.2007 as null and void as per the suit filed in year 2022 is beyond the period of limitation declaring the sale deed executed by 17th Defendant in favour of Defendants 18 and 19 as Doc. No.233/2020 as null and void. The suit is filed in the year 2023. Therefore, the Plaintiff cannot seek declaration of title.

26. From the plaint averments, it is found that the Plaintiff's mother had obtained sale deed from Ramakka and the legal heirs of Venkadaswamy son of Jogi Chinnasamy whereas through succession from Venkadaswamy son of Sonnappa, the Plaintiff's mother was in possession of 1.91 acres out of 3.34 acres. It is to be proved only during trial. A claim made in the plaint that it is an oral sale deed is a technicalities in law. She was in possession from her father-in-law and throughout in the family. This fact is to be proved only through evidence. When the suit was pending, W.P.No.32474, 33786 of 2022 and W.P.No.716 of 2023 were filed by the Plaintiff herein and one B.Subramani and the said Writ Petitions were disposed of by common order dated 21.06.2023. Against which the Plaintiff and the said B.Subramani filed



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W.A.Nos.1889, 1890 and 1895 of 2023 before the Hon'ble first Bench of this

WEB COPY Court. The first Bench of this Court by common order dated 07.09.2023 had

dismissed W.A.Nos.1889, 1890 and 1895 of 2023 observing as follows:

“9. It is for the appellants to seek reliefs in the pending suits. The learned Single Judge has also observed that when the dispute of title is pending before Civil Court, the appellants are at liberty to file Interlocutory Applications and direction is also given to decide the Interlocutory Applications within the stipulated period. In view of the pendency of the civil suits, it would not be appropriate to give any finding, even prima facie in respect of title qua the properties. The same would be preempting the decision of the civil suits. In a writ appeal, the said disputed question of title cannot be gone into.”

Against which one of the Writ Appellant - B. Subramani who had filed W.A.No1890 of 2023 preferred Special Leave Petition (C) Nos.1250 to 1252 of 2024 before the Hon'ble supreme Court. The said Special Leave Petitions were dismissed with the following observation:

“Delay condoned.

We do not find any ground to interfere with the impugned order passed by the High Court. However, liberty is given to the Petitioners to raise all relevant issues in appropriate proceedings including the Civil Suit. Such liberty would include filing of applications seeking interim orders in the civil suit.

The Special Leave Petitions are, accordingly, dismissed.”

Therefore, in the light of the observations made by the Hon'ble First Bench of this High Court, as well as the Hon'ble Supreme Court when the subject is disposed of based on adducing evidence, the rejection of the plaint based on the affidavit of the Defendant the petitioner and the counter filed by Plaintiff

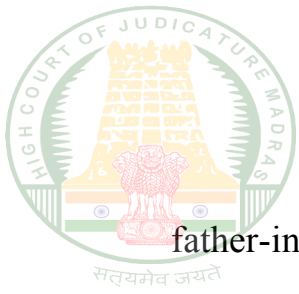


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as Defendant and the observations made by the learned Judge in the course of the discussion while rejecting the plaint in paragraph No.15 to 22, is found considering materials other than the Plaint that borders on evidence without actually proceeding with the trial at pre-trial stage. Therefore, the submission of the learned Counsel for the Appellant that the learned Judge had rejected the plaint on consideration other than plaint averments is found acceptable in the light of the reported decision filed by the learned Counsel for the Appellant in (i) *Mayar (H.K.) Ltd., vs. Owners & Parties, Vessel M.V.Fortune Express* reported in (2006) 3 SCC 100; (ii) *P.V.Guru Raj Reddy vs. P. Neeradha Reddy* reported in (2015) 8 SCC 331; (iii) *Kuldeep Singh Pathania vs. Bikram Singh Jaryal* reported in (2017) 5 SCC 345; (iv) *Kum. Geetha, D/o. Late Krishna & Others vs. Nanjundaswamy and others* in C.A.No.7413 of 2023; (v) *Astral Cables Ltd., vs. National Small Industries Corporation Ltd.*, reported in 2011-2-LW-332; (vi) *M. Chinnaiyah vs. Naina Mohammed and another* reported in 2012-5-LW-250 and (vii) *P. Rajkumar and others vs. Mary Saroja and others* reported in 2013 (2) MWN (Civil) 89.

27. The submission of the learned Senior Counsel for the Respondents that the claim of the Plaintiff is based on oral sale deed from



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father-in-law to daughter-in-law which is prohibited as per Transfer of Property Act is found unacceptable at this stage. From father-in-law to daughter-in-law the enjoyment of the property continues. Whether the father-in-law Venkataswamy son of Sonnappa himself had title to 1 acre 91 cents as per the family partition is to be considered only at the time of trial by adducing evidence. From the affidavit of the Petitioner in I.A and the counter filed by the Plaintiff as Respondent in I.A.No.11 of 2023, it is found that the Defendants 17 and 18 as Petitioners in I.A had filed petition seeking cancellation of Patta before the competent authorities in the revenue department and also filed complaint against the mother of the Plaintiff Vinodha as land grabbing which was quashed by the Plaintiff by filing Criminal Original Petition as converting a civil case into criminal case. Under those circumstances, based on the observation of the Division Bench of the High Court while disposing of Writ Appeals and the observation by the Hon'ble Supreme Court by observing that parties may sort out their dispute through the Civil Court, it is not fair on the part of the learned Additional District Judge, Krishangiri at Hosur rejecting the paint on consideration of materials, documents filed by Defendants and comparing with documents of the Plaintiff and coming to the conclusion that the Plaintiff was unable to explain in the plaint regarding enjoyment of 1 acre 91 cents, it is something



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to be decided during trial by adducing evidence at the relevant point of time and not at this stage. It amounts to appreciation of evidence at pre-trial stage

by the learned Additional District Judge, Hosur which is found erroneous as per the submissions made by the learned Counsel for the Appellant. Therefore, the Plaintiff is to be granted the opportunity to prove his case before the trial Court by adducing evidence without which if the plaint is rejected, it amounts to curtailing the valuable right of Vinodha who claims right of enjoyment from her father-in-law Venkataswamy, son of Sonnappa, paternal grand-father of the Plaintiff. After conclusion of trial, if the claim made by the Plaintiff is found not as per law, the learned Additional District Judge within his/her power to award cost to the affected party as per the Civil Procedure Code.

28. In the light of the observation of the Hon'ble Supreme Court, the rulings cited by the learned Senior Counsel for the Respondents in **(2012) 8 SCC 706** in the case of ***Church of Christ Charitable Trust and Educational Charitable Society rep by Chairman vs. Ponniyamman Educational Trust rep by its Chairperson/Managing Trustee*** and **(2022) 8 SCC 633** in the case of ***Frost International Limited vs. Milan Developers and Builders Private Limited and another*** relying on Order VII, Rule 11 of CPC, rejection of



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plaint as a whole in respect of one only of the Defendants, permissibility –
held, rejection permissible where Defendant sought rejection of plaint as a

whole for non-disclosure of cause of action or non-fulfillment of statutory requirement, will not be applicable to the facts of this case as the Plaintiff claim possession from the days of his paternal grand father Venkataswamy, son of Sonnappa who had transferred his right in favour of his daughter-in-law which is between the family which need not be by sale which can be by oral transfer from generation to generation in the family which is to be proved only during trial. Merely based on a technical plea, sale deed, gift, oral gift “claimed by the Vinodha in her settlement deed in favour of her son Manjunath, the Plaintiff the Court shall not jump into conclusion that there is no cause of action. It is to be treated as without recording evidence the claim of the Plaintiff is rejected as there is no cause of action. Whether the grandfather of the Plaintiff had title to 1 acre 91 cents, whether he enjoyed it during his lifetime, whether it was transferred from generation to next generation daughter-in-law is something for evidence before the trial court and before ever recording evidence rejecting the claim as no cause of action is made out amounts to preempting the valuable right to hold the property before ever recording evidence at the threshold, therefore, the rulings cited by the learned Senior Counsel for the Respondents are rejected.



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29. Another ruling relied by the learned Senior Counsel for the Respondents in **(2020) 7 SCC 366** in the case of ***Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) dead through Legal Representatives and others*** for the proposition that the power under Order VII, Rule 11 of CPC can be exercised by Court at any stage of suit. The prayer of the Plaintiff seeking to declare the sale deed in favour of the Defendants as null and void cannot be granted at this length of time. At the same time, the attempt of the Plaintiff seeking declaration to the Plaintiff's property who claim title through sale deed from Ramaka and the legal heirs of the husband of the Ramakka, second wife of Jogi Chinasamy and Jogi Chinnasamy's children through first wife and also through enjoyment of the property through the paternal grand-father from whom the title flows to the mother of the Plaintiff and from her, to the son the Plaintiff. Whether the paternal grand-father of the Plaintiff Venkataswamy, son of Sonnappa grand father of the Plaintiff is to be considered only during trial and not in this stage. Therefore, the claim of the Plaintiff seeking declaration of title the property is to be proved only through evidence and not at this stage before ever proceeding with the trial. Therefore, the Court cannot come to a conclusion that it is an illusory cause of action at this stage particularly when both parties had preferred Writ

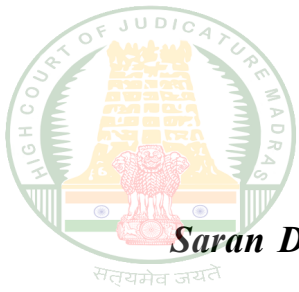


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Petition before the Hon'ble High Court which was disposed of against which Writ Appeals had been filed and the Writ Appeals had been disposed of with

an observation that the valuable right can be agitated before the Civil Court and the observation of the Hon'ble Supreme Court in Special Leave Petitions that the matter can be decided before the Civil Court. Therefore, at this stage rejecting the plaint based on technicalities that there is no evidence regarding claim of the Plaintiff regarding enjoyment of the property measuring an extent of 1 acre 91 cents by grand-father of the Plaintiff Venkataswamy, son of Sonnappa. It is found from the pleadings that both parties claim that the seller of the property had exceeded their share while selling the property. The same allegations are made against each other. That is subject of evidence and cannot be decided in Order VII, Rule 11 of C.P.C. Therefore, the rejection of the plaint based on the petition filed by the Defendants 17 and 18, the discussion of evidence by the learned Additional District Judge, Hosur is rejected. The above ruling is not applicable to the present case.

30. The learned Senior Counsel for the Respondents relied on yet another ruling of the Hon'ble Delhi High Court reported in **1992 SCC OnLine Del 446** in the case of **Wg. Cdr. (Rtd) R.N. Dawar vs. Shri Ganga**



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Saran Dhama. The observation of the Hon'ble Delhi High Court cannot be
invoked in the subject matter of the dispute herein before the learned

Additional District Judge, Hosur because the claim of the Plaintiff is enjoyment from the days of the paternal grand-father who had gifted his property to his daughter-in-law. Therefore, the enjoyment is from the family within the family for generations from the grand father through the son through the grand son. Vinodha is daughter-in-law enjoying the property in the absence of her husband. It is to be considered only during trial. Whether she was granted an extent 1 acre 91 cents to which grand father of the Plaintiff did not have possession and did not have valid title, during his lifetime. It is something to be decided only during trial. The claim of the Plaintiff is for three generations – grand-father, after grand father mother i.e., daughter-in-law, then the Plaintiff. Whether it is within the family, whether the right to enjoy the property continuously had been in possession is to be decided only on adducing evidence and not at this stage. Based on documents filed by both parties, the claim or the conclusion arrived by the learned Additional District Judge, Hosur in rejecting the plaint that the Plaintiff did not explain properly is found preposterous at this stage. Therefore, if the judgment of the Hon'ble Delhi High Court is invoked in this case, it amounts to rejecting the claim of the Plaintiff before ever proceeding with the trial



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without considering the plaint averments only considering the contents of the petition in I.A and contents of the counter and the document filed by both parties which amounts to pre-trial appreciation of evidence which result in miscarriage of justice. Therefore this ruling is also rejected in the light of the First Bench of this Court and the the observation of the Hon'ble Supreme Court.

31. In the light of the above discussion, the point for determination is answered in favour of the Appellant and against the Respondents. The order and decreetal order dated 20.09.2023 passed in I.A.No.11 of 2023 in O.S.No.66 of 2022 by the learned Additional District Judge, Hosur, is found perverse and the same is to be set aside.

In the result, **this Appeal Suit is allowed.** The learned Additional District Judge, Hosur is directed to proceed with the trial in O.S.No. 66 of 2022 without granting unnecessary adjournments and to conclude the trial within a reasonable period of six months from the date of receipt of copy of this judgment or from the date of uploading of this judgment in the website of the High Court of Madras. No costs. Consequently, connected miscellaneous petitions are closed.



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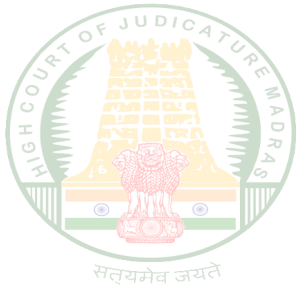
Internet : Yes/No

Speaking/Non-speaking order

To

1. The Additional District Court,
Hosur.
2. The Section Officer,
V.R. Section,
High Court Madras.

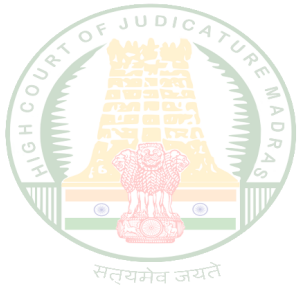
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SATHI KUMAR SUKUMARA KURUP, J.,

srm

Judgment made in
A.S.No.703 of 2023

27.06.2025