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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2025

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)No.872 of 2021

and

C.M.P.(MD)No.4765 of 2021

Mohaideen Abdul Kadhar

... Petitioner

-VS.-

S.Ramaraj

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to call for records and strike off the suit in O.S.No.40 of 2019 on the file of the Principal District Court, Ramanathapuram from its file.

For Petitioner :Mr.J.Barathan

For Respondent :Mr.R.Prabhakaran



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ORDER

The present Civil Revision Petition has been filed to strike off the plaint in O.S.No.40 of 2019 from the file of the Principal District Court, Ramanathapuram.

2.The Revision Petitioner is the defendant in the suit in O.S.No.40 of 2019. The respondent herein, as plaintiff, had filed the above suit for a declaration and for permanent injunction.

3.It is the contention of the Revision Petitioner that originally, as against the Revision Petitioner and one Mohamed Kasim, a partition suit in O.S.No.14 of 1983 was filed by one Paul Amina Beevi, wherein, the Revision Petitioner was arrayed as the second defendant. The said suit was dismissed by the trial Court. Thereafter, a settlement deed was executed by the second defendant in that suit, namely, Mohammed Kasim in favour of his son, by name, Mohamed Ibrahim. The said Mohamed Ibrahim had entered into a sale agreement on 22.03.2007 and the same was registered as Doc.No.177/2007 with one Thenmozhi.



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4.The said Thenmozhi had filed a suit in O.S.No.14 of 2009 for specific performance. After decreetal of O.S.No.14 of 2009, E.P.No.40 of 2010 was filed and by virtue of the order passed by the Executing Court, the possession was delivered to Thenmozhi on 04.07.2012. The said Thenmozhi after becoming the absolute owner had sold the suit schedule property to one Ramaraj, who arrayed as the defendant in O.S.No.40 of 2019.

5.The learned Counsel for the Revision Petitioner contended that originally, a partition suit in O.S.No.14 of 1983 was filed by Paul Ameena Bivi who is the sister of the defendant and the same was dismissed by the trial Court. Challenging the judgment and decree in O.S.No.14 of 1983, the plaintiff and the first defendant in that suit/the Revision Petitioner, Mohamed Abdul Khadar, have filed an appeal and the same was allowed on 25.11.1987. Challenging the same, a Second Appeal was filed by the plaintiff in the suit in O.S.No.14 of 1983, who succeeded before the trial Court. The Second appeal in S.A.No.1211 of 1990 was dismissed by this Court.



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6. On the above facts, as the suit schedule property has been purchased by the plaintiff, the suit was filed for declaration and for permanent injunction as against the defendant. The learned Counsel for the Revision Petitioner contended that institution of the suit by the respondent herein is an abuse of process of Court, as they have succeeded the suit schedule property in S.A.No. 1211 of 1990.

7. *Per contra*, the learned Counsel for the respondent contended that respondent/plaintiff was not a party before any of the proceedings in O.S.No. 14 of 1983, A.S.No.43 of 1987 and S.A.No.1211 of 1990. As the respondent/plaintiff was not a party in any of the proceedings, invoking of Article 227 of Constitution of India to strike off the plaint before this Court is *per se* bypassing the procedure, which is a mixed question of fact and law by placing all relevant factors before the trial Court.

8. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.



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9.A Three Judge Bench of the Hon'ble Supreme Court in the case reported in **(2018) 6 SCC 422** between ***Chhotanben and another vs Kiritbhai Jalkrushnabhai Thakkar and others***, with regard to the application filed under Order VII Rule 11 CPC for rejection of plaint on the ground of limitation, held as follows:

“15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18-10-1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellant-plaintiffs is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers, original Defendants 1 and 2, in favour of Jaikrishnabhai Prabhudas Thakkar or Defendants 3 to 6. They acquired that knowledge on 26-12-2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original Defendants 1 and 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realised that the original Defendants 1 and 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom.



According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the trial court opined that it was a triable issue and declined to accept the application filed by Respondent 1-Defendant 5 for rejection of the plaint under Order 7 Rule 11(d). That view commends to us.”

10.The Hon'ble Supreme Court in the case reported in **(2019) 4 SCC 367**

between **Pawan Kumar vs Babulal and others**, had held as follows:

“13.In the present case, the controversy has arisen in an application under Order 7 Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject-matter of assessment at the stage when application under Order 7 Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not. We may quote the following observations of this Court in Popat and Kotecha Property v. SBI Staff Assn. [Popat and Kotecha Property v. SBI Staff Assn., (2005) 7 SCC 510] : (SCC p. 515, para 10)

“10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.”



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11.The Hon'ble Supreme Court in the case reported in **(2020) 7 SCC 366** between ***Dahiben vs Arvindbhai Kalyanji Bhanusali (Gajra) dead and others,*** held as follows:

“28.A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh [State of Punjab v. Gurdev Singh, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082] held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” mean the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.”

12.The Hon'ble Supreme Court in the case reported in **(2021) 17 SCC 100** between ***Salim D.Agboatwala and others vs Shamalji Oddhavji Thakkar and others,*** had held as follows:

“11. As observed by this Court in P.V. Guru Raj Reddy v. P. Neeradha Reddy [P.V. Guru Raj Reddy v. P. Neeradha Reddy, (2015) 8 SCC 331 : (2015) 4 SCC (Civ) 100] , the rejection of plaint under Order 7 Rule 11 is a drastic power conferred on the court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a



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plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order 7 Rule 11.”

13.The Hon'ble Supreme Court in the case reported in **2023 SCC OnLine SC 521** between ***Ramisetty Venkatanna and another vs Nasyam Jamal Saheb and others***, had held as follows:

“30.Now so far as the reliance placed upon the decision of this Court in the case of Nusli Neville Wadia (supra) is concerned, again there cannot be any dispute with respect to the proposition of law laid down by this Court that while deciding the application under Order VII Rule XI, mainly the averments in the plaint only are required to be considered and not the averments in the written statement. However, on considering the averments in the plaint as they are, we are of the opinion that the plaint is ought to have been rejected being vexatious, illusory cause of action and barred by limitation and it is a clear case of clever drafting.”

14.Following the dictum laid down by the Hon'ble Supreme Court in the cases cited supra and the fact that the the respondent/plaintiff was not added as a part in any of the suit filed earlier between petitioner/defendant and his rival claimants, this Court is not inclined to allow the present Civil Revision



Petition. Accordingly, the Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

06.01.2025

Internet :Yes/No
NCC :Yes/No
Index :Yes/No

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To

The Principal District Judge, Ramanathapuram.



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N.SENTHILKUMAR, J.

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