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C.R.P.(PD)(MD) No. 2242 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	11.12.2024
Pronounced on	29.01.2025

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No. 2242 of 2024 and
CMP(MD).No.12692 of 2024

Murugaiyan
rep. by power of attorney
L.Hiriharan

... Petitioner / 1st defendant

Vs.

M.Ramalaingam

.. Respondent / plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order, dated 06.07.2024 passed in I.A.No.2 of 2023 in O.S.No.75 of 2021 on the file of the District Munsiff, Pattukkottai.

For Petitioner : Mr. M.L.Ramesh

For Respondent : Mr.R. Abdul Mubeen

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 06.07.2024 passed in I.A.No.2 of 2023 in O.S.No.



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75 of 2021 on the file of the District Munsiff, Pattukkottai.

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2. The revision petitioner herein is the first defendant and the respondent herein is the plaintiff in the above suit. For sake of convenience the parties are referred to as per their ranking before the trial Court.

3. The respondent as plaintiff filed the above suit in O.S.No.75 of 2021 before the District Munsif Court, Pattukkottai for declaring the sale deed, dated 26.11.1981 registered as document No.115 of 1981 as null and void in respect of the suit property and not binding on the plaintiff. Further, to grant the relief of permanent injunction restraining the first defendant and his men from in any way interfering with the plaintiff's possession and enjoyment of the suit property. The case of the plaintiff is that the suit properties and other extents originally belong to one Rajagopal Naidu. The said Rajagopal had right only in 31 Cents out of the total extent of 44 Cents in S.No.65B/5A. The said Rajagopal during his life time had executed a registered Will, dated 26.06.1948 in respect of the above 31 Cents. As per the recital of the said Will the Testator had given life estate in favour of his wife Aandal ammal. After the life time of



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said Aandal Ammal the said properties devolved among their two daughters namely, Krishnammbal and Radharukumani. The said krishnammal is the mother of the plaintiff herein. Subsequently, the said Rajagopal died leaving behind his legal heirs. Soon after his death, the said Will dated, 26.06.1948 came into force. Thereafter, the said Aandal ammal was enjoying the said properties. She died on 24.10.1972 and as per the terms of the Will the suit property devolved equally among Krishnambal and Radharukmani. Whereby, they had become the absolute owners of the suit property. The plaintiff submits that there is a sale deed, dated 29.01.1972 as if the said Radharukmani along with her children and Krishnambal along with the plaintiff herein had jointly sold 13 $\frac{1}{4}$ cents out of 31 Cents and the remaining 18 cents was in possession and enjoyment of Radharukmani and Krishnambal. The said Radharukkumani filed a suit for partition in respect of 9 cents in S.No. 65B/5A and other properties by claiming $\frac{1}{2}$ share against the Krishnambal and others before Sub Court, Thanjavur. The suit was numbered as O.S.No.45 of 1974. The said suit was decreed on 30.01.1975. Thereafter, a final decree application was filed and the said application was numbered as I.A.No.972 of 1978 and final decree was passed on 21.08.1979. On 19.01.1981, the said Radharukmani sold her 9 cents in



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S.No.65B/5A to the 1st defendant's mother. Originally, Radharukmani

has got title over 9 Cents in S.No.65B/5A, but, due to oversight she had

wrongly mentioned the extent of the suit property as 9 cents instead of 18

Cents in O.S.No.45 of 1974 and as per the Judgment passed in the said

suit, she got right over 4 ½ cents only in S.No.65B/5A, however, the

plaintiff is not claiming any right in the remaining extent of 4 ½ cents.

The plaintiff submits that the said Radharukmani has no right over the

remaining 9 cents (¼ share of Krishnammal) in the S.No.65B /5A because

she had already sold her 9 cents to 1st defendant's mother on 19.01.1981.

The said Radharukumani with an intention to grab the suit properties from

Krishnambal fabricated a forged sale deed, dated 26.12.1981 in favour of

the 1st defendant's mother in respect of 6 Cents out of 9 Cents belonging

to Krishnambal. The said fact came to the knowledge of the plaintiff only

in July, 2019. The property in the sale deed dated 26.12.1981 is the suit

property, which is a vacant site. The said forged sale deed is void and the

same will not bind the plaintiff. After the death of said Krishnambal, the

plaintiff is in enjoyment of the said 9 cents and thereafter, he sold 2 ¾

cents out of it to one Jayaraman on 18.11.2019. The remaining 6 ¼ cents

is in the possession of the plaintiff. The plaintiff is in lawful enjoyment of

the suit property without any disturbance. Even though the forged sale



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deed dated 26.12.1981 stands in the name of the 1st defendant, the possession of the suit property is with the plaintiff. On 21.02.2021, the 1st defendant and his men came to the suit property and attempted to trespass into the same. Hence, the suit.

4. In the written statement filed by the first defendant it is stated that the suit is barred by the law of limitation. The suit had been filed to declare the sale deed which had been registered on 26.12.1981 and the document is a public document. Therefore, the suit ought to have been filed within a period of three years from the date of registration. But, it has been filed after four decades. Even in the plaint it is not mentioned as to when and how the plaintiff was aware of the sale deed, dated 26.12.1981 registered in the name of this defendant's mother. The date mentioned in the plaint is only imaginary and invented only to circumvent the law of limitation. It is stated that the said Radharukmani filed a suit seeking for partition against her sister and others in O.S.No.45 of 1974 on the file of the Sub Court, Thanjavur in respect of the larger extent including the suit property. The said suit was in respect of the Eastern side of the entire property measuring to an extent of Acre 0.09 Cents in S.No.65/B/5A and that the suit was decreed on 30.01.1975. Subsequent to the preliminary



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decree, the plaintiff therein filed an application in I.A.No.972 of 1978 for final decree and an Advocate Commissioner was also appointed, who inspected the property and submitted his report along with plan. In pursuant to the report of the Advocate Commissioner, the learned Subordinate Judge, Thanjavur, by his order, dated 21.08.1979 has passed the final decree. The said order is that the plaintiff be allotted AJIH portion excepting the tiled house and the appurtenant vacant site together measuring 57 feet North to South and 18-1/2 Feet East to West, which was allotted to the defendants. Therefore, the plaintiff in the above suit is not the only owner of the property with respect to the tiled house and the appurtenant vacant site measuring 57 feet North to South and 18 ½ feet East to West. Therefore, the other defendants in the above suit are also necessary parties in the present suit. The said Radharukmani had executed a registered sale deed in favour of Rajammal on 26.12.1981 in Document No.56 fo 1981 for an extent measuring Acre 0.09 Cents. As per the sale deed the purchaser Rajammal was in possession and enjoyment of the property and subsequently, there was a family partition between Rajammal and others by a registered partition deed, dated 12.03.1986 in Document No.659 of 1986 on the file of the Joint Sub Registrar, Pattukkottai. In the said partition, the suit property fell into the



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share of the first defendant. This deed of partition had not been challenged in the present suit. It is absolutely false to state that the contention that the suit had been filed only for Acre 0.09 Cents in S.No. 65B/5A. The contention that the said Radharukmani is entitled only for 4 ½ cents is not correct. The owner of the property had executed the sale deed in favour of Rajammal and the same had been lawfully registered with the registering authority and acted upon. Therefore, the contention that the said document is a forged document is un-sustainable in the eye of law. The fact remains that in the final decree application the Advocate Commissioner had been appointed. He had visited the suit schedule mentioned property and prepared the plan which had been annexed along with his report and formed part of the final decree. In the said plan the measurement with respect to AJIH is 6815 Sq.Ft. Which is equal to Acre 0.15.64 Cents. The trial Court while passing the final decree was conscious enough in granting the extent to the plaintiff therein as AJIH excepting the titled house and the appurtenant vacant site together measuring 57 feet North to South and 18-1/2 feet East to West to the defendants and the same has become final. The present suit filed by the plaintiff is a re-litigation of the earlier suit for partition granted by the competent Civil Court and the same is abuse of process of court and the



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same has to be dismissed. The contention that the vendor to the 1st defendant's mother viz., Radharukmani in view to grab the property belonging to her sister had executed the sale deed, is not true and correct. The fact remains that even during the lifetime of of Krishnammal the sale deed was not been challenged. Now after a period of 40 years of the execution of the sale deed, the present suit is filed which is not maintainable and as such liable to be dismissed. Even during the life time of the plaintiff's mother the sale deed was executed and the possession had been passed to the defendant's mother. It is absolutely incorrect for the plaintiff to content that Krishnammal was enjoying her share of nine cents and died intestate on 13.09.1997 for the simple reason that by a final decree, dated 21.08.1979 the Sub Court, Thanjavur had put on Rahdarukumani into possession of the property excepting the tiled house along with the appurtenant land measuring 57 feet North to South and 18 ½ feet East to West, therefore, the mother of the plaintiff could not have been in possession of the entire property as contended by the plaintiff herein. The plaintiff is called to prove that he was in possession of the nine cents. Even to substantiate that he was in possession of the property no contemporary revenue and municipal records had been filed along with the plaint. The plaintiff was not in possession of the property described in



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the suit schedule. The predecessor in title of this defendant of this suit property viz., Rajammal is a bonafide purchaser for value and has been in possession for more than 12 years, and this defendant has obtained title and possession to the suit property under a partition deed between him and his mother Rajammal and others. The recitals found in the sale deeds obtained by Rajammal from Radha Rukmaniammal the owner of the suit property would show that there was a execution petition in E.P.No.80 of 1980 in O.S.No.45 of 2974 and delivery of the suit property was made by the Court to Radharukmani on 24.09.1980 and ever since, the said Rajammal was in possession of the property and thereafter, the defendant is in possession and enjoyment of the suit property and thereby perfected title to the property. Hence, the plaintiff has no title or possession over the property. There is no cause of action for the suit and prays for dismissal of the suit.

6. Pending suit, the first defendant took out an application in I.A.No.2 of 2023 under Order 7 Rule 11 (a) and (d) CPC to reject the plaint on the ground that there is no cause of action for filing the suit and the suit is barred by limitation. The contention of the first defendant in the above application is that the sale deed, dated 26.12.1981 was



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registered before the Joint II Sub Registrar, Pattukkottai even on 26.12.1981 and therefore, the date of knowledge is deemed to be on the said date. Therefore, the suit is barred by limitation. The further contention of the first defendant is that it has been accepted by the mother of the plaintiff that the property available was only 0.9 cents and the same has been partitioned by a decree of the Court and therefore, there is no cause of action for filing the above suit.

7. However, the trial Court dismissed the said application by stating that the question of limitation is a mixed question of fact and law and the same has to be gone into only at the time of trial.

8. Assailing the said order, the first defendant has preferred the present revision.

9. The learned counsel appearing for the revision petitioner / first defendant would submit that under Article 56 of the Limitation Act, within three years from the date of registration of the sale deed, the suit ought to have been filed. It is further submitted that by virtue of the decree passed in the suit in O.S.No.49 of 1974 filed by Radha Rukkumani



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for partition in respect of the remaining extent of the eastern side measuring Acre 0.9 cents, the present suit is not maintainable without challenging the said decree. Therefore, there is no cause of action to file the present suit. It is further submitted that the plaintiff himself sold a portion of property on 18.11.2019 based on the decree obtained in O.S.No.45 of 1974, dated 30.01.1975. Therefore, he cannot now claim that the above suit in O.S.No.75 of 1974 is a partial partition. It is further submitted that the contention of the plaintiff that there was no partition between Radha Rukkumani and Krishnammal in respect of the remaining 0.9 Cents and it was jointly enjoyed by them and therefore, the sale deed executed by Radha Rukkumani ammal on 26.12.1985 is null and void is incorrect. In fact the plaintiff has executed a sale deed in respect of 2.50 cents in S.No.65/B/5A. This would establish the fact that the plaintiff had the knowledge of the sale deed executed by the said Radha Rukkumaniammal in favour of the mother of the first defendant on 26.12.1981 and therefore, the suit filed by the plaintiff is barred by limitation.

10. The learned counsel would further submit that, the Court while considering an application under Order 7 Rule 11 of CPC, finds the suit to



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be manifestly vexatious, not disclosing any right to sue, it would be justified in exercising power under Order 7 Rule 11 of CPC. In the absence of any averment in the plaint that the suit is within time, the plaintiff would fail. He would further contend that whenever document is registered, the date of registration becomes the date of deemed knowledge. His further contention is that the present suit is not only barred by limitation, but also barred by principles of re-litigations. The learned counsel submits that the trial Court has not taken into consideration of the above fact erroneously dismissed the application filed by the first defendant which calls for interference by this Court. In support of his contention relied on the following Judgments:

1. *2013-2-L.W.84 (R.Arumugam Vs. P.R.Palanisamy and another)*
2. *2020 (1) MLJ 503 (Commissioner of Bishop, Thoothukudi and others Vs. R.Ayyamperumal Nadar and others)*
3. *The Judgment of the Hon'ble Supreme Court made in Civil Appeal No.522 of 1979, dated 20.10.1994 (Ramti Devi (smt) Vs. Union of India)*



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11. Whereas the learned counsel appearing for the respondent / plaintiff submitted that it is clearly stated in the plaint that, the sale deed executed by the said Radha Rukkumani came to the knowledge of the plaintiff only in July 2019. Only at the time of trial, the plaintiff can establish the fact that through whom the execution of the sale deed came to the knowledge of the plaintiff. Therefore, the suit is filed within the period of limitation. It is further submitted that the contention of the first defendant that, after passing of final decree in O.S.No.45 of 1974, dated 28.01.1979 the remaining 0.9 cents was not in possession and enjoyment of the plaintiff and his mother is in correct cannot be accepted. The suit property is in possession and enjoyment of the plaintiff and the same can be established only at the time of trial. His further submission is that the suit property mentioned in O.S.No.45 of 1974 is different from the present suit property. The present suit is filed for the remaining 0.9 Cents and therefore, the contention of the first defendant that the suit is barred by the principles of resjudicata and that there is no cause of action for filing the present suit is in correct. The learned counsel would submit that, whether a plaint discloses a cause of action or not is essentially question of fact and the same must be found out from the reading of the plaint itself. A cause of action is a bundle of fact which are required to be pleaded and



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proved for the purpose of obtaining relief claimed in the suit. In view of the above principles, the Court on the basis of the averments made in the plaint, if it is prima facie of the opinion that the whole or a part of cause of action has arisen, it can certainly entertain the suit. There is no need to ascertain whether the averments made in the plaint are true in fact. He would further submit that, thus, for an enquiry under Order 7 Rule 11 of CPC, only the pleadings of the plaintiff can be looked into. Therefore, the question of limitation, resjudicata and cause of action cannot be determined at the stage of the rejection of the plaint and the same can only be determined upon trial of the suit. In support of his contention he has relied upon the following Judgments:

i) 2004(9) SCC 512 (Liverpool and London S.P & Association) Ltd., Vs. M.V.Sea Success I and another

ii) 2009(13) SCC 241 (Rajiv Modi Vs. Sanjay Jain and others)

iii) 2016(15) SCC 219 (Ajay Arjun Singh Vs. Sara Dendu Divari and others)

iv) 2017(5) SCC 3456 (Kuldeep singh Pathania Vs. Vikram Singh Jaryal)



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v) 2021(9) SCC 99 (*Srihari Hanumandas Totala Vs.*

WEB COPY *Hemand Vithal Kamat and others*)

vi) 2024 (8) SCC 767 (*State of West Bengal Vs.*

Union of India)

12. Heard on both sides and perused the records.

13. In the present case, the revision petitioner prays for rejecting the
plaint on the following grounds:

1. Barred by limitation.
2. Absence of cause of action.

14. On the question of limitation the Hon'ble Supreme Court has held in the cases of i) ***Sham Lal alias Kuldip Vs. Sanjeev Kumar*** reported in ***2009 (2) SCC 454*** ii) ***N.V. Srinivas Murthy and others Vs. Mariyamma (dead) by proposed LRs and others*** reported in ***AIR 2005 SC 2197*** as well as the case in ***Rama Prasath Gupta Vs. Rajiv Kumar Gupta and others*** reported in ***2007 (10) SCC 59*** considering the averments in the plaint if it is found that the suit is clearly barred by law



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of limitation, the same can be rejected in exercise of powers under Order 7

Rule 11(d) of the CPC. Therefore, to reject a plaint as barred by limitation, it should be shown that the suit is ex facie barred by limitation and it should so appear from the reading of the plaint. We shall examine the case on hand in the light of the law settled by the Hon'ble Supreme Court. The plaint in the case on hand contains a specific averment that the plaintiff came to know about the sale deed, dated 26.12.1981 only in July, 2019. Nowhere it is mentioned that through whom and how the plaintiff was aware of the sale deed, dated 26.12.1981 registered in the name of the first defendant's mother. Admittedly, the suit has been filed after lapse of 40 years from the date of registration of the sale deed. It is settled legal position that, whenever a document is registered the date of registration becomes the date of deemed knowledge. It is the specific case of the first defendant that the maternal aunt of the plaintiff, viz., Radharukkumani executed a registered sale deed in favour of the first defendant's mother Rajammal and she was in possession and enjoyment of the suit property. Thereafter, in the family partition suit property was allotted to the first defendant by virtue of a registered partition deed, dated 12.03.1986. Even on bare looking on the averments in the plaint, there are only vague averments with respect to the date of knowledge of the sale deed and the



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suit has been filed after lapse of 40 years from the date of execution which is a fit case to exercise the powers under Order 7 Rule 11(d) CPC. Merely by making some vague averments with respect to the execution of the sale deed, the plaintiff cannot be permitted to bring the suit within the period of limitation. There must be specific allegations and averments in the suit. Though the question of limitation is a mixed question of law and facts and while deciding the application under Order 7 Rule 11 CPC, only the averments and allegations in the plaint are required to be considered, the averments and allegations with respect to knowledge of the plaintiff is too vague. Nothing has been mentioned about how the plaintiff had the knowledge about the sale deed. The said statement made by the plaintiff in the plaint is also not supported by any further averments. The plaintiff cannot be permitted to bring the suit within the period of limitation by clever drafting, which otherwise is barred by limitation. At this stage, the decision of the Hon'ble Supreme Court made ***Civil Appeal No.522 of 1979, dated 20.10.1994*** in the case of ***Ramti Devi (smt) Vs. Union of India*** is required to be referred to. Wherein the Hon'ble Apex Court has observed and held as under:

6.8. In ***Madanuri Sri Rama Chandra Murthy (Madanuri Sri***



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Rama Chandra Murthy V. Syed Jalal (2017) 13 SCC 174, this Court has

observed and held as under : (SCC pp. 178 -79, para 7);

“7. The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

15. Therefore, when a suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by



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law of limitation. It is settled legal position that limitation creates a substantial right in favour of succeeding party and against the defaulting party, which cannot be taken away casually. The law of limitation is not merely a matter of technicality, but, is a foundation of law. Hence, if the facts and circumstances particularly of the plaint, on perusal, bring no other conclusion but that of suit being barred by law of limitation, then, the Court has no option but to reject the plaint under Order 7 Rule 11(d) CPC for being barred by law. The registration of the sale deed was on 26.12.1981. Therefore, the suit seeking for the relief of declaration to declare the said sale deed as null and void ought to have been filed within three years from the date of registration of the document. Therefore, the present suit is barred by limitation.

16. On the point of cause of action, no doubt a reading of Order 7 Rule 11 will show that neither suppression of fact nor misrepresentation, not even fraud, has been made a ground for rejection of the plaint. Even the rule does not include abuse of process of Court as a ground for rejection of plaint. Clauses (a) and (d), which deal with absence of disclosure of cause of action and the suit appearing from the statement to be barred by any law. Whether the plaint discloses a cause of of action



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for the suit or not, has got to be decided only based on the averments made in the plaint and the documents produced along with the plaint. The cause of action alleged may not be true or may be a deliberate falsehood. The Court dealing with a petition under Order VII Rule 11 cannot go in to the question whether cause of action alleged in the plaint is true or false and take a decision based on the defence plea taken by the defendant or based on the documents produced by the defendant. On the other hand, there may be cases in which the plea made in the plaint itself having the effect of destruction of the plea regarding the cause of action and make such plea regarding the cause of action illusory. Only in such cases, the Court has to decide whether the cause of action alleged in the plaint is real or that the plaint has been drafted in an intelligent manner to camouflage an illusory cause of action as a real cause of action. A cause of action alleged in the plaint being illusory different from the cause of action alleged in the plaint being false. Only in the former case, the court can reject the plaint on the ground that the plaint does not disclose a cause of action and not in the latter case.

17. Now, it has to be seen whether there is any cause of action to file the suit. According to the revision petitioner / first defendant is alone



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in possession and enjoyment of the suit property. Though the plaintiff would contend that he is in possession and enjoyment of the suit property, no document has been filed along with the plaint to establish his possession and enjoyment in the suit property for claiming the relief of permanent injunction. Though he would contend that the documents will be produced at the time of trial at least when an application is filed to reject the plaint, the plaintiff ought to have produced the documents to establish his possession in the suit property. On the other hand, the first defendant has produced all the revenue records to establish his possession in the suit property. Moreover, the plaintiff contention is that he came to know about the alleged sale deed in July, 2019. But, the suit was filed only in the year, 2021. The reasons stated in the plaint cannot be accepted which is not substantiated by any material. Hence, the allegation made in the plaint that the defendants are attempting to dispossess the plaintiff from the suit property found to be imaginary. The plaint has been drafted in an intelligent manner to camouflage an illusory cause of action as a real cause of action. By device of clever drafting of the plaint, the plaintiff is attempting to file a fictitious suit on the basis of an illusory cause of action and suit of the present nature is nothing but camouflage to get over the bar of limitation, which is a time barred relief, as per Limitation Act.



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29.01.2025

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K.GOVINDARAJAN THILAKAVADI, J.

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in
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