



A.S.(MD)No.120 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
09.09.2025	12.09.2025

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

A.S.(MD)No.120 of 2017

1.D.Asha @ Sahaya Asha
2.D.Agnal Raj

... Appellants / Plaintiffs

vs.

1.V.Siluvai Dhasan
2.A.Mary
3.S.Victoria
4.J.Gnana Jothi
5.D.J.N.Michael Ancealo @ Michal
6.John Albert
7.Arockia Prema
8.Kesavan
9.John Benedict
10.Berchmans Jose
11.S.Devasahaya Dinald
12.M.Merlin Latrizia
13.P.Amala Mercy

... Respondents / Defendants



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PRAYER : Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 08.03.2017, rendered in unnumbered O.S.SR.No.701 of 2017, on the file of the District Court, Kanyakumari District at Nagercoil.

For Appellants : Ms.Susmitha
for Mr.G.Aravinthan

For R1 to R4, R6, R7 and R10 to R13 : Mr.K.Rajeshwaran

For R5, R8 and R9 : No Appearance

JUDGMENT

C.V.KARTHIKEYAN, J.

The plaintiffs, in the unnumbered plaint in O.S.SR.No.701 of 2017 on the file of the District Court, Kanyakumari District at Nagercoil, aggrieved by the order of the learned District Judge, Kanyakumari District at Nagercoil, dated 08.03.2017 rejecting the plaint, have filed the present Appeal Suit.

2. In the order of the learned District Judge, the averments made in the plaint were summarised, and it was observed that the cause of action arose in 1954, relating to the challenge of a sale deed. It was further observed that the



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relief sought was to declare the transactions executed by the first defendant in favour of the other defendants as null and void. It was held that the relief sought was barred by limitation.

3. Holding as above, the learned District Judge rejected the plaint, necessitating the plaintiffs to file the present Appeal Suit.

4. Heard Ms.Susmitha, learned counsel for the appellants.

5. It is informed by the learned counsel for the appellants that, during the pendency of this appeal, notice had been issued to the respondents, and Mr.K.Rajeshwaran, learned counsel, had also entered appearance on behalf of the respondents 1 to 4, 6, 7, and 10 to 13. However, since the scope of the Appeal Suit is restricted to examining whether the plaint, as presented by the appellants, can withstand the scrutiny of the Court for numbering, we are of the opinion that, at this stage, it may not be appropriate to call upon the learned counsel for the respondents to advance arguments on the merits of the Appeal Suit.



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6. O.S.SR.No.701 of 2017 had been filed by two plaintiffs, a sister and a brother against 13 defendants. Defendants 1 to 4 are the brother and three sisters of the plaintiffs' mother, who had died before the institution of the suit.

7. It is the case of the plaintiffs that the suit schedule properties originally belonged to their maternal grandfather, Visenthi Nadar @ Vincent, who acquired title pursuant to a sale deed dated 05.04.1954, registered as Document No.925 of 1954. The plaintiffs claim that their maternal grandfather was in possession and enjoyment of the properties and that he died intestate, leaving behind his wife, four daughters, and one son as legal heirs. The plaintiffs' mother was one of the legal heirs. She died on 13.12.1993, leaving behind her husband and the plaintiffs as her legal heirs.

8. It was contended that the plaintiffs had sought partition of the suit properties by metes and bounds. However, since the defendants 1 to 4 failed to comply with the plaintiffs' request, the plaintiffs issued a legal notice through their Advocate, demanding partition and separate possession. Upon receipt of the reply notice, in which the defendants 1 to 4 denied the claim, the plaintiffs decided to institute the suit.



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9. In the reply notice, the defendants 1 to 4 contended that several transactions had taken place in respect of the suit properties, without notifying the plaintiffs or including them as parties to those transactions. The transactions commenced on 07.11.2008, when the Power of Attorney holder of the first defendant executed a sale deed conveying a portion of the suit property in favour of the fifth defendant. The fifth defendant subsequently executed a sale deed in favour of the sixth defendant.

10. In 2009, the first defendant executed another sale deed conveying a different portion of the suit property in favour of the eighth defendant. The eighth defendant, in turn, executed a sale deed in favour of the ninth defendant, who later conveyed the same to the tenth defendant in 2013. Additionally, in 2014, the first defendant executed a further sale deed in favour of the tenth defendant, involving another portion of the suit property. In 2015, the first defendant executed yet another sale deed in favour of the seventh defendant for a separate portion of the suit property. The first defendant also executed a settlement deed in respect of another portion of the property in favour of the eleventh defendant,



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who subsequently executed a settlement deed in favour of the defendants 12 and 13.

11. The main claim of the plaintiffs is that the documents to which they were not parties, and which, according to them, were surreptitiously executed without notice or information to them, are not binding upon them. They contend that these documents are sham and nominal, and seek that they should be declared as null and void.

12. While stating the cause of action for the institution of the suit, the plaintiffs traced the origin of the properties to a purchase made in the year 1954 by their maternal grandfather. However, that transaction is not the actual cause of action. It is admitted that the properties were originally purchased by the plaintiffs' maternal grandfather in 1954. The cause of action for the present suit, however, actually arose only when the defendants 1 to 4, in their reply notice dated 28.07.2016, disclosed the execution of various sale deeds and settlement deeds over the suit properties.



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13. In the plaint, there is a specific averment that the plaintiffs thereafter approached the Revenue Department and, upon examining the revenue records on 17.08.2016, became aware of the various transactions that had been effected over the suit properties. The present suit was subsequently presented on 23.11.2016.

14. The District Court, Kanyakumari District at Nagercoil, initially returned the plaint on 25.11.2016, raising issues relating to the payment of Court fees, the market value of the properties, and requiring production of the death certificate of the plaintiffs' mother.

15. The plaintiffs rectified the defects and re-submitted the plaint on 04.12.2016. Thereafter, a further return was made on 08.12.2016, directing that the documents filed along with the plaint should be stitched. This defect was also rectified, and the plaint was re-presented on the very next day, *i.e.*, 09.12.2016.

16. Subsequently, another return was made on 10.12.2016, raising a query regarding the market value of the properties involved in the various transactions mentioned in the plaint. On 19.12.2016, an endorsement was made by the learned



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counsel for the plaintiffs, stating that, as per the directions of the Principal Sub Court, the plaint was filed before the District Court. The plaint was again returned on 04.01.2017, raising a specific query as to how the claim was within limitation and maintainable under Article 58 of the Limitation Act, 1963.

17. The plaintiffs re-presented the plaint on 01.02.2017, after answering the query raised. However, on the same day, the plaint was once again returned, and the Registry observed that the earlier returns had not been fully complied with and that necessary Court fees were still required to be affixed on some of the documents.

18. The plaint was then re-presented on 02.02.2017 with a point-by-point reply to the Registry's earlier returns. With respect to the issue of limitation, the learned counsel for the plaintiffs made the following specific endorsement:-

"After receiving the reply notice sent by the first defendant, the plaintiffs went to the Revenue Department for examination of records on 17.08.2016. After that the plaintiffs came to know that the schedule properties were sub-divisioned and several documents were executed.



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The plaintiffs gained the knowledge of execution of Release Deed No. 955/2015 only on 17.08.2016."

19. In the order passed by the learned District Judge, there is no indication that the counsel for the plaintiffs was heard specifically on the issue of limitation prior to the rejection of the plaint. The learned District Judge reiterated that the cause of action arose in the year 1954; however, this observation may not be entirely accurate. The plaintiffs had merely stated that the properties in question were purchased in the year 1954. The actual cause of action, according to the plaintiffs, arose only when they became aware of the impugned transactions, namely, upon receipt of the reply notice dated 28.07.2016 from the defendants 1 to 4, and subsequently, upon making enquiries with the Revenue Department, which revealed the various transactions that had taken place over the suit properties. Thereafter, the plaintiffs instituted the suit, seeking a declaration that the sale deeds are sham, nominal, and not binding upon them.

20. The only point which arises for consideration is whether the order of the learned District Judge could be sustained since he had rejected the plaint on the ground of limitation even before it had been numbered.



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21. A perusal of the order of the learned District Judge reveals that he had also examined the amendment made to the Hindu Succession Act in the year 1989 by the then State Government, and observed that only a Hindu woman married after 1989, or her children, could claim a share in the property and seek partition. The learned Judge further observed as follows:-

"It is an accepted fact that in Tamil Nadu when women are married valuable properties are sold and sale proceeds are utilised for the marriage expenses including jewellery or sreedhana to the women."

22. The learned District Judge further observed as follows:-

"If the mother of the plaintiffs were already married in the year 1985 only these plaintiffs might have born in 1985 or 1986. In such case they cannot claim right of undivided share in the joint family properties of the so called Visenthi Nadar @ Vincent and the amendment brought about by the then D.M.K. Government to the Hindu Women's Right to property will not be attracted to the facts of this case. In such circumstances, the plaint is treated as clever drafting by the counsel for the plaintiffs to gain unlawful enrichment by creating legal complications to the first defendant who had alleged to have created encumbrances based on the fact that he is only son of Visenthi Nadar @ Vincent who died intestate."



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23. The observations made by the learned District Judge on the applicability of the 1989 amendment and the rights of Hindu women appear to be extraneous to the issues raised in the plaint. It is probable that even the defendants may not have raised these contentions in their written statements. The question of when the plaintiffs acquired knowledge of the transactions is a matter of fact, and such a factual assertion made in the plaint can only be challenged by the defendants during the course of trial.

24. It is well settled that the issue of limitation is a mixed question of law and fact. In **Selvaraj and others vs. Koodankulam Nuclear Power Plant India Limited, represented through its Project Director, Koodankulam and others**, reported in **2021 (4) CTC 539**, while examining the rejection of a plaint even before it was numbered, it was held as follows:-

"29. To sum up, the Court may reject the plaint before numbering and entering it in the Register of Suits, if from a reading of the plaint, it is seen that the suit is barred by any law, or if it suffers from any procedural infirmity, adumbrated supra. The Court, at that stage, cannot and is not



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expected to conduct a roving enquiry into the merits of the matter by testing the correctness of the plaint- averments even prior to its institution.

30. *In S. Parameswari v. Denis Lourdusamy, [(2011) 5 CTC 742], this Court had held that after one return, the Court should post the matter in open Court, and invited arguments of the counsel on the question of maintainability and pass a judicial order. If the objection is upheld, the aggrieved party could work out his/her rights. In Muthuganesah v. Thillaimani, [2016 (2) LW 340], this Court had pointed out:*

"3.The court, while admitting the plaint, can scrutinise the other aspects, namely the cause of action, valuation, payment of court fee, jurisdiction and limitation. The court can also verify whether the plaint has been filed in the proper form and whether the necessary requirements of plaint have been complied with. The question as to whether any other person should have been made a party is outside the purview of the scrutiny of the trial court at the time of admitting the plaint. The above said aspects are with reference to the merits of the return made by the trial court.

4. Once certain defects are pointed out by the court and the plaint is returned and the plaintiff or plaintiffs, represent the same stating that the plaint has been properly



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prepared and filed and asking the court to hear regarding the necessity to comply with the returns made by the court, the court can return the plaint provided its view that the compliance with the returns are mandatory and it is conceded by the plaintiff. If the plaintiff makes it clear that he is not prepared to comply with the returns and the plaint as filed by him should be taken on file, the trial court should reject the plaint rather than returning the plaint stating the very same reason."

*This Court only adds a rider to it: In all cases where the Court chooses to reject the plaint for not curing the defects mentioned (which may include the issue on exclusion of jurisdiction) it is necessary for the Court to follow the dictum in *S.Parameswari v. Denis Lourdusamy*, [(2011) 5 CTC 742] and post the matter before Court, with or without the request of the plaintiff or the counsel concerned, and hear them. The duty to hear before a decision is made constitutes the soul of procedural fairness inbuilt in the Civil Procedure Code, and cannot be compromised."*

25. In Narne Rama Murthy vs. Ravula Somasundaram and others, reported in **(2005) 6 SCC 614 : 2005 SCC OnLine SC 1197**, the Hon'ble Supreme Court, while examining Special Leave Petitions challenging the



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judgment of the High Court of Andhra Pradesh, addressed a contention that the High Court and the Courts below ought to have examined the issue of limitation.

The Hon'ble Supreme Court held as follows:-

"5. When limitation is the pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of course, it is the duty of the Court to decide limitation at the outset even in the absence of a plea. However, in cases where the question of limitation is a mixed question of fact and law and the Suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved."

26. We are of the firm opinion that, even in the present case, the plaintiffs ought to have been afforded an opportunity to present their case. Any defence raised by the defendants would be a matter for trial, and only thereafter a judgment could be appropriately rendered. It is also to be reiterated that a perusal of the impugned order does not reflect that the counsel for the plaintiffs was heard before the plaint was rejected and that too, even before it had been numbered. An opportunity ought to have been granted to the learned counsel for the appellants/plaintiffs.

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27. The point framed for determination is answered that the order of the learned District Judge does not pass the scrutiny of this Court and has to be set aside.

28. For the foregoing reasons, the order dated 08.03.2017 passed in the unnumbered plaint in O.S.SR.No.701 of 2017 on the file of the District Court, Kanyakumari District at Nagercoil, is hereby set aside. The Appeal Suit is allowed. There shall be no order as to costs.

29. The Registry is directed to return the original plaint and the documents filed along with it to the District Court, Kanyakumari District at Nagercoil, within a period of two weeks from today. The District Court, Kanyakumari District at Nagercoil, is further directed to verify whether the plaint is otherwise in order, and if so, number the plaint and proceed further in accordance with law.

Index : Yes / No
NCC : Yes / No
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[C.V.K., J.] & [R.V., J.]
12.09.2025



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To

- 1.The Principal District and Sessions Judge,
Kanyakumari District at Nagercoil.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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C.V.KARTHIKEYAN, J.
and
R.VIJAYAKUMAR, J.

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PRE-DELIVERY JUDGMENT MADE IN
A.S.(MD)No.120 of 2017

12.09.2025