



A.S.(MD).No.151 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.10.2025

PRONOUNCED ON : 08.12.2025

CORAM:

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

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Vimala Damayanthi

....Appellant/Plaintiff

Vs

1.J.R.Symon Morris

2.R.Karthigai Selvi

3.The Branch Manager
Canara Bank
Gnanaolivupuram Branch
Madurai

....Respondents/Defendants

Prayer: The First Appeal filed under Section 96 of C.P.C, to set aside the judgment and decree passed by the I Additional District Judge, Madurai in O.S.No.162 of 2017 dated 10.09.2018.

For Appellant : Mr.K.Suresh

For Respondents : Mr.G.Prabhu Rajadurai for R1 & R2

:No appearance for R3



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J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The plaintiff in O.S.No.162 of 2018 on the file of the I Additional District Court, Madurai has preferred the present first appeal challenging the rejection of plaint.

(A).Factual Matrix:

2.The appellant herein as plaintiff has filed the above said suit for the relief of declaration that the sale deed dated 28.03.2014 executed by her husband in favour of the defendants 1 and 2 in respect of the suit schedule property is null and void. A consequential prayer for permanent injunction restraining the defendants from dispossessing the plaintiff's peaceful possession in the suit schedule property has also been prayed for.

3.As per plaint averment, the plaintiff's husband L.C.Benjamin is the absolute owner of the property. Due to old age, he was suffering from certain ailments and to meet out his medical expenses, he had approached the Indian Bank for availing loan by mortgaging the suit schedule property. Since he was aged about 75 years, the Bank had rejected his request.

4.It is further contended in the plaint that the first defendant who was the auditor of the plaintiff's husband has approached him and requested him to transfer the property in his name so that he could avail the Bank loan. He



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further stated that he needs Rs.9,00,000/- for his personal expenses. In case, if the Bank sanctions the loan of Rs.18,00,000/-, the same could be shared between the plaintiff's husband and his auditor. The equated monthly instalments between the plaintiff's husband and his auditor could also be shared. On repayment of the entire loan, the auditor, namely the 1st defendant had agreed to re-transfer the property.

5. It is further contended in the plaint that the plaintiff's husband and the 1st defendant entered into a promissory declaration on 18.01.2014 wherein the above said agreement was recorded. On the basis of the above said promissory declaration, an unregistered sale agreement was entered into between the plaintiff's husband and the defendants 1 and 2 on 04.03.2014. Based upon the said agreement, a sale deed was executed by the plaintiff's husband in favour of the 1st defendant on 28.03.2014 wherein it is recorded that out of the total sale consideration of Rs.25,00,000/-, Rs.7,00,000/- was paid as advance. However, no such amount was paid by the 1st defendant. It is further contended in the plaint that based upon the sale deed, housing loan was sanctioned by the 3rd defendant Bank on 28.03.2014 to a tune of Rs.16,75,000/-. The 1st defendant had given two cheques to the plaintiff to a tune of about Rs.9,62,000/- and Rs.2,50,000/- and another cheque on 04.04.2014 to a tune of Rs.7,12,000/- as agreed in the promissory declaration. In turn, the plaintiff's husband had transferred a sum of Rs.9,62,000/- vide



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two cheques to the credit of the 1st defendant.

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6. According to the plaint averments, the plaintiff's husband was regularly paying the monthly instalment for his part of the loan to the defendants 1 and 2 and defendants 1 and 2 paid the monthly EMI including their part of loan for a certain period. But later defaulted to pay EMI regularly to the defendant Bank. On 15.08.2016, the defendants have issued a legal notice to the plaintiff's husband requesting him to handover possession of the house property. A reply was sent by the plaintiff's husband on 20.12.2016 contending that the sale deed was not executed to be acted upon. The plaintiff's husband has lodged a police complaint on 31.12.2016. Before filing of the suit, the plaintiff's husband had passed away on 29.01.2017. The plaintiff has also lodged a police complaint on 04.04.2017 and the police officials have directed the parties to approach the competent civil Court.

7. It is further contended in the plaint that the plaintiff and her husband never received any advance for sale and sale consideration as expressed in the sale agreement is not true. It is further contended that the plaintiff's husband acted only believing the trustworthy words of the defendants 1 and 2. However, the defendants have cheated the plaintiff. The sale deed was executed only as sham and nominal document for the purpose of raising loan from the Bank and in fact, no sale consideration passed. It is further contended in the plaint that the plaintiff has sent a reply notice on 31.07.2017



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directing them to settle the dues to the Bank and to re-transfer the title in favour of the plaintiff within a period of 15 days. A reply was received by the plaintiff on 18.08.2017 denying the allegation. According to the plaintiff, no sale consideration was paid by the defendant as per sale deed and the sale deed is a void document, especially in the light of the promissory declaration note dated 08.01.2014

8.It is further contended in the plaint that the defendants 1 and 2 are trying to evict the plaintiff in the suit schedule house property through unlawful activities and the defendants influencing the officials to transfer the property tax in their names based upon the sale deed dated 28.03.2014. Hence, the present suit.

9.The defendants have filed a written statement contending that the plaintiff is a retired teacher and her husband was an Advocate by profession who attained superannuation as Legal Advisor to Director General of Police. Only the plaintiff's husband has approached the 1st defendant expressing his willingness to sell the property. The sale consideration was fixed at Rs.25,00,000/-. On 04.03.2014, the plaintiff's husband had received Rs. 7,00,000/-as advance. Another sum of Rs.1,25,000/-was also paid.

10.It is further contended by the defendants 1 and 2 that in order to avail loan to purchase the suit property, the defendants 1 and 2 have approached the 3rd defendant Bank based upon the sale agreement dated



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04.03.2014. The Bank had sanctioned a loan of Rs.16,75,000/-. The loan amount of Rs.16,75,000/- was credited to the account of the plaintiff's husband in his bank account. Only after confirmation of receipt of sale price of Rs.16,75,000/-, the plaintiff's husband has executed a registered sale deed in favour of the defendants 1 and 2 on 28.03.2014. In fact, the plaintiff has signed one of the witnesses to the said sale deed. Therefore, the plaintiff had knowledge about the sale deed from 28.03.2014.

11.It is further contended in the written statement that since both the families are very close to each other, considering the age of the plaintiff and her husband, they have permitted them to reside in the suit schedule property for a period of one year. In fact, the plaintiff and her husband have agreed to vacate and surrender the suit property. Despite several requests, they have not surrendered the possession. Therefore, the defendants were constrained to issue a legal notice on 15.08.2016 to vacate and handover possession.

12.The defendants 1 and 2 are very close family members of the plaintiff and her husband. Therefore, the plaintiff's husband used to borrow money from the 1st defendant. In January 2014, when the plaintiff's husband asked a loan of Rs.7,00,000/- from the 1st defendant, at that time, he had no huge money, so he arranged for a sum of Rs.7,00,000/- from his friends for a short period and gave it to the plaintiff. Even though the two daughters of the plaintiff are settled abroad, there is no help to the plaintiff's family. The



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plaintiff and her husband were not able to raise money from the Bank. Since they were in severe financial crisis, the plaintiff and her husband had approached the defendants that they are intending to alienate the property. On completion of sale deed on 28.03.2014, the plaintiff's husband had immediately repaid the amount of Rs.7,00,000/- to settle the loan. The allegations that the 1st defendant had duped the plaintiff and her husband being a personal auditor are false.

13.The defendants had further submitted that the 1st defendant never executed a promissory declaration note dated 18.01.2014. He has also disputed the other money transactions. They had further contended that the plaintiff's husband has received the entire sale consideration of Rs.25,00,000/- as per sale deed dated 28.03.2014. It was further contended that the suit having been filed after a period of 3 years from the date of execution of sale deed is clearly barred by limitation.

14.Pending suit, the defendants 1 and 2 have filed I.A.No.13 of 2018 under Order 7 Rule 11 of C.P.C seeking to reject the plaint on the ground that the suit having been filed 3 years after the date of execution of the sale deed is clearly barred by limitation, especially in the light of the fact that the plaintiff being an attestor to the said document.

15.A counter was filed by the plaintiff contending that the defendants 1 and 2 acted in violation of the promissory declaration note dated 18.01.2014.



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Therefore, the right to sue got occurred only when a legal notice was issued by the defendants 1 and 2 on 15.08.2016 directing the plaintiff and her husband to vacate and hand over possession of the suit schedule property. The suit having been filed within 3 years from the date of breach of the agreement is clearly within limitation.

16.The learned trial Judge after considering the submissions made on either side has recorded a finding that the plaintiff was very much aware of the transactions between her husband and the defendants. The sale deed having been executed on 28.03.2014, the suit filed on 14.09.2017 is clearly barred by limitation. Since the plaintiff was one of the attestors to the sale deed, she was aware of the fact that the sale transaction is sham and nominal on the date itself. Since there is no dispute with regard to the dates and events, the limitation is not a mixed question of facts and law, therefore, apparently barred by limitation.

17.Based upon the above said findings, the trial Court had rejected the plaint and as a consequence, dismissed the suit also. Challenging the said judgment and decree, the present first appeal has been preferred by the plaintiff.

(B).Submissions of the learned counsel appearing on either side:

18.The learned counsel appearing for the appellant submitted that he had specifically relied upon the promissory declaration note dated 18.01.2014



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wherein the plaintiff's husband and the 1st defendant have agreed to raise a loan from the Bank and to share the loan amount. The possession has not been handed over pursuant to the sale deed dated 28.03.2014. When a plea that a particular document is sham and nominal is raised, it has to be adjudicated only during the trial. In case, if the trial Court arrives at a finding that the sale deed dated 28.03.2014 is a sham and nominal document, the suit would not be barred by limitation, especially when it has been filed within a period of 3 years from the date of sending of legal notice by the defendants on 15.08.2016.

19.The learned counsel for the appellant had further submitted that the defendants 1 and 2 have filed O.S.No.38 of 2018 on the file of the V Additional District Court, Madurai as against the plaintiff for the relief of declaration of title and recovery of possession. Therefore, it is clear that the possession is retained by the plaintiff. When the document is sham and nominal document, it is void *ab initio* and therefore, Article 59 of the Limitation Act would not get attracted.

20.Per contra, the learned counsel appearing for the respondents/defendants submitted that the sale deed was executed by the plaintiff's husband on 28.03.2014. The plaintiff is one of the attestors to the said sale deed. She had preferred the suit only on 14.09.2017. The plaintiff having knowledge about the document, cannot seek to extend the period of



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limitation on the ground that the cause of action for filing the suit arose only after receipt of legal notice from the defendants. According to him, the limitation prescribed under Article 59 of the Limitation Act would get attracted and the suit having been filed after a period of 3 years from the date of document would clearly be barred by limitation. Hence, he prayed for sustaining the order passed by the trial Court.

21.We have considered the submissions made on either side and perused the material records.

(C).Discussion:

22. A perusal of the plaint averments reveals that the plaintiff has contended that the sale deed dated 28.03.2014 is a sham and nominal document and the parties have never intended to enter into such a transaction. The said document was executed by the plaintiff's husband only to enable the 1st defendant to raise a loan from the Bank. According to the plaint averments, the sale deed was preceded by a promissory declaration note dated 18.01.2014.

23.A perusal of the said plaint document reveals that the parties have agreed to share the equated monthly instalments for the loan to be raised from the Bank. It further states that the parties will share the burden to fulfil the Bank obligation and each will have a right to exercise the commitment of promissory declaration. The document further points out that the plaintiff's



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husband has approached the 1st defendant due to financial stress to a tune of about Rs.10,00,000/- and they are agreed to divide the expenses which are likely to be incurred for raising the loan from Bank. The genuineness and validity of the said document has been disputed by the defendant.

24.We are inclined to consider only the plaint averments and the documents annexed to the plaint for the purpose of deciding whether the case falls within Order 7 Rule 11 of C.P.C.

25. The Hon'ble Supreme Court in a judgment reported in **(2024) 15 SCC 675 (Shri Mukund Bhavan Trust and others Vs.Shrimant Chhatrapati Udayan Raje Pratapsingh Maharaj Bhonsle and another)** in Paragraph No. 13 has held as follows:

“13.As settled in law, when an application to reject the plaint is filed, the averments in the plaint and the documents annexed therewith alone are germane. The averments in the application can be taken into account only to consider whether the case falls within any of the sub-rules of Order VII Rule 11 by considering the averments in the plaint. The Court cannot look into the written statement or the documents filed by the defendants. The Civil Courts including this Court cannot go into the rival contentions at that stage.....”

26.The Hon'ble Supreme Court in a judgment reported in **(2011) 15 SCC 756 (V.M.Salim Vs.Fathima Muhammed and others)** in paragraph



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No.8 was pleased to define the nature and character of sham and nominal document. Paragraph No.8 of the said judgment is extracted as follows:

“8.A document will be “sham” if it ostensibly creates rights/obligations, which are not intended to be acted upon by the parties to the deed, and is executed in pursuance of a secret arrangement, with the ulterior motive of securing an undisclosed advantage to the owner (or executant as the case may be). It involves collusion between the parties to the document to achieve an illegal objective. Therefore, if anyone wants to establish that a sale transaction was sham and collusive, he ought to plead and prove a secret arrangement between the vendor and the purchaser, that the sale was nominal and that no right, title or interest passed or intended to pass to the purchaser under the sale, and the deed was executed with the sole intention of securing the eviction of the tenants or securing some other benefit to the vendor. Where direct evidence of such secret arrangement is not available, it may be possible to establish the sham nature of a document by some clinching circumstantial evidence.....”

27.Under a sham and nominal document, no right, title or interest is intended to be passed to the purchaser and there will be a secret arrangement between the vendor and vendee. In such circumstances, whether it is necessary to set aside such a sham and nominal document is the issue to be decided.



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28. Our High Court in a judgement reported in **(1970) 1 Mad LJ 207**

(Kaka Hajee Md Ishaque Sahib Vs. Kaka Md. Saddiq Sahib and others) has held as follows:

“...Normally a transaction will bind a person if he or persons under whom he derives title are eo nomine parties to the same, and must be set aside before any relief is claimed thereunder. This, however, is subject to two important, exceptions : (1) Where the transaction is only a sham and nominal one, not intended to be given effect to; and (2) Where the transaction is void in law. It necessarily follows that (1) transactions to which a person or persons under whom the said persons derive title are not eo nomine parties; (2) transactions which are challenged as sham and nominal and (3) transactions which are void ab initio are not legally binding in character need not be cancelled and set aside, before any claim is made thereunder. The reason is fairly obvious. In the first group of cases, there can be no difficulty, as it is an elementary principle of law that transactions to which a person or persons under whom the said person derives title are not parties cannot bind them. In the case of sham and nominal or void transactions comprised in the second and third group of cases, title has not passed to the transferees. Prayer for setting aside such transactions will be superfluous and the plaintiff will be entitled to ignore them altogether.....”

29. While considering the relevancy of Article 59 of Limitation Act to a void transaction, the Hon'ble Supreme Court in a judgement reported in



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(2006) 5 SCC 353 (Prem Singh and others Vs.Birbal and others) in

Paragraph Nos.13 to 20 has held as follows:

13.Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are voidable transactions.

14.A suit for cancellation of instrument is based on the provisions of Section 31 of the Specific Relief Act, which reads as under:

"31. When cancellation may be ordered.--(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908, the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

15.Section 31 of the Specific Relief Act, 1963 thus, refers to both void and voidable document. It provides for a discretionary relief.

16.When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non-est in the



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eye of law, as it would be a nullity.

17.Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary Article would be.

18.Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply to the case of such instruments. It would, therefore, apply where a document is prima facie valid. It would not apply only to instruments which are presumptively invalid. [See *Unni & Anr. vs. Kunchi Amma and Sheo Shankar Gir vs. Ram Shewak Chowdhri & Ors.*

19.It is not in dispute that by reason of Article 59 of the Limitation Act, the scope has been enlarged from old Article 91 of 1908 Act. By reason of Article 59, the provisions contained in Articles 91 and 114 of 1908 Act had been combined.

20.If the plaintiff is in possession of a property, he may file a suit for declaration that the deed is not binding upon him but if he is not in possession thereof, even under a void transaction, the right by way of adverse possession may be claimed. Thus, it is not correct to contend that the provisions of the Limitation Act would have no application at all in the event the transaction is held to be void.

30.The Hon'ble Supreme Court while considering the plea of limitation with regard to the prayer for declaration of a sale deed to be void in a judgement reported in (2022) 18 SCC 489 (*Kewal Krishan Vs. Rajesh Kumar and others*) in Paragraph Nos.19 and 20 has held as follows:



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“19.....Thus, the sale deeds of 10th April 1981 will not confer any right, title and interest on Sudarshan Kumar’s wife and children as the sale deeds will have to be ignored being void. It was not necessary for the appellant to specifically claim a declaration as regards the sale deeds by way of amendment to the plaint. The reason being that there were specific pleadings in the plaints as originally filed that the sale deeds were void. A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings.

20.Hence, the issue of bar of limitation of the prayers for declaration incorporated by way of an amendment does not arise at all. The additional submissions made by the respondents on 16th November 2021 have no relevance at all.”

31.The Hon'ble Supreme Court in a judgment reported in **2025 SCC Online SC 1961 (Shanti Devi (Since deceased) through Lrs.Goran.... Vs. Jagan Devi and others)** while considering the applicability of Article 59 of Limitation Act in Paragraph No.31 has held as follows:

“31.....Both the First Appellate Court as well as the High Court have arrived at the finding that the plaintiff had never executed the said sale deed in the first place as it was proved that it was not her thumb impression that was affixed therein. Therefore, this finding goes to the character of the sale deed and thereby, renders it void/void ab initio. Hence, as per this decision, there remained no reason for the plaintiff to seek for its cancellation. The original sale deed also was not produced



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before the trial Court by the defendants in order to rebut the doubt cast upon the veracity of the said sale deed. Consequently, Article 59 of the Limitation Act, 1963 would find no application to the case in hand.”

32.From the judgments of the Hon'ble Supreme Court and our High Court, the following the propositions of law emerge.

a).When a document is alleged to be a sham and nominal document, it is a document which void *ab initio*.

b).A document which is void, need not be challenged by praying a declaration, as the said plea can be set up and proved even in collateral proceedings.

c).Since title has not passed to the transferee under a void document, the prayer for setting aside such transaction will be superfluous and the plaintiff will be entitled to ignore them all together.

d).With regard to a void document, since the prayer for declaration to declare the said document is superfluous, Article 59 of the Limitation Act would not get attracted.

e). If the plaintiff is in possession of the property, after execution of such a void document, he can very well seek for a superfluous declaratory prayer irrespective of the period of limitation.



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On the other hand, if possession had passed on to the transferee under a void document, the plaintiff has to seek recovery of possession and the said suit would be governed under Article 65 of the Limitation Act.

33.In the present case, admittedly the plaintiff is in possession of the suit schedule property. In fact, defendants 1 and 2 have filed O.S.No.38 of 2018 before the V Additional District Court, Madurai seeking the relief of declaration of title and recovery of possession. Therefore, the possession of the plaintiff is not in dispute. Whether the sale deed dated 28.03.2014 is a sham and nominal document or not has to be adjudicated only during the trial, especially in the light of the alleged promissory declaration note dated 18.01.2014. In case, if the plaintiff is able to establish that the sale deed dated 28.03.2014 is a sham and nominal document, then Article 59 of Limitation Act would not get attracted. On the other hand, if the plaintiff is not able to establish that the disputed sale deed is a sham and nominal document, the period of limitation as prescribed under Article 59 of the Limitation Act would get attracted. Therefore, merely on the basis of the date of sale deed and the date of knowledge of the plaintiff, the plaint cannot be rejected on the ground of limitation.

34.The trial Court has proceeded to reject the plaint on the ground that the sale deed has been executed on 28.03.2014 and the plaintiff being an



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attestor of the sale deed, is aware of the said document and the suit having been filed on 14.09.2017 is clearly barred by limitation. The trial Court though has referred to the allegation in the plaint with regard to the sham and nominal document, has not considered the fact that in case if the plaintiff was able to establish that the sale deed is a sham and nominal document, it would be a void ab initio document. Therefore, we are of the considered opinion that the order of the trial Court in rejecting the plaint has to be set aside and the parties have to be relegated to the trial Court.

(D).Conclusion:

35.In view of the above said deliberations, the judgement and decree of the trial Court is set aside and the matter is remitted back to the file of the trial Court. It is made clear that the observations made in this order are only for the purpose of disposal of Order 7 Rule 11 Application. The parties are at liberty to raise all the issues before the trial Court.

36.Accordingly, the judgement and decree of the trial Court are set aside and the first appeal stands allowed and the same is remitted back to the file of the trial Court for disposal on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

(C.V.K.J.,)

(R.V.J.,)

08.12.2025.



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To

1. Additional District Judge
Madurai

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.**

msa

Pre-delivery Judgment made in
A.S.(MD).No.151 of 2019

08.12.2025