

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CUDDALORE

Present: Selvi.B.Phebe, B.A.,LLB.,

Additional District Munsif, Cuddalore

Saturday, the 19th day of June – 2025

I.A.No.170/2024 and I.A.No.103/2025

in O.S.No.92/2004

I.A.No.170/2024:

S.Selvam

.....Petitioner/7th Defendant

..Vs..

1. G.Muthukrishnan
2. G.Pandurangan
3. G.Gunasekaran
4. S.Sudhakaran
5. K.Siddharthan
6. K.Thangapazham
7. R.Ramamurthy

.....1 to 7 Respondents/Plaintiffs

8. N.Janardhanan (Died)
9. S.Prabhakaran
10. S.Premkumar
11. S.Sathishkumar
12. L.Devanathan

I.A.No.170/2024 and I.A.No.103/2025
in O.S.No.92/2004 – Dt.19.07.2025
Additional District Munsif Court, Cuddalore.

13. P.Prabhavathy
14. Umamaheswari
15. The State of Tamil Nadu, rep. by the District Collector,
Cuddalore.
16. The Sub Registrar, Cuddalore
17. The Commissioner, Cuddalore Municipality,
Cuddalore.
18. The Thasildar, Cuddalore Taluk Office.
19. The Assistant Engineer (Town) Tamil Nadu
Electricity Board, (O &M), Cuddalore.
20. Raja @ Govindaraj
21. The Sub Registrar, Nellikuppam.
22. R.Pandian8 to 22 Respondents/Defendants

Counsels on Record in I.A.No.170/2024:

- For Petitioners : Mr.S.Ramadas
- For R1 to R7 : Mr.R.Rajavelavan
- For R9 and R14 : Mr.G.Murugaiyan
- For R10 to 13, 20 : Exparte in suit
- For R15 to to 19, 21 : Pleader for Government
- For R22 : Mr.S.Ram Mohan

I.A.No.103/2025:

S.Prabhakaran

.....Petitioner/2nd Defendant

..Vs..

1. G.Muthukrishnan
2. G.Pandurangan
3. G.Gunasekaran
4. S.Sudhakaran
5. K.Siddharthan
6. K.Thangapazham
7. R.Ramamurthy

.....1 to 7 Respondents/Plaintiffs

8. N.Janardhanan (Died)
9. S.Premkumar
10. S.Sathishkumar
11. L.Devanathan
12. P.Prabavathy
13. Selvam
14. Umamaheswari
15. The State of Tamil Nadu, rep. by the District Collector,
Cuddalore.
16. The Sub Registrar, Cuddalore
17. The Commissioner, Cuddalore Municipality,
Cuddalore.

I.A.No.170/2024 and I.A.No.103/2025
in O.S.No.92/2004 – Dt.19.07.2025
Additional District Munsif Court, Cuddalore.

18. The Thasildar, Cuddalore Taluk Office.
19. The Assistant Engineer (Town) Tamil Nadu
Electricity Board, (O &M), Cuddalore.
20. Raja @ Govindaraj
21. The Sub Registrar, Nellikuppam.
22. R.PandianRespondents/Defendants 1 to 3,
6 and 7 to 22

Counsels on Record in I.A.No.103/2025:

- For Petitioner : Mr.G.Murugaiyan
For R1 to R7 : Mr.R.Rajavelavan
For R9 and R13 : Mr.S.Ramadas
For R10 to 14, 20 : Exparte
For R15 to to 19, 21 : Pleader for Government
For R22 : Mr.S.Ram Mohan

These petitions came before this Court on 14.07.2025 in the presence of both counsels and upon perusal of records and having stood over for consideration till this day, this court delivers the following:

COMMON ORDER

I.A.No.170/2024 and I.A.No.103/2025 both the petitions have been filed under Order 7 Rule 11 r/w S. 151 of C.P.C to pass an order of rejection of plaint.

I.A.No.170/2024 and I.A.No.103/2025
in O.S.No.92/2004 – Dt.19.07.2025
Additional District Munsif Court, Cuddalore.

2) Gist of the affidavit in I.A.No.170/2024:-

(i) The petitioner herein is 7th defendant in the suit. The suit properties originally belonged to Krishnasamy Mudaliar who created “Krishnasamy Mudaliar Trust” through WILL dated 25.04.1920 and made the descendants as members of the Trust. The Trust was created under the Registered partition deed dated 29.06.1908. The trust came under the management of the 1st defendant Janardhanan, as trustee he possessed the suit properties in his life time.

(ii) He with his power agent 2nd defendant filed a suit in O.S.No.225/2003 before the First Additional Subordinate Court, Cuddalore and obtained a decree to sell the suit properties on 30.10.2003. Thereafter, he sold the suit properties to the petitioner herein for a consideration of Rs.4,52,100/- vide Document No.2185/2003 dated 12.12.2003. The 2nd defendant S.Prabhakaran attested the document as witness.

(iii) This suit is not filed within the proper jurisdiction. This Hon'ble Court has no jurisdiction to entertain this suit. The plaintiffs can prefer appeal only in the proper appellate court. The prayer in plaint that for declaration of decree in O.S. 225/2003 as null and void is not maintainable in law and lacks jurisdiction. Hence, prayed to reject the paint.

3) Gist of the affidavit in I.A.No.103/2025:-

(i) The Petitioner herein is the 2th defendant in the above suit. The above suit has been filed by the respondents/plaintiffs for the alleged relief of declaration that the sale deed dated 12.12.2003 and 05.01.2004 executed by the first defendant Janarthanan in favour of the petitioner and sale deed dated 12.12.2003 in favour one Selvam (D7) as null and void and to declare that the judgment and decree delivered by Hon'ble I - ASJ Court, Cuddalore in O.S.No.225/2003 dated 30.10.2003 as null and void and also for permanent injunction restraining the petitioner and the 7th defendant, from encumbering the suit property pending disposal of the suit and for other reliefs.

(ii) In the above suit, written statement has been filed questioning the maintainability of the suit and cause of action contending that the cause of action mentioned in the suit is vexatious and this Hon'ble Court has no jurisdiction to decide the suit since the Judgment and decree in O.S.No.225/2003 was delivered by the Hon'ble Additional Sub Judge at Cuddalore. The suit properties originally belonged to Krishnasamy Mudaliar who created "KRISHNASAMY MUDALIAR TRUST".

(iii) One Janardhan Mudaliar took over the management of the trust property but he could not maintain the trust properties, hence he filed a suit in

O.S.No.225/2003 before the Hon'ble 1st Additional Sub Court, Cuddalore seeking permission to sell the trust property which was decreed. He then sold the suit properties to 6th and 7th defendant herein. Since then, respective defendants took possession of the properties and is enjoying the same as absolute owners. This suit has not been filed within proper jurisdiction and the suit filed before this Hon'ble Court is not maintainable and barred by law. The prayer sought for in the suit is also not maintainable. There is no cause of action. Hence the same deserves to be rejected in limine. Hence sought to reject the plaint.

4) Gist of the Counter in I.A.No.170/2024 and I.A. 103/2025 filed by the 4th Respondent and adopted by the 1 to 3 and 5 to 7 are as follows:

(i) The suit schedule properties originally belongs to Krishnasamy Mudaliar Trust. It is not the separate property of 1st defendant. The affidavit is quite silent as to under what provision or authority of law the suit is stated to be barred in law. The respondents being plaintiffs in the suit have specifically pleaded in the plaint that intrinsic fraud has been committed by the defendants while obtaining the ex-parte decree of permission dated 30-10-2003 in O.S.No.225 of 2003 on the file of 1 Additional Sub Court, Cuddalore. Therefore, any decree and judgment obtained by fraud has to be treated as nullity by every Court superior or inferior. So, there is no legal impediment for this Court to try

the dispute between the parties.

(ii) If the allegations of fraud are found to exist and established after adjudication the decree in O.S.No.225 of 2003 would be vitiated. Therefore, any decree and judgment obtained by fraud has to be treated as nullity by every Court superior or inferior. So, there is no legal impediment for this Court to try the dispute between the parties. After examination of two witnesses in the suit, the 2nd defendant moved an application to receive additional written statement by contending that the suit is hit by S. 92 of CPC.

(iii) Interrogatories were then filed by the respondents asking the petitioner whether any such application for permission under S. 92 of CPC was moved in O.S.No.225 of 2003, for which the 2nd defendant filed an affidavit, after the intervention of Hon'ble High Court of Madras in C.R.P No. 1326 and 1327 of 2021, stating no such application was filed. The present suit is filed primarily challenging the earlier decree of permission on the grounds of fraud rather than administration of the trust and hence, the instant suit filed under S. 31 of the Specific Relief Act, 1963 is very well maintainable.

(iv) The suit was valued under Section 40 (1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, under which the amount or value of the property for which the decree was passed has to be considered. The valuation

mentioned in the suit in O.S.No.225 of 2003 was Rs. 30,000/- and when the present suit came to be filed by assailing the ex parte decree of permission granted in O.S.No.225 of 2003, an amendment was affected in Tamil Nadu Civil Courts Act, 1873 and the pecuniary jurisdiction of this Court was enhanced to Rs.1 Lakh and as such the present suit before this Court is not lacking jurisdiction. Moreover, lack of jurisdiction cannot be a ground coming under the mischief of Order 7 Rule 11 of the Code.

5. *The point for consideration is whether these petitions filed by the petitioners are to be allowed or not?*

6. *No witnesses were examined. No documents were marked.*

7. Submissions of Counsels:

(i) The learned counsels for the petitioners in I.A.No.170/2024 and I.A.No.103/2025 reiterated the petition averments and sought to assail the plaint on the following grounds:

- a) The plaint was filed under Order 7 Rule 1 of CPC and it does not include the term “*r/w Sec.92 of CPC*” which proves that the liberty under S. 92 of CPC not sought for.
- b) The plaint averments does not disclose, whether the plaintiffs are the beneficiaries/trustees. It further does not disclose, in what capacity the

plaintiffs have instituted the suit.

- c) Even if it is stated they are the beneficiaries, the plaintiffs have not impleaded all the beneficiaries but only limited members have been added as party to the suit.
- d) ExA1 the WILL would show that the trust was created to carryout charitable works out of the proceeds of certain trust properties. This shows that it was created for the benefit of public and also intended to be a private one. In fine, he argued that the trust is a private cum public trust.
- e) When it is proved that the said trust is a private cum public trust the Munsif Court has no jurisdiction to try the matter, as it is ousted by the notification in G.O.M.S.No.727 dated 08.03.1960. In case of public trust there exist a concurrent jurisdiction with the Principal District Judge and The Sub Court.
- f) The relief sought for in the present suit is based on breach of trust.
- g) The present suit is filed in the court of lowest decree to annul the decree passed by the higher forum which is impermissible in the eye of law. The decree passed by the Sub Court should be challenged only before the higher forum and not before the Munsif Court.
- h) The subject matter jurisdiction prevails over pecuniary jurisdiction and hence the plaintiffs cannot seek refuge under the amended

provisions of Court Fee Act.

- i) This Hon'ble court lacks jurisdiction to grant a relief prayed for.
- j) The suit is not maintainable for want of cause of action.
- k) The suit is barred by principles of Res judicata for the reason that between same parties earlier suit has been disposed of in OS.No.964/2004 on 20.03.2017 in respect of other properties of trust.

The learned counsels for the petitioners relied on the following judgments to substantiate their case:

- The Judgment of Hon'ble Supreme Court in the case of ***Ramisetty Venkatanna vs Nasyam Jamal Saheb reported in 2023 LiveLaw (SC) 372*** was relied on for the proposition that the plaint has to be rejected, if it is found to be vexatious, has illusory cause of action and is barred by limitation.
- The Judgment of Hon'ble Supreme Court in the case of ***K Akbar Ali v. K Umar Khan reported in 2021 (5) Supreme 130*** was relied on for the proposition that while considering an application under Order VII Rule 11 of the CPC, the question before the Court is whether the plaint discloses any cause of action or whether the suit is barred by any law, on the face of the averments contained in the plaint itself. While considering an

application under Order VII Rule 11 of the CPC the Court is not to look into the strength or weakness of the case of the plaintiff or the defence raised by the defendant.

- The Judgment of Hon'ble Supreme Court in the case of ***Asma Lateef v. Shabbir Ahmad reported in 2024 INSC 36*** was relied on for the proposition that when there is dispute with regard to maintainability, no relief could be granted.
- The Judgment of Hon'ble Supreme Court in the case of ***A.Subramanyam and Ors v. B.Yegnanrayaniah and Anr*** reported in ***1971 (1) MLJ 46*** has been relied on for the proposition that the learned counsels statement under erroneous understanding of law cannot bind him as admission and would not amount to a mischief for the doctrine of approbate and reprobate.
- The Judgment of Hon'ble Supreme Court in the case of ***Dr.Jagmittar sain Bhagat & Ors v. Dir. Health Services, Haryana*** reported in ***1971 (1) MLJ 46*** has been relied on for the proposition that, a decree without jurisdiction is a nullity. It is a coram non judice, when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the Common Law Court has no jurisdiction.

- The Judgment of Hon'ble Supreme Court in the case of ***T.Arivandandam v. T.V.Satyapal & anr*** reported in ***1977 (4) SCC 467*** has been relied on for the proposition that, if on a meaningful reading, the plaint is manifestly vexatious, and meritless and does not exhibit a clear right to sue, power under Or. VII r. 11 C.P.C. should be exercised. If clever, drafting has created the illusion of a cause of action, it has to be nipped in the bud.
- The Judgment of Hon'ble Supreme Court in the case of ***Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal*** reported in ***2017 (13) SCC 174*** has been relied on for the proposition that, when the plaint do not disclose the cause of action for filing the suit, the suit is manifestly meritless and vexatious.
- The Judgment of Hon'ble Supreme Court in the case of ***ONGC Ltd v. M/s.Modern Construction and Co*** reported in ***2013 AIR SCW 5806*** has been relied on for the proposition that, if a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong.
- The Judgment of Hon'ble Madras High Court in the case of ***B.D.V.Rangarathinam and Ors v. Sri Bakthositha Perumal Temple Sholinghur and Ors*** reported in ***2004 (4) CTC 641*** has been relied on for the proposition that, the District Munsif Court has no jurisdiction, to deal

with the suits relating to trusts created for public purpose of charitable or religious nature.

- The Judgment of Hon'ble Supreme Court in the case of ***Sri Jeyaram Educational Trust & Ors v. A.G.Syed Mohideen & Ors*** reported in **2010 (2) SCC 513** has been relied on for the proposition that, the pecuniary limits mentioned in section 12 of the Civil Courts Act, do not apply to suits under section 92 of the Code.
- The Judgment of Hon'ble Madras High Court in the case of **R.Radha @ Radha Ramalingam Vs. Madhan Raj** reported in **2024 (4) CTC 138** has been relied on for the proposition that when an issue of maintainability is raised in O.7 R.11 petition, it has to be discussed and a speaking order should be passed.

In view of all the above submissions, sought to allow the petition.

(ii) The learned counsel for the respondents reiterated the averments in the counter and argued to sustain the plaint with the following reasonings for the distinct heads:-

a) Lack of Jurisdiction:

- ❖ If a suit is barred for the reason of lack of jurisdiction it has to be dealt under Order 7 Rule 10(a) and not under Order 7 Rule 11.

- ❖ As for the relief sought in the suit, it was argued that an amendment was made in Tamil Nadu Civil Courts Act through Act 1 of 2004 w.e.f. 08.01.2004, in which the pecuniary jurisdiction of the Civil court was enhanced. Hence, this suit was filed in Munsif Court and hence it is not barred for the reason of lack of jurisdiction.
 - ❖ He further argued that, a decree is an instrument under S.31 of Specific relief Act, hence that provision could be invoked for cancellation of the same on the ground of fraud.
- b) Barred By Law:
- ❖ The affidavit is silent as to what statute bars this suit. He argued that the suit is not barred by the Law of limitation for the reason that the impugned decree was passed in the year 30.10.2003 and this suit has been filed within a period of 3 years.
- c) Cause of Action:
- ❖ A right to sue must be exhibited in the plaint if that is done a suit cannot be rejected for want of cause of action.
 - ❖ He further argued that the affidavit of 2nd defendant filed on 15.02.2024 would show even the suit in O.S.No.225/2003 has been filed without seeking permission from the court under S.92 of CPC. Hence the petitioner

cannot be allowed to approbate and reprobate. Hence, sought to dismiss the petition.

d) The respondent counsel argued that the judgment in O.S.No.225/2003 is an instrument under S.31 and 34 of Specific Relief Act and hence a Collusive and Fraudulent instrument can be challenged before any court.

The learned counsel for the respondents relied on the following judgments to substantiate their case:

- 1.The Judgment of Hon'ble Supreme Court in the case of *R. Murali & Others v. Kanyaka P. Devasthanam & Charities and Others* was relied on for the proposition that the respondents cannot be allowed to approbate and reprobate in two suits in which the subject matter and issue of jurisdiction of civil court involved are the same.
2. The Judgment of Hon'ble Madras High Court in the case of *Thulasimani Vs. Maheswari reported in 2019-1-L.W.769* has been relied on for the proposition that, plea of jurisdiction could not be raised in petition under O.7 R.11.
- 3.The Judgment of Hon'ble Madras High Court in the case of *A.V.Papayya Sastry & Ors v. Government of A.P. & Ors reported in 2007-4-L.W.139*

has been relied on for the proposition that, fraud vitiates every solemn act.

8. Heard both sides and perused the records.

9. Documents:-

(i) ExA1 is the Partition Deed dated 29.06.1908 which creates the trust. ExA2 is the WILL executed by Krishnasamy Mudaliyar dated 25.04.1920. ExA3 is the Delivery Deed executed by Padmapriya dated 11.03.2002 in favour of Janarthanan with regard to 9 properties. ExA4 and ExA5 are the Power of Attorney Deed executed by N.Janarthanan in favour of S.Prabakaran dated 17.02.2003 and 21.02.2003 for 8 properties and 1 property respectively . ExA6 is the Plaint in O.S.No.225/2003 claiming permission to sell 6 trust properties.

(ii) ExA7 is the Decree in O.S.No.225/2003 which was decreed with costs. ExA8 is the Sale Deed executed by Janarthanan infavour of Prabavathy dated 12.12.2003 for the property in S.No.47/1 comprising of 8 ares 24 cents in Doc.No.2186/2003 for Rs.4,57,350/- wherein the 7th defendant herein has signed as witness. ExA9 is the Sale Deed executed by Janarthanan infavour of K.S.Selvam dated 12.12.2003 in Doc.No.1285/2003 for 5 properties towards a consideration of Rs.4,52,100/-. ExA10 is the Sale Deed executed by Janarthanan infavour of Prabavathy dated 05.01.2004 for property in S.No.47/1 comprising to

an extent of 3.86.0 Hec.ares for a sum of Rs.73,500/-.

(iii) ExA11 is the Sale Deed executed by S.Prabakaran infavour of B.Umamegeswari dated 26.06.2007 in Doc.No.2181/2007 for property in T.S.No.535 comprising an extent of 2650 sq.ft of land towards a consideration of Rs.2,40,000/- wherein the market value of the property stands at Rs.8,48,000/-. ExA12 is the Legal notice dated 02.07.2007 sent to Assistant Engineer along with the acknowledgment receipt requesting to reject the request of Balakrishnan for an EB connection. ExA13 is the Sec.80 Notice sent to Collector, Sub Registrar, Tahsildar, Commissioner, Prabakaran and Umamageshwari requesting not to register any document in said property and not to issue Patta.

(iv) ExA14 to ExA18 are the Acknowledgement cards and receipts for the same. ExA19 is the Sale Deed in Doc No.587/2011 dated 04.03.2011 executed by K.S.Selvam infavour of P.R.Pandiyan for consideration of Rs.1,00,000/- for the suit property in S.No.70/3 comprising 1.10.0. ExA20 is the General Power Deed dated 15.10.2012 executed by K.S.Selvam in favour of K.Sivasakthi in Doc.No.133/2012 for property in S.No.70/3 and S.No.70/6. ExA21 is the Death Certificate of N.Janarthanan, S/o.Natarajan wherein the date of Death is mentioned as 08.01.2006.

10. Analysis:-

(i) At the outset it would be apt to refer to the provisions under O. 7 R.11 of Civil Procedure Code, which reads as follows:

“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.

(ii) The Hon’ble Supreme Court in the case of ***Dahiben v. Arvinbhai Kalyanji Bhanusali*** reported in **(2020) 7 SCC 366** has dealt in detail as to the guiding principles under Order 7 Rule 11. The principles laid

out therein are as follows:-

“**23.2.** *The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.*

23.3. *The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit...*

23.4. *...The whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court...*

23.5. *The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*

23.6. *Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint read in conjunction with the documents relied upon, or whether the suit is*

barred by any law...

23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed.

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing

summons to the defendant, or before conclusion of the trial.

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.”

(iii) On perusal of Plaint, this court finds that the suit property originally belonged to one Krishnasamy Mudaliyar and he executed a registered “WILL” on 25.04.1920 thereby created a trust in his name. The trust was created under a Registered Partition Deed dated 27.06.1908. Initially the trust was managed by the sons of Krishnasamy Mudaliyar as per the trust deed and after them Venkatachalam Mudaliyar, after him Thangaraj, then Muthaiyan, then Padmapriya and finally Janarthanan the 1st defendant took over the management of the trust under document dated 12.03.2002.

(iv) As the 1st defendant resided in Chennai, he executed a Power of Attorney Deed in favour of the 2nd defendant. It is the plaintiff’s case that both of them colluded with an intention to misappropriate the Sale proceeds of the trust properties and obtained an exparte decree in O.S.No.255/2003 to sell the trust properties and thereby sold the trust property to the 6th defendant who is the wife

of 2nd defendant and to 7th defendant. In fine, the suit seeks the relief of declaration that the decree in O.S.No.255/2003 is null and void and sale deeds dated 12.12.2003 as null and void. It is also filed seeking consequential Permanent injunction and Mandatory Injunction.

(v) In the case on hand, the petitioners sought to assail the plaint on the ground of cause of action and statutory bar. On reading the plaint and plaint documents in entirety this court could see a clear cause of action for filing a suit, as the plaint has specific pleading on fraud, to bring home the relief sought for.

(vi) One of the points raised by the petitioners are that, a Sub Court decree could not be declared as null and void by Munsif court. It is settled Principle of Law that fraud vitiates every solemn act. At this juncture it would be apt to refer to the judgment of Hon'ble Supreme Court of India in ***A.V.Pappaiya Sasthiri and ors v. Government of Andara Pradesh and Ors*** wherein the Hon'ble court relied on the legal maxims "*fraus et jus nunquam cohabitant*" and "*fraus et dolus nemini patrocinari debent*" and held that the fraudulent judgment, decree or order is a nullity and non-est in the eye of law, whether delivered by 1st court or final court. The relevant passage is as follows

“ 21. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and

non-est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings".

(vii) It was further stated that the Munsif court has no power to try the matter as the suit involves trust properties. However, on the reading the Trust Act, 1882 it could be seen that, the Trust Act deals with the Private trust and Section 34 of the Act provides for the right to apply to court for opinion in management of trust property. The said section deals with questions on management or administration of trust property. Hence it could be perceived that it is not an complete ouster of jurisdiction of Munsif Court.

(viii) Then, the GOMS No.727 dated 08.03.1960 was pressed into service to show that, only the Sub court and District Court has concurrent jurisdiction with regard to trust matters. The relevant portion from the said G.O. is as follows,

".....(G.O.Ms.No.727, Home, 8th March 1960) S.R.O.No.A-1893 of 1960.

In exercise of the powers conferred by clause (1) of [Section 92](#) of the Code of Civil Procedure, 1908 (Central Act V of 10.8), and in supersession of Judicial Department Notification No.719, dated the

*17th October 1910, published at page 1657 of Part I of Fort St. George Gazette, dated the 25th October 1910. **the Governor of Madras hereby invests all Courts of Subordinate Judges in the State of Madras with jurisdiction under the said Act in respect of suits relating to trusts created for public purpose of a charitable or religious nature....***”

(ix) The above G.O applies only for trust created for public purpose of charitable or religious nature. Further under the savings clause it could be seen that the Trust Act does not applies to mutual relations of members of an undivided family as determined by any customary or personal Law and also to Public or Private, Religious or Charitable endowments. In the case on hand, the nature of the trust is not yet confirmed as initially the petitioners claimed it to be a public trust and insisted on liberty under Section 92 of CPC and once they were asked whether they filed application under S. 92 of CPC in OS.225/2003, the 2nd defendant have filed an affidavit stating that no application was filed, and no order was obtained under S.92 of CPC in O.S.No.225/2003 as it is a Private trust properties.

(x) Once this was pointed out it was argued that, the trust is a private cum public trust. The learned counsel for the petitioners, then relied on the

judgment of Hon'ble Madras High Court in the case of *A.Subramanyam and Ors v. B.Yegnanrayaniah and Anr* reported in *1971 (1) MLJ 46* to press into service the proposition that a mistake made by the learned counsel under erroneous view of Law would not bind him. However, in the case on hand, it is not a statement of the learned counsel but the statement of 2nd defendant/deponent under a sworn affidavit. Hence, this court is of the view that the deponent is bound by his statement and would be estopped from stating otherwise. The petitioners cannot be allowed to approbate and reprobate or blow hot and cold as per his whims and fancies.

(xi) Further as per law, the trust properties has to be sold only by public auction. In the case on hand, the suit property was sold to the 6th defendant wife of 2nd defendant and that too for a value much less value as claimed in the plaint. The nature of the trust would be known only at the stage of trial. Further this suit does not deal with any dispute with regard to Management or Administration of trust, only on that circumstance, the jurisdictional bar under S.34 of Indian Trust Act would apply.

(xii) It could also be seen that the WILL and the Partition Deed prohibits Sale, Mortgage and Lease of the trust properties. That being the case, petitioners have not pleaded the same in O.S.No.225/2003 thereby got an exparte decree for

selling the suit property. Suppression of material facts would amount to playing fraud upon court. The plaint in O.S.No.225/2003 is marked as ExA6.

(xiii) Further the documents ExA21 and ExA11 proves that after the death of Janarthanan/1st defendant, the 2nd defendant has executed Sale Deed in favour of Uma Mageshwari as a power agent of 1st defendant. The plaintiffs have clearly exhibited cause of action for filing the present suit. Further, the suit has been filed within a period of 3 years from the date of decree and hence not barred under the law of limitation.

(xiv) It is settled proposition of Law that, under Order 7 Rule 11, the question that will have to be considered is as to whether the reliefs as claimed in the plaint by the plaintiffs could be granted or not and if none of the reliefs sought in the plaint can be granted then such a suit should be thrown out at the threshold. In the case on hand, fraud has been alleged in each and every transaction which could be established only at the time of trial and could not be decided at this stage.

(xv) It is the case of the respondents that at the time of filing the suit the pecuniary jurisdiction of the Munsif Court was enhanced under Tamil Nadu Civil Courts Act 1873 and the suit was valued as per Section 40 (1) of TNCF & Suit Valuation Act 1955 wherein the subject matter of the suit is taken

into consideration. The subject matter herein is the decree passed by the 1st Additional Sub-Court and it was valued at Rs. 30,000/- then. Court fee is paid accordingly as per law.

(xvi) The suit being 20 years old, has only examined 2 witnesses. Now the petitioner/7th defendant after remaining *exparte* for 20 years has now come forward with this petition. This shows that the intention of the petitioners that it is only to prolong the trial. Such a practice has been deprecated by the Hon'ble Supreme Court in the case of *M/S Bhagya Estate Ventures Pvt. Ltd. v. Narne Estates Pvt. Ltd. & Anr. In Civil Appeal No. 4570 Of 2023*

(xvii) The Hon'ble Madras High Court in the case of **Saraswathi Vidyalaya vs A.V.Sridhar in C.R.P. No. (PD). No. 3957 of 2017** has observed that the trust therein as a private one and held since the pecuniary limits are within the Munsif Court's jurisdiction, hence suit has to be instituted before the Munsif Court. It is a case where initially the plaint was presented in District court, then to Sub Court. However, the Hon'ble High Court observed as follows:-

“From the above, it is seen that the value of the suit property is at Rs.16,000/-, total court fee paid is at Rs.480/- and CF is paid at Rs.520/-. Since the value of the suit property is below one lakh rupees, the suit has to be presented before the District Munsif Court, Ponneri, which is having pecuniary

jurisdiction to deal with the case. If the value of the suit is beyond one lakh rupees and upto 10 lakh rupees, then, the Sub Court, Ponneri has got pecuniary jurisdiction to deal with the suit.”

(xviii) Further it could be seen that the Hon’ble Madras High Court in the case of *Syed Abbas Saheb v. Amir Hamiza Saheb: (1948) 1 MLJ 469*, for a question, when the trust deed provides for the purpose of certain charitable trusts and for paying overs the surplus to the descendants of the founder of the trust, whether S. 92 applies? The Hon’ble Court observed as follows:-

“The plaintiffs are seeking to enforce their private right in the surplus which remains after the charitable purposes are met. No account is asked for in respect of those purposes. The bar under Section 92 does not therefore arise.”

(xix) The above 2 judgments prove that only in case of public trust, application under S.92 of CPC has to be filed and liberty has to be sought. It is the admitted case of the petitioners that it is a private trust. That being the case, suit could be instituted as per the pecuniary limits exclusive of the matters dealt under the Indian Trusts Act.

In view of all the above discussions this court is of the view that the plaint and the plaint documents prima facie discloses a clear cause of action with a right to sue and is not barred by statute or any

other ground as laid out under Order 7 Rule 11.

In the result, I.A.No.170/2024 and I.A.No.103/2025 both petitions are dismissed without costs.

Dictated by me and directly typed in the computer by Steno typist and printed out by her and corrected and pronounced by me in open court, on this day, the 19th day of July.

Additional District Munsif,
Cuddalore.

List of Documents and witnesses on both side: -Nil-

Additional District Munsif,
Cuddalore.

ADM Court, Cuddalore.
Fair Order
I.A.No.170/2024 and I.A.No.103/2025
in
O.S.No.92/2004
Date: 19.07.2025

I.A.No.170/2024 and I.A.No.103/2025
in O.S.No.92/2004 – Dt.19.07.2025
Additional District Munsif Court, Cuddalore.