

(2014) 12 MAD CK 0378

Madras High Court

Case No: C.R.P. (PD). No. 2959 of 2014 and M.P. No. 1 of 2014

N. Saravanan

APPELLANT

Vs

Manujothi Ashramam

RESPONDENT

Date of Decision: Dec. 8, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 43 Rule 1, Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 11(d), 104
- Limitation Act, 1963 - Section 14
- Tamil Nadu Court Fees and Suits Valuation Act, 1955 - Section 12(2), 25, 40

Hon'ble Judges: K. Ravichandra Babu, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K. Ravichandra Babu, J.

The petitioner is the sixth defendant in the suit. The said suit was filed by the first respondent herein as plaintiff for declaration that no right, title and interest is conveyed under document No. 1705/83, dated 6.5.1983 to defendants 3 to 7 who are the legal heirs of the deceased K.N. Nataraja Iyer and also for declaration that no right, title and interest is conveyed under document No. 1704/83, dated 9.5.1983 to the second defendant. Pending the said suit, the sixth defendant filed application under Order 7 Rule 11 CPC for rejection of the plaint on the grounds that the suit is barred by limitation; there was no cause of action for filing the said suit and the suit is under-valued. The trial Court dismissed the said application. Challenging the same, the present Civil Revision Petition is filed by the sixth defendant.

2. The case of the plaintiff in the said suit, in short, is as follows:

The plaintiff-Ashramam, registered under the Societies Registration Act, came into being on 19.12.1963. The plaintiff-Ashramam is owning lands measuring an extent

of 5.02 cents in S.No.165/2 situated in No. 174, Rajakilpakkam Village, Tambaram Taluk, by virtue of a deed of settlement, dated 10.7.1973 made in favour of the plaintiff by one Dr.S.C. Jacob. The said deed is irrevocable. Under the said settlement deed, the power of sale was given to the plaintiff only for the purpose of activities and for maintenance of the plaintiff- Ashramam and it should be done in consultation with the President of the plaintiff-Ashramam and its governing body. The Founder-President of the plaintiff-Ashramam, Gurudev R.P. Lawyer executed a Power of Attorney constituting Dr.S.C. Jacob as the Power of Attorney, through Power of Attorney Deed, dated 17.10.1973, registered as document No. 92/1973. The settlor of the said property as well as the Power of Attorney is one and the same, who is the first defendant. However, the first defendant, without obtaining approval and consultation of the President and the governing body of the plaintiff-Ashramam, had effected two transfers by way of sale deeds, dated 6.5.1983 and 9.5.1983. In the absence of ratification and concurrence of the President and the Board of Management, no title passes on to the purchaser. Since the sale deeds are without the approval, no transfer of interest passes on to the purchaser. The plaintiff continues to deal with the property. On 10.9.1985, a notice was issued on the plaintiff-Ashramam to file a statement under Section 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and on failure to furnish the same, notice under sub-section (2) and draft statement under Section 9(1) of the said Act were issued on 16.6.1986. Accordingly, the competent authority, by order dated 9.3.1990, determined an extent of 19800 Sq.Ft. of land as excess in respect of S.No.165/2. Final statement under Section 10(1) of the said Act was issued on 24.4.1990 by the competent authority. Accordingly, 500 Sq.Meters was declared to be retained by the Ashramam in S.No.165/2 and excess land declared to an extent of 19800 Sq.Ft. was re-classified as S.No.165/2A. The plaintiff alone took part in all the above proceedings. On 24.2.1989, the Founder- President of the Ashramam, namely R.P. Lawrie died. The purchaser of the land, through sale deeds, dated 6.5.1983 and 9.5.1983 had effected further conveyance on 10.7.1989 and 16.7.1989. Thereafter, the subsequent purchasers, through the abovesaid sale deeds effected further sale on 6.9.1989. After a lapse of six years, the defendants 3 to 7 preferred appeal against the order of the competent authority determining the excess vacant land in S.No.165/2 and the acquisition proceedings of the competent authority was set aside by the Principal Commissioner and Commissioner of of Land Reforms, Chennai. The defendants 3 to 7 filed W.P. No.17197 of 1998 to direct the authorities to remove the encroachment in S.No.165/2. On 29.6.1999, the said Writ Petition was disposed of, with a direction that the tenth defendant shall take all effective steps in evicting the encroachers, after complying with the due process of law contemplated under the relevant statutes. The plaintiff filed W.P. No.16578 of 1999 to quash the order made under Section 9(4) of the said Act by the competent authority. The plaintiff also filed W.P. No.17839 of 1999 to quash the order dated 17.6.1998 made in the appeal filed by the defendants 3 to 7 before the appellate authority under the Tamil Nadu Urban Land (Ceiling and Regulation) Act. Both the Writ Petitions were

dismissed, by observing that if there is any other dispute as to the possession or title between the petitioner and the third party, it is open for the petitioner to agitate the same or protect his rights by taking proper action. Thereafter, the suit is filed, which is within time. The sale by the Power of Attorney was effected only on 6.5.1983 and 9.5.1983, whereas on 10.9.1985, a notice was served upon the plaintiff to file a statement under Section 7(1) of the said Tamil Nadu Urban Land (Ceiling and Regulation) Act. In view the proceedings initiated under the said Act, the plaintiff cannot file any suit during the pendency of the proceedings under the said Act, which stood repealed during October 1999. Hence, the suit is within the period of limitation.

3. The sixth defendant has filed the application under Order 7 Rule 11 CPC for rejection of the plaint mainly on three grounds, namely that the suit is barred by limitation, it does not disclose cause of action and the suit is undervalued.

4. The trial Court observed that on a plain reading of the plaint, the Court cannot conclude that the suit is barred by limitation and that the question of limitation being a mixed question of law and fact, the same shall have to be gone into at the time of trial only and it is premature to decide the same at this stage. Insofar as the ground raised in respect of the cause of action is concerned, the trial Court observed that unless the oral evidence is let in, the facts set out in the plaint cannot be brought into light, as the cause of action is the bundle of facts. In respect of the other ground that the suit is under-valued and proper Court fee has not been paid, is concerned, the Court below has observed that such ground is not available, since no direction was given by the trial Court for paying the deficit Court fee and that there is no failure on the part of the plaintiff to pay the same inspite of such direction. Therefore, it was observed by the trial Court that on this ground also, the plaint cannot be rejected.

5. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner/6th defendant submitted as follows:

The challenge in the suit is made after 17 years of the impugned sales. The Power of Attorney, dated 17.10.1973, through which the impugned sales were made, was not at all challenged by the plaintiff at any point of time. The plaintiff admits the knowledge of existence of the Power of Attorney as well as the execution of the sale deeds at the relevant point of time itself. Therefore, the suit having not been filed within three years, is barred by limitation, based on the averments in the plaint itself. There is no cause of action for filing the said suit, because, the pendency of the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act will not preclude the plaintiff from filing the suit, nor such proceedings would extend the period of limitation. The suit is under-valued and the plaintiff has to pay the Court fee as per Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act. The proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act cannot be equated with that of the proceedings under Section 14 of the Limitation

Act to get the extension of the period of limitation. Article 58 of the Limitation Act alone would apply in this case, which contemplates three years as the period of limitation to challenge the impugned transaction. In support of his submissions, learned Senior Counsel relied on the following decisions:

- (i) [Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Depp. and Others,;](#)
- (ii) [Ram Bhawan Singh and Others Vs. Jagdish and Others,;](#)
- (iii) [The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee,;](#)
- (iv) [Chandra Vs. Reddappa Reddy, Thulasi and Sargunam](#) and
- (v) 2011 (2) MWN (Civil) 122 (Madras High Court) (K.Nagaraj Vs. Saraswathy Ammal).

6. Per contra, Mr.S.Meenakshi Sundaram, learned counsel appearing for the first respondent/plaintiff submitted as follows:

The Civil Revision Petition itself is not maintainable, as the petitioner has to file only appeal as per the decision of this Court reported in [The Ootacamund Club Vs. H.S. Mehta,.](#) On merits, there is a delay in filing the application under Order 7 Rule 11 CPC. Since the plaintiff-Ashramam is only a Trust, Article 92 of the Limitation Act alone would apply, which contemplates 12 years as the period of limitation. From 3.8.1976 to October 1999, the plaintiff could not have a right to challenge, because of the pendency of the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act. Therefore, filing of the suit in the year 2000 is not barred by limitation. When the Urban Land Ceiling proceedings were pending, the plaintiff cannot file the suit. As per Section 6 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, any transfer is null and void. The impugned sale deeds are non-est in the eye of law and therefore, the question of seeking cancellation does not arise. The orders passed in W.P. No.17839 of 1999 and W.A. No.2301 of 1999 granted liberty to the plaintiff to agitate its rights. The cause of action is bundle of facts, which has to be gathered and considered as stated in the plaint. With regard to the valuation of the suit, it has been rightly valued as per Section 25 of the Tamil Nadu Court Fees and Suits Valuation Act. In support of the above submissions, learned counsel for the first respondent relied on the following decisions:

- (i) [P. Thillai Selvan Vs. Shyna Paul,;](#)
- (ii) [Electronic Machine Tools Limited Vs. Power Engineers and Precitek Components \(P\) Ltd., and](#)
- (iii) [Kamala and Others Vs. K.T. Eshwara Sa and Others,.](#)

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. The petitioner, who is the sixth defendant in the suit for declaration, seeks for rejection of the plaint on the following three grounds:

- (i) The suit is barred by limitation;
- (ii) No cause of action exists for filing the suit and
- (iii) The suit is not properly valued and the Court fee paid is not correct.

9. Insofar as the first ground with regard to the limitation is concerned, the petitioner contends that the suit filed in the year 2000, for declaration to declare the sale deeds, dated 6.5.1983 and 9.5.1983 as void, is hopelessly barred by limitation. It is his case that the plaintiff is fully aware of the sales then and there and such awareness is evident in the plaint itself. Therefore, the petitioner contends that the plaint is liable to be rejected on the ground of limitation. It is his further contention that the pendency of the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, cannot be a ground for extending the period of limitation.

10. On the other hand, it is contended by the first respondent/plaintiff that it is a Trust and therefore, Article 58 of the Limitation Act would not apply and only Article 92 of the Limitation Act would apply, which contemplates 12 years as the period of limitation for filing a suit. It is their further contention that even though the impugned sales were made in the year 1983, the same are void-ab initio, since there was no transfer of title which passes on to the purchaser, as there was no ratification of the sales by the President and the governing body of the plaintiff-Ashramam as required under the original settlement deed, dated 10.7.1973. It is the further contention of the plaintiff that from 3.8.1976 when the Tamil Nadu Urban Land (Ceiling and Regulation) Act came into force, to October 1999 when the said Act was repealed, the plaintiff was debarred from filing any suit, as they are not competent to file the suit, in view of the pendency of the urban land ceiling proceedings at the relevant point of time. According to the plaintiff, the transfer made was null and void and non-est in the eye of law, and therefore, the plaintiff is not required to seek for cancellation immediately after the transaction. These are all the plaint averments, based on which the suit came to be filed by claiming the same as within the period of limitation.

11. A careful consideration of the above rival contentions of the parties would undoubtedly reveal that there are several disputed facts and circumstances regarding the question of limitation alone. Whether the plaintiff- Ashramam is a Trust and if it is so, whether the relevant Article under the Limitation Act is Article 92, are all questions which do not involve pure application of law alone for deciding the issue and on the other hand, as stated supra, application and consideration of both facts and law are necessary to decide the issue of limitation. The plaintiff-Ashramam has not simply filed the suit seeking to challenge the sale deeds of the year 1983 without explaining as to why they have come before the Court after such a long period. It is claimed that the proceedings under the Tamil Nadu Urban Land (Ceiling

and Regulation) Act, even after the impugned sales, were issued in the name of the plaintiff and they alone participated in the proceedings all throughout.

12. Further, from a perusal of the order passed by this Court in W.P. No.17839 of 1999, dated 5.11.1999, filed by the first respondent/plaintiff, challenging the proceedings of the Principal Commissioner and Commissioner for Land Reforms, Chennai, dated 17.6.1998, it is seen that this Court has made the following observations:

"3..... If there is any other dispute as to possession or title between the petitioner and the third party, it is well open to the petitioner to agitate the same or protect his rights by taking proper action. It is needless to add that the land ceiling provision had already been repealed and as such there is no occasion for further proceedings also....."

13. Not being satisfied with the above observations of this Court, the first respondent/plaintiff filed Writ Appeal in W.A. No.2301 of 1999, wherein a Division Bench of this Court, by judgment dated 11.1.2000, has observed as follows:

"4..... As the Proceedings initiated under Tamil Nadu Urban Land (Ceiling and Regulation) Act have come to an end, we do not think that the appellant has got any right to pursue the matter in this writ appeal. We find no merit in this appeal and accordingly it is dismissed. However, we make it clear that if there is any genuine dispute between the appellant and the 6th respondent in respect of the same property, it would be open to the appellant to agitate the same before the appropriate forum without prejudice to such rights of the appellant....."

14. When these are the observations made by this Court granting liberty to the first respondent/plaintiff to agitate the matter before appropriate forum and when the above orders were passed by this Court only on 5.11.1999 in W.P. No.17839 of 1999 and on 11.1.2000 in W.A. No.2301 of 1999, the questions as to whether the present suit filed by the first respondent/plaintiff in the month of January 2000, is barred by limitation or not, is the question that needs to be considered, appreciated and decided based on the totality of the circumstances as well as the evidence let in by the parties. When that being the factual position, the petitioner/sixth defendant cannot seek for rejection of the plaint as barred by limitation at the threshold.

15. Therefore, all these factual aspects of the matter need to be gone into to find out as to whether the plaintiff is justified in contending that they were prevented by law from challenging the impugned sales at that time to hold that the suit is not barred by limitation. A careful perusal of the entire averments made in the plaint is certainly not driving this Court to come to a conclusion that the suit is barred by limitation on the face of the plaint averments. On the other hand, this Court is of the view that such averments made in the plaint need to be considered and decided only after conducting trial by giving sufficient opportunity to the plaintiff to establish their case by adducing material evidence in support of their pleadings. Therefore, I am of

the view that the plaint cannot be rejected on the ground of limitation, as such issue being mixed question of law and fact, has to be considered and decided only in the trial.

16. Coming to the next ground with regard to the cause of action, it is well settled that the cause of action as stated in the plaint, has to be seen and considered while deciding the application filed under Order 7 Rule 11 CPC and not the facts as projected by the defendant in the said application. A perusal of the entire plaint in this case would certainly show that the petitioner/sixth defendant is not justified in contending that there is no cause of action for the first respondent/plaintiff to file the suit. In this connection, it is useful to refer the decision of this Court reported in [Electronic Machine Tools Limited Vs. Power Engineers and Precitek Components \(P\) Ltd.,](#) wherein, this Court observed that the averments made in the plaint are sufficient to decide as to whether the cause of action has been mentioned in the plaint or not and there is no need to decide as to whether the cause of action averred in the plaint is true and correct. It is relevant to quote paragraphs 16 and 17 of the said decision:

"16. It is an admitted fact that the averments in the plaint are sufficient to prove that where the cause of action is mentioned and averred in the plaint, there is no need to decide as to whether the cause of action averred in the plaint is true and correct.

17. In such circumstances, as per the dictum laid down in the decisions quoted above, I am of the view that the averments in the plaint are sufficient to decide as to whether the cause of action has been mentioned in the plaint or not."

17. Further, in the decision reported in [Kamala and Others Vs. K.T. Eshwara Sa and Others,](#) the Honourable Supreme Court has observed that whether a plaint discloses a cause of action or not, is a question of fact depending upon the facts and circumstances of each case and the same must be found out from a reading of the plaint itself. In paragraph 26 of the said decision, it has been observed as follows:

"26. Order 7 Rule 11(d) of the Code serves a broad purpose as has been noted in [Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another,](#) in the following terms:

"The idea underlying Order 7 Rule 11(a) is that when no cause of action is disclosed, the Courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the Courts would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the Court's resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the Court is doomed to fail would not further be allowed to be used as a device to harass a litigant. (See [Azhar Hussain Vs. Rajiv Gandhi,](#)"

But therein itself, it was held:

"Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading of the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

In [C. Natrajan Vs. Ashim Bai and Another](#), this Court held at p.1281 of MLJ:

"7. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the Court would not be entitled to consider the case of the defence. (See [Popat and Kotecha Property Vs. State Bank of India Staff Association](#),"

18. Further, as rightly argued by the learned counsel for the first respondent/plaintiff, the cause of action being a bundle of facts, the same has to be culled out as averred in the plaint, and therefore, the petitioner is not entitled to succeed on this ground also.

19. The last question is with regard to the valuation of the suit and payment of Court fee. According to the petitioner/sixth defendant, the suit ought to have been valued and the Court fee should have been paid as per Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, whereas it is contended by the first respondent/plaintiff that the suit had been valued and the Court fee had been paid as per Section 25 of the said Act. Hereagain, the petitioner cannot succeed on this ground, in view of the fact that what is contemplated under Order 7 Rule 11 CPC is that there must be failure on the part of the plaintiff to pay the deficit Court fee inspite of a direction issued by the Court to pay the same. In this case, there is no such finding rendered by the Court or a direction was issued to the plaintiff to pay the deficit Court fee, which they failed to pay. Moreover, the valuation of the suit and payment of Court fee thereon, again is not issue involving purely question of law and on the other hand, it is a mixed question of law and fact. The very same issue was considered by this Court earlier in a case reported in [P. Thillai Selvan Vs. Shyna Paul](#), wherein, in paragraphs 9 and 13, it has been observed as follows:

"9. According to the second defendant who is the petitioner herein, such valuation of the suit is not correct and therefore, the plaint has to be rejected. The valuation of the suit property and payment of Court fee thereon, are certainly not purely question of law and on the other hand, it is a mixed question of law and fact. Therefore, the plaint cannot be rejected based on the objection raised in respect of the valuation of the suit property, especially when such objection is opposed and denied by the plaintiff. At this juncture, it is useful to refer the decision of this Court reported in Nagarjuna Oil Corporation Ltd. Vs. R.Revathi (supra) [Nagarjuna Oil](#)

Corporation Ltd. Vs. R. Revathi, , wherein, in paragraph 9, it has been observed as follows:

"9. According to me, that question can be decided by the Court below by permitting the party to lead the evidence. The reason is that the Court fee is a mixed question of fact and law and it cannot be decided as a preliminary issue. Nevertheless, under Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act, any Defendant may, by his Written Statement filed before the first hearing of the Suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section, not later, plead that the subject matter of the Suit has not been properly valued or that the fee paid is not sufficient. When such questions are raised, the same shall be decided before the evidence is recorded...."

"13. Insofar as the question of limitation is concerned, as rightly submitted by the learned counsel for the first respondent/plaintiff, it is purely a mixed question of law and fact, and therefore, based on such allegations, the plaint cannot be rejected even before trial is conducted to find out as to whether such allegations are true and sustainable in the eye of law."

Therefore, the said ground is also not available for the petitioner/sixth defendant seeking for rejection of the plaint.

20. Learned Senior Counsel appearing for the petitioner relied on a decision of the Honourable Supreme Court reported in The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. Ponniyamman Educational Trust represented by its Chairperson/Managing Trustee, to contend that at any time before conclusion of the trial, the application under Order 7 Rule 11 CPC can be filed. There is no quarrel over the said proposition. What is to be seen is as to whether the defendant has made out a case for rejection of the plaint under Order 7 Rule 11 CPC. I have already found that the grounds raised by the petitioner cannot be sustained to reject the plaint. Therefore, the said decision is not helping the petitioner in any manner.

21. Further, the decision of the Honourable Supreme Court reported in Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, is relied on by the learned Senior Counsel appearing for the petitioner to contend as to when Section 14 of the Limitation Act can be applied. In my considered view, such issue is not for this Court to consider at present, since this Court has relegated the issue with regard to the limitation to be considered by the trial Court after conducting trial. Therefore, the petitioner can raise all these points before the trial Court at appropriate time.

22. The other decision of the Honourable Supreme Court reported in Ram Bhawan Singh and Others Vs. Jaqdish and Others, is cited by the learned Senior Counsel appearing for the petitioner to contend that the suit filed by the first respondent/plaintiff cannot be considered to be one in good faith. I am of the view

that the facts and circumstances of each case have to be seen to find out as to whether the proceedings initiated are in good faith or not. Here again, it is a matter for trial to substantiate such contention by the petitioner.

23. Though the learned counsel for the first respondent raised a preliminary objection with regard to the maintainability of the Civil Revision Petition by relying upon the decision of this Court reported in [The Ootacamund Club Vs. H.S. Mehta,](#) I am not inclined to accept the said submission, in view of the fact that the abovesaid decision was already distinguished by this Court in the subsequent decisions reported in [Chandra Vs. Reddappa Reddy, Thulasi and Sargunam](#) and 2011 (2) MWN (Civil) 122 (K.Nagaraj Vs. Saraswathy Ammal) and held that the Revision is maintainable.

24. Learned counsel for the first respondent also relied on a decision of the Honourable Supreme Court reported in [Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another,](#) in support of his submission regarding the maintainability of the Civil Revision Petition. In the above decision, the Honourable Supreme Court considered the decision made in Shah Babulal Khimji case [Shah Babulal Khimji Vs. Jayaben D. Kania and Another,](#) and found that an order rejecting the plaint would be appealable, but it does not expressly state that an order refusing to reject the plaint, would not be appealable. A careful perusal of the decision made in Shah Babulal Khimji case (cited supra) would show that such decision came to be rendered while considering the scope of Clause 15 of the Letters Patent with regard to the appeal within the High Court itself. In other words, whether an intra-Court appeal is barred, was the issue and thus, the Honourable Supreme Court has observed in Shah Babulal Khimji case (cited supra) that the provisions under Order 43 Rule 1 CPC and Section 104 of the CPC would not apply to the internal appeals within the High Court. Such being the factual aspects of the issue involved in the above referred case before the Honourable Supreme Court, the same cannot be relied and sought to be applied to the present case, as this Civil Revision Petition has not arisen out of an intra-Court order or proceedings. In fact, a learned single Judge of this Court in the [The Ootacamund Club Vs. H.S. Mehta,](#) has followed only Shah Babulal Khimji case (cited supra) to hold that the Revision is not maintainable.

25. Therefore, by following the above two decisions of this Court, reported in [Chandra Vs. Reddappa Reddy, Thulasi and Sargunam](#) and 2011 (2) MWN (Civil) 122 (cited supra), which distinguished the earlier decision of this Court reported in [The Ootacamund Club Vs. H.S. Mehta,](#) I reject the contentions of the first respondent on this aspect.

26. Considering all the above facts and circumstances, the present Civil Revision Petition fails and the same is dismissed. No costs. The Miscellaneous Petition is closed.