

(2014) 11 MAD CK 0113

In the Madras High Court

Case No : C.M.A. Nos. 2023, 2024, 2087, 2088 of 2014 and M.P. Nos. 1,1,1 and 1 of 2014

T. Kannappan

APPELLANT

Vs

K. Kannaian and Others

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Chit Funds Act, 1982 — Section 3, 5
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 11 Rule 7, Order 7 Rule 11, Order 7 Rule 11(a), 35-A
Penal Code, 1860 (IPC) — Section 120(B), 406, 409, 420
Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 — Section 5, 7(3), 7(5), 9
Transfer of Property Act, 1882 — Section 41

Citation : (2015) 1 CTC 173 : (2015) 1 LW 268 : (2015) 1 MLJ 324

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : S.V. Jayaraman, Senior Counsel for A.D. Jagadish Chandira, Advocates for the Appellant; P. Rajamanickam, T. Jayaramraj, Government Advocate and S. Shahul Hameed, Advocates for the Respondent

Judgement

R. Subbiah, J.—All these above four appeals have been filed challenging the fair and decreetal order passed by the learned Special Judge under the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act (in short TANPID Act), Chennai, dismissing the applications filed by the appellant T. Kannappan Gurukkal @ Venkatasubramanian under Order 7 Rule 11(a) of C.P.C. r/w Section 7(5) of the TANPID Act to reject the original applications filed by the 1st respondent K. Kannaian under Section 9 of the TANPID Act. C.M.A. No. 2023 of 2014 has been filed against the order passed in I.A. 85 of 2013 in O.A. No. 17 of 2012. C.M.A. No. 2024 of 2014 has been filed against the order passed in I.A. No. 84 of 2013 in O.A. No. 16 of 2012. C.M.A. No. 2087 of 2014 has been filed against the order passed in I.A. No. 82 of 2013 in O.A. No. 14 of 2012. C.M.A. No. 2088 of 2014 has been filed against the order passed in I.A. No. 83 of 2013

in O.A. No. 15 of 2012.

2. Since the issues involved in all these appeals are one and the same, these appeals are disposed of by way of this common judgment.

3. The brief facts, which are necessary to decide the issues involved in these appeals, are as follows-

3(a). During the period from 1984 to 1989, the 1st respondent K. Kannaian and the appellant T. Kannappan Gurukkal @ Venkatasubramanian and Others floated Suprabath Chits and Investments (P) Ltd., (Registered), Krishna Finance (Registered), K.B. Investments (unregistered) and Suprabath Investments (unregistered). The 1st respondent K. Kannaian is the Managing Director and the appellant T. Kannappan Gurukkal @ Venkatasubramanian and Others are the Directors of the said financial firms. They have received number of deposits (money) from the public under various schemes by promising exorbitant rate of interest and thereby collected the principal amount of Rs. 23,12,59,636/-. Since they defaulted in repayment, a complaint was preferred by one Thiru. N. Ramesh Babu @ Ramesh S/o. Narayanasamy with the 3rd respondent and on the basis of the said complaint, a case in EOW II Cr. No. 03/2009 under Sections 406, 409, 420, 120(B) IPC and Section 5 of TANPID Act and Sections 3 & 5 of the Chit Fund Act, was registered on 29.09.2009 as against the above said financial firms as well as directors of the said firms, for default in repayment of the principle amount and interest. During the course of investigation, 32 properties of the accused/Directors of the said concerns were attached by the Government Order vide. G.O.Ms. No. 215 Home (Police XIX) Department, dated 23.02.2010 and one more property was attached under G.O.Ms. No. 529 of 2012 dated 13.07.2012. Thereafter, the Competent Authority/District Revenue Officer (2nd respondent) filed O.A. No. 85/2010 to make the ad-interim attachment absolute, in respect of the properties relating to the G.O.Ms. No. 215 of 2010 dated 23.02.2010, before the learned Special Judge under TANPID Act. While so, one of the accused in the case viz., 1st respondent Kannaian filed four applications in O.A. Nos. 14 to 17 of 2012 under Section 9 of the TANPID Act before the learned Special Judge under TANPID Act, seeking to permit him to furnish security and to cancel the order of attachment in respect of some of the properties. The nature of security offered by the 1st respondent Kannaian in each of the above OAs are as follows-

"1) In O.A. No. 14 of 2012, he offered to deposit a sum of Rs. 5.85 crores as security to cancel the ad-interim order of attachment with respect to Item No. 32 in G.O.Ms. No. 215, dated 23.02.2010, viz., a vacant land measuring to an extent of 9000 sq. ft., comprised in Survey No. 95/8, 95/3, at Kannappa Nagar, 1st Main Road.

2) In O.A. No. 15 of 2012, he offered to deposit a sum of Rs. 5,67,20,000/- as a security to cancel the interim attachment in respect of the house sites bearing Plot Nos. 42, 43 & 44 measuring to an extent of 8726 sq. ft. described at Item Nos. 13 & 14 in G.O.Ms. No. 215, dated 23.02.2010.

3) In O.A. No. 16 of 2012 he offered to deposit Rs. 3,30,00,000/- as security to cancel the order of attachment in respect of the house site bearing Plot No. 24 measuring to an extent of 3655 sq. ft. described in Item No. 4 in G.O.Ms. No. 215, dated 23.02.2010.

4) In O.A. No. 17 of 212, he offered to deposit a sum of Rs. 5,44,25,000/- by way of security to cancel the interim attachment in respect of the house sites bearing Plot No. 15 and 16 measuring a total of 8373 sq. ft. described at item No. 13 and 14 in G.O.Ms. No. 215, dated 23.02.2010."

4. O.A. No. 14 of 2012 has been filed by the 1st respondent Kannaian as power agent of the appellant T. Kannappan Gurukkal @ Venkatasubramanian, to offer security as Power Agent of T. Kannappan Gurukkal @ Venkatasubramanian, by projecting a case that he had purchased the property under attachment from the appellant T. Kannappan Gurukkal @ Venkatasubramanian, for a valid sale consideration in the year 1997 itself and the appellant T. Kannappan Gurukkal @ Venkatasubramanian has executed a Power of Attorney Deed in favour of the 1st respondent Kannaian instead of a sale deed. So far as O.A. Nos. 15, 16 & 17 of 2012 are concerned, the 1st respondent has offered security in lieu of attachment order in his individual capacity.

5. Originally all the above said four Original Applications have been filed by the 1st respondent Kannaian only as against the official respondents viz., i) Competent Authority/District Revenue Officer, ii) Deputy Superintendent of Police, EOW-II, Chennai, and the Association of Depositors of Suprabath Chits and Investments. When the appellant T. Kannappan Gurukkal @ Venkatasubramanian came to know about the OAs filed by the 1st respondent to offer security for cancelling the ad-interim attachment order in respect of certain items of properties mentioned in G.O.Ms. No. 215 Home (Police XIX) Department, dated 23.02.2010, he got himself impleaded as one of the respondents in all the said four OAs filed by the 1st respondent Kannaian and filed four applications in I.A. Sr. No. 167 to 170 of 2013 under Order 7 Rule 11(a) of C.P.C. r/w Section 7(5) of TANPID Act, seeking to reject the said OAs filed by the 1st respondent Kannaian, contending that the 1st respondent Kannaian has no locus standi or cause of action to file the said OAs, since he is not the owner of the subject properties. But, the said IAs were rejected by the learned Special Judge under TANPID Act at the SR stage itself, stating that the civil court proceedings are not applicable to the proceedings pending before the TANPID Court. Aggrieved by the order of rejection of the applications, the appellant T. Kannappan Gurukkal @ Venkatasubramanian had filed appeals in C.M.A. Nos. 2658 to 2661 of 2013 before this Court. This Court by a common judgment dated 14.08.2013 directed the Special Court under TANPID Act to number the said applications filed by the appellant herein under Order 7 Rule 11 C.P.C. and to decide the applications on merits. The relevant portion of the order passed by this Court in the said appeals is extracted hereunder-

"7. Therefore, for any cause of action that arises during the attachment or sale

or realisation or raising of an attachment, the Code of Civil Procedure is applicable. The Original application is filed under Section 9 of the Act and the application to implead the present appellant is filed under Order I Rule 10, admittedly, invoking the provisions of Code of Civil Procedure. In that event, this Court fails to understand how the court below has raised a question, how an application under Order VII Rule 11 of C.P.C. is maintainable?

8. Whether the relief can be granted on an application of Order VII Rule 11 is a different matter. But, questioning the maintainability itself is against the provisions and therefore, the order of the trial Court rejecting the applications at the threshold itself, is erroneous."

6. Thereafter, the applications filed by the appellant T. Kannappan Gurukkal @ Venkatasubramanian were numbered as I.A. Nos. 82 to 85 of 2013. After hearing both parties in the said IAs, the TANPID Court has dismissed all the IAs stating that the issues raised in the said IAs by the appellant herein could be decided only in the Original Applications filed by the 1st respondent herein and the IAs filed under Order 7 Rule 11 of C.P.C. is not legally sustainable. Aggrieved over the same, the present appeals have been filed by the appellant.

7. The case put forth by the 1st respondent Kannaian in the above said OAs are as follows-

7(i). O.A. No. 14 of 2012: This OA has been filed by the 1st respondent Kannaian as a Power Agent of the appellant T. Kannappan Gurukkal @ Venkatasubramanian, stating that he had purchased the house site measuring to an extent of 9000 sq. ft. comprised in Survey No. 95/8, 95/3, at Kannappa Nagar, 1st Main Road, from the appellant T. Kannappa Gurukkal @ Venkatasubramanian for valid consideration in the year 1997 itself. Since he wanted to promote the property by construction of apartment and sale to third parties, he requested the appellant T. Kannappa Gurukkal @ Venkatasubramanian to execute a Power of Attorney deed in his favour instead of pucca sale deed. Accordingly, a Power of Attorney deed dated 20.11.1997 was executed by the appellant in favour of the 1st respondent Kannaian. The payments towards sale price were made both by way of cheque and cash, which would be reflected in the ledger maintained by the 1st respondent for and on behalf of the former Partners of Krishna Finance. He also obtained a sale receipt from the appellant T. Kannappa Gurukkal towards the receipt of the entire sale consideration. According to the 1st respondent, the Power of Attorney Deed dated 20.11.1997 is not a mere power simpliciter and it has been executed in the place of sale deed after the receipt of entire sale price. Hence, the 1st respondent Kannaian is the owner of the said property viz., the house site measuring to an extent of 9000 sq. ft., comprised in Survey No. 95/8, 95/3, at Kannappa Nagar, 1st Main Road. Hence, he is prepared to deposit a sum of Rs. 5.85 crores to raise the attachment in respect of the said property.

7(ii). O.A. No. 15/2012: The 1st respondent Kannaian has purchased the house

sites bearing Plot Nos. 42, 43 & 44 measuring to an extent of 8726 sq.ft. (described at Item Nos. 13 & 14 in G.O.Ms. No. 215, dated 23.02.2010) from the appellant T. Kannappa Gurukkal for a sum of Rs. 21,91,000/- and the said sale consideration was paid by way of cheques and cash from the account of the Krishna Finance. After entire sale price was paid, a sale agreement was signed by the appellant & his wife in favour of the 1st respondent on 04.09.1995. Later on 04.04.1997, both the appellant T. Kannappa Gurukkal and his wife executed a power deed in favour of the 1st respondent, instead of pucca sale deed, and they also handed over the possession of the property to the 1st respondent on the same day. But, now the appellant is denying the execution of power deed and falsely alleged that his signature and the signature of his wife Shanthi were forged. Further, in order to deprive lawful payment due to the depositors, the appellant T. Kannappa Gurukkal created two bogus settlement deeds dated 31.08.2009 in favour of his wife Shanthi. According to the 1st respondent, since the entire sale price has been paid and he was also put in possession of the properties, he is the owner of the properties. Thus, the 1st respondent prayed the Court for permission to deposit a sum of Rs. 5,67,20,000/- as a security to cancel the interim attachment in respect of the house sites bearing Plot Nos. 42, 43 & 44 measuring to an extent of 8726 sq. ft. described at Item Nos. 13 & 14 in G.O.Ms. No. 215, dated 23.02.2010.

7(iii). O.A. No. 16 of 2012: The 1st respondent Kannaian purchased the house site bearing Plot No. 24 in Lay out No. 101/1973, measuring to an extent of 3655 sq. ft., situated at Radhakrishna Nagar, Thiruvanmiyur, Chennai, from the appellant T. Kannappa Gurukkal, for a sale consideration of Rs. 22,00,000/- in the year 1997 itself. Since he wanted to promote the property by construction of apartment and sale to third party, he requested the appellant to give a receipt for payment of sale price. Accordingly, the appellant had given a confirmation deed on 02.06.1992 in favour of the 1st respondent Kannaian and handed over the possession of the property to him. Thereafter, on 06.04.2000, the appellant executed a Power of Attorney deed in respect of the said property in favour of the 1st respondent. The payments made towards sale price were reflected in the ledger maintained by the 1st respondent for and on behalf of the former partners of Krishna Finance. The Power of Attorney deed dated 06.04.2000 is not a mere power simplicitor and it has been executed in the place of sale deed after the receipt of entire sale price. Hence, the 1st respondent Kannaian is the absolute owner of the said house site. Hence, he prayed the Court for grant of permission to deposit a sum of Rs. 3,30,00,000/- as security to cancel the order of attachment in respect of the house site bearing Plot No. 24 measuring to an extent of 3655 sq. ft. described in Item No. 4 in G.O.Ms. No. 215, dated 23.02.2010.

7(iv). O.A. No. 17/2012: The 1st respondent Kannaian has purchased the house sites bearing Plot Nos. 15 and 16 measuring to a total extent of 8373 sq. ft. (described at item No. 13 and 14 in G.O.Ms. No. 215, dated 23.02.2010) from the appellant T. Kannappa Gurukkal for a sum of Rs. 16,50,000/- and the said

sale consideration was paid by way of cheques and cash from the account of the Krishna Finance. After entire sale price was paid, a general Power of Attorney deed was given by the appellant & his wife in favour of the 1st respondent on 09.04.1997. Later on 02.06.1997, both the appellant T. Kannappa Gurukkal and his wife executed a confirmation deed in favour of the 1st respondent to prove payment of entire sale price. But, now the appellant is denying the execution of power deed and falsely alleged that his signature and the signature of his wife Shanthi were forged. Further, in order to deprive lawful payment due to the depositors, the appellant T. Kannappa Gurukkal created two bogus settlement deeds dated 31.08.2009 in favour of his wife Shanthi. According to the 1st respondent, since the entire sale price has been paid and he was also put in possession of the properties, he is the owner of the properties. Thus, the 1st respondent prayed the Court for grant of permission to deposit a sum of Rs. 5,44,25,000/- by way of security to cancel the interim attachment in respect of the house sites bearing Plot Nos. 15 and 16 measuring to an extent of 8373 sq. ft. described at item Nos. 13 and 14 in G.O.Ms. No. 215, dated 23.02.2010.

8. In all the above four OAs, the 1st respondent had filed proof affidavits by examining himself as P.W. 1.

9. In the above said OAs, the appellant T. Kannappa Gurukkal @ Venkatasubramanian has filed Interlocutory Applications in I.A. Nos. 82 to 85 of 2013 for rejection of the said OAs under Order VII Rule 11(a) & (d) of C.P.C. r/w Section 7(5) of TANPID Act, 1997. The sum and substance of the Interlocutor Applications filed by the appellant T. Kannappa Gurukkal @ Venkatasubramanian are as follows-

9(i). I.A. No. 82 of 2013 in O.A. No. 14/2012: The 1st respondent Kannaian is claiming ownership over the subject property in O.A. No. 14 of 2012 based on the registered General Power of Attorney dated 20.11.1997 registered as Document No. 1014 of 1997 at SRO, Joint I South Chennai. But, the said General Power of Attorney had been duly cancelled by the appellant under the deed of Revocation of Power of Attorney dated 25.03.2004 registered as Document No. 427 of 2004 at SRO, Joint I South Chennai to the knowledge and consent of the agent Kannaian/1st respondent. In fact, the 1st respondent Kannaian had signed in the Deed of Revocation of Power of Attorney dated 25.03.2004 as attesting witness and also as identifying witness. But, in spite of the same, the 1st respondent Kannaian is attempting to deal with the properties. Hence, a notice dated 23.04.2012 was sent to the 1st respondent severely warning him not to deal with the subject property. Though the said notice was served on the 1st respondent Kannaian, no reply had been sent by him. Only after the receipt of notice dated 23.04.2012 and despite having got the knowledge about the cancellation of the General Power of Attorney dated 20.11.1997, the 1st respondent has filed O.A. No. 14 of 2012. The alleged sale confirmation affidavit dated 13.08.2003 is forged and fabricated document. The 1st respondent Kannaian is not the owner of the subject property. Therefore, the said O.A. 14 of

2012 is not maintainable.

9(ii). I.A. Nos. 83 of 2013 in O.A. No. 15 of 2012: The 1st respondent Kannaian is claiming ownership over the subject properties in O.A. No. 15 of 2012 based on the unregistered General Power of Attorney deed dated 04.04.1997 and the unregistered Sale Agreement dated 04.09.1995. But, those documents are forged and fabricated by the 1st respondent and those documents will not confer any title to the 1st respondent in respect of the subject properties in O.A. No. 15 of 2012. Further, it is the contention of the appellant that a mere perusal of G.O.Ms. 215, under which the properties were attached, would show that Ms. T.K. Shanthi is the absolute owner of the schedule mentioned property in terms of the registered Settlement Deeds dated 01.09.2009. The 1st respondent is not the owner of the subject properties. Therefore, he cannot sought for any relief under Section 9 of TANPID Act in respect of the subject properties in O.A. No. 15 of 2012.

9(iii). I.A. No. 84 of 2013 in O.A. No. 16 of 2012: The 1st respondent is claiming ownership in respect of the subject property in O.A. No. 16 of 2012 on the basis of the General Power of Attorney deed dated 06.04.2000, registered as Document No. 381 of 2000, executed by the appellant appointing the 1st respondent Kannaian as Power Agent. But, the said General Power of Attorney had been duly cancelled by the appellant under the Deed of Revocation of Power of Attorney dated 26.05.2009, registered as Document No. 826 of 2009, to the knowledge and consent of the agent 1st respondent Kannaian. Therefore, he cannot sought for any relief under Section 9 of TANPID Act in respect of the subject properties in O.A. No. 16 of 2012.

9(iv). I.A. 85 of 2013 in O.A. No. 17 of 2012: The 1st respondent Kannaian is claiming ownership over the subject properties in O.A. No. 17 of 2012 based on the unregistered General Power of Attorney deed dated 09.04.1997 and the unregistered Sale Agreement dated 02.06.1995. But, those documents are forged and fabricated by the 1st respondent and those documents will not confer any title to the 1st respondent in respect of the subject properties in O.A. No. 17 of 2012. Further, it is the contention of the appellant that a mere perusal of G.O.Ms. 215, under which the properties were attached, would show that Ms. T.K. Shanthi is the absolute owner of the schedule mentioned property in terms of the registered Settlement Deeds dated 01.09.2009. The 1st respondent is not the owner of the subject properties. Therefore, he cannot sought for any relief under Section 9 of TANPID Act in respect of the subject properties in O.A. No. 17 of 2012.

10. But, the Court below, after considering the submissions made on either side, has dismissed all the Interlocutory Applications in I.A. Nos. 82 to 85 of 2013, on the findings that only if the applications filed by the first respondent herein did not disclose any cause of action, the same can be rejected under Order VII Rule 11 of C.P.C. and as the 1st respondent Kannaian is claiming right over the subject properties, whether the applications filed by him to furnish security in

O.A. Nos. 14 to 17 of 2012 are maintainable or not, could be decided only after hearing the said Original Applications. Aggrieved over the same the present appeals have been filed by the appellant.

11. It is the submission of the learned counsel for the appellant that the appellant had filed the applications under Order VII Rule 11 of C.P.C. to reject the OAs filed by the 1st respondent herein under Section 9 of TANPID Act. By inviting the attention of this Court to Section 9 of the TANPID Act, the learned counsel for the appellant submitted that Section 9 of the TANPID Act says that any financial establishment or person whose property has been or is about to be attached under this Act may, at any time, apply to the Special Court for permission to give security in lieu of such attachment. The word "whose property" has been referred only to the owner of the property. Admittedly, in the instant case, absolutely no document was produced by the 1st respondent Kannaian to prove his title or ownership over the subject properties. In O.A. Nos. 14 & 16 of 2012, the 1st respondent is claiming ownership over the subject properties, based on two registered Power of Attorney Deeds dated 20.11.1997 and 06.04.2000 respectively; but, the said Power of Attorney Deeds were cancelled long back by the appellant, which fact was also informed to the 1st respondent Kannaian, through the legal notice dated 23.04.2012. Since the Power of Attorney have been cancelled, now the 1st respondent is not entitled to deal with the property involved in O.A. Nos. 14 & 16 of 2012 as the Power Agent of the appellant and hence, the said OAs are liable to be rejected in limini. Though the 1st respondent Kannaian is making a claim over subject properties, the dispute regarding the ownership of the properties between the private parties cannot be decided in the proceedings initiated under Section 9 of the TANPID Act and if there is any dispute with regard to the ownership of the property between the two parties, the same can be decided only by the regular Civil Court. Unless, the Power Agent/1st respondent proves his title or ownership of the subject properties by producing tangible evidence, he cannot maintain the Original Application to furnish security to raise the order of attachment. Since the 1st respondent has not satisfied the requirements under Section 9 of the TANPID Act, the Original Applications filed by the 1st respondent is not maintainable. Further, the learned counsel for the appellant submitted that the sale receipts and declaration of sale deeds, produced by the 1st respondent Kannaian are all forged documents. The 1st respondent, by forging the signatures of the appellant and his family members, created those forged documents.

12. The learned counsel for the appellant by relying upon the judgment reported in T. Arivandandam Vs. T.V. Satyapal and Another, , submitted that if on a meaningful reading of the plaint it is seen that the plaint is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the trial Court should exercise its power under Order VII Rule 11 of C.P.C., to reject the plant. The learned counsel for the appellant has also submitted that Order VII Rule 11 of C.P.C., does not place any restriction or limitation on the exercise of the Court's power; it does not either expressly or by necessary impliedly provide

that power under Order VII Rule 11 of C.P.C should be exercised at a particular stage only. In the absence of any restriction placed by the statutory provision, it is open to the Court to exercise that power at any stage. In this regard, the learned counsel for the appellant has placed reliance on the judgments reported in Samar Singh Vs. Kedar Nath alias K.N. Singh and Others, and Nesammal and another Vs. Edward and another, .

13. It is further submitted by the learned counsel for the appellant that the 1st respondent-Power Agent has no right to question the cancellation of Power Deed. In support of this contention, the learned counsel for the appellant relied upon the judgment reported in S. Subramanian and Others Vs. R. Dayananthan, D.V. Vanitha, Indian Oil Corporation Ltd. and Indian Overseas Bank, .

14. By way of reply, the learned counsel for the 1st respondent submitted that Section 9 of TANPID Act says that the person, whose property has been attached, can offer security to raise the attachment. But, it does not say that only the owner of the property with the registered document alone can apply for furnishing security to raise the attachment. So far as the present case is concerned, by executing two registered Power of Attorney Deeds as well as two unregistered Power of Attorney Deeds, the properties were transferred to the name of the 1st respondent by the appellant as well as by the wife of the appellant and they have also received the sale consideration in the year 1997 itself and the 1st respondent was also put in possession of the properties and he is in continuous possession of the subject properties. The subject properties were purchased by the 1st respondent to develop the property and to sell the same to the third parties. Therefore, the questions with regard to whether the revocation of the Power of Attorney deeds are valid or not; whether the 1st respondent has satisfied the requirements under Section 9 of TANPID Act, can be gone into only in the Original Applications filed by the 1st respondent. In fact, in the Original Applications, the 1st respondent has also examined himself as P.W. 1 and proof affidavit was also filed. Since there is disputed questions of facts, necessarily the same have to be gone into only at the time of hearing the Original Application; therefore, the Original Application filed by the 1st respondent cannot be rejected under Order VII Rule 11 of CPC.

15. In this regard, by relying upon the judgment reported in Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another, , the learned counsel for the 1st respondent submitted that only if the averments in the OAs do not disclose any cause of action, the Court may exercise the powers under Order VII Rule 11 of C.P.C. So long as the application discloses some cause of action, the application cannot be rejected under Order VII Rule 11 of C.P.C. Thus, the learned counsel for the 1st respondent submitted that no case has been made by the appellant to reject the OAs under Order VII Rule 11 of C.P.C. Therefore, the order passed by the TANPID Court dismissing the IAs filed by the appellant, does not suffer from any infirmity. Thus, the learned counsel for the 1st respondent sought for dismissal of the appeals. In support of his

submissions, the learned counsel for the 1st respondent has also relied upon the judgments reported in Purnmasi Yadav Vs. Narbedeshwar Tripathi and others, and Maharaja Jagat Singh Vs. Lt. Col. Bhawani Singh and others, .

16. The learned counsel for the 1st respondent has further submitted that as per Section 41 of the Transfer of Property Act, if a person, who is ostensible owner of the property, transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it; provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith. Hence, applying the principle laid down in Section 41 of the Transfer of Property Act, the 1st respondent has to be construed as the owner of the subject properties.

17. By way of reply, the learned counsel for the appellant submitted that submission made by the learned counsel for the 1st respondent on the basis of Section 41 of the Transfer of Property Act is a result of misconception of provision of law. Section 41 of the Transfer of Property Act has no application to the case on hand. Section 41 of the Transfer of Property Act is an enabling section to protect the interest of a bona fide purchaser of the property, who purchased the property believing the vendor as his owner of the property to the knowledge of the real owner of the property. Therefore, only a bona fide purchaser can rely upon the said provision in an action taken by the real owner of the property. Assuming without admitting that the 1st respondent is an agent or agreement holder, even on such capacity he cannot invoke Section 41 of the Transfer of Property Act.

18. The learned Government Advocate appearing for the official respondents 2 & 3 submitted that the applications have been filed only on collusion between the 1st respondent and the appellant to protract the criminal proceedings. Since the Original Applications are pending for enquiry, by dismissing the appeals, a direction may be given to the Court below to dispose of the Original Applications as early as possible.

19. The learned counsel for the 4th respondent/depositors made his submissions to maintain the Original Applications under Section 9 of the TANPID Act. It is the submission of the learned counsel for the 4th respondent/depositors that mere claim for ownership of the property is sufficient to maintain the OAs; now, the 1st respondent has filed the Original Applications claiming himself as owner of the subject properties; the question as to whether he is owner of the subject properties or not, could be decided only in the Original Applications. In this regard, the learned counsel for the 4th respondent/depositors by relying upon Section 7(3) of the TANPID Act and submitted that any person claiming an interest in the property attachment or any portion thereof, can make an objection before the Special Court under TANPID Act. Section 9 has to be read along with Section 7(3) and if so read, it would give a clear inference that any person, who is having an interest in the property attached, can make an application to raise the attachment by providing security, and he need not be a

title holder.

20. I Have carefully heard the submissions made on either side and perused the entire materials available on record.

21. Though very many contentions have been raised by the learned counsel for the respective parties, the only question that has to be considered in these appeals is whether the Interlocutory Applications filed by the appellant under Order VII Rule 11 of C.P.C. is sustainable or not?

22. According to the learned counsel for the appellant, since the 1st respondent has not satisfied the requirements under Section 9 of the TANPID Act, the Original Applications filed by him are liable to be dismissed. In other words, it is the submission of the learned counsel for the appellant that only the owner of the property can maintain the application to deposit the security in order to raise the attachment of the property. But, in the instant case, admittedly, the 1st respondent is not having any title document; on the other hand, he is claiming ownership over the subject properties only based on the registered/unregistered Power of Attorney Deeds as well as declaration of sale certificates, said to have been executed by the appellant and his wife. But, those documents are forged documents created by the 1st respondent by forging the signatures of the appellant and his family members. Since the 1st respondent is not the owner of the subject properties, the Original Applications are liable to be rejected.

23. Per contra, it is the submission of the learned counsel for the 1st respondent that though the documents were not registered in his favour, he had paid the full sale consideration to the appellant as early as in the year 1997 and he was put in possession of the subject properties by the appellant and he had purchased the said properties for the purpose of developing the same and to sell the same to the third parties; therefore, he can very well maintain the Original Applications under Section 9 of the TANPID Act, because Section 9 does not say that only the owner of the property can file the application to raise the attachment.

24. According to the learned counsel for the appellant, "person whose property" mentioned under Section 9 of TANPID Act refers only the owner of the property. Therefore, only the owner of the property alone can make an application to deposit the security to raise the attachment of the property.

25. But, the dictionary meaning for the word "whose" reads as follows-Oxford Concise Dictionary: Whose - belonging to or associated with which person.

26. Hence, in my considered opinion, "person whose property" referred under Section 9 of TANPID Act needs proper interpretation and under such circumstances, the Original Applications filed by the 1st respondent cannot be rejected at this stage. As contended by the learned counsel for the 4th respondent/depositors, a combined reading of Section 7(3) and Section 9 of TANPID Act would show that even if the person, who is claiming an interest over the property or a portion of the property under attachment, can make an

objection before the Special Court under TANPID Act. Therefore, the issues involved in this case can be decided only after the completion of recording of evidence and after hearing the submissions made on either side on merits by the Court below in the OAs filed by the 1st respondent. Therefore, the OAs filed by the 1st respondent cannot be rejected at the threshold stage under Order VII Rule 11 of CPC.

27. So far as the application filed under Order VII Rule 11 of C.P.C. is concerned, it is well settled legal principle that only if the averments in the application do not disclose any cause of action, the application can be rejected. While dealing with the application under Order VII Rule 11 of C.P.C., the averments in the application alone have to be read and the defence of the respondent/defendant cannot be considered at that stage.

28. In this regard, a useful reference could be place in the judgment reported in *Purnamsai Yadav v. Narbedeshwar Tripathi and Others* (supra), wherein it has been held as follows-

"5. The power under Order 7 Rule 11 speaks of rejection of plaint under four circumstances, the first one being non-disclosure of cause of action, and the last one is on a bar of suit under any provision of law. The other two grounds on which a plaint could be rejected relate to valuation and non-payment of Court fees, which are not matters concerned with the present case. For an order under Order 7 Rule 11 C.P.C. it is the plaint and the plaint alone which is to be considered and if the plaint made out a case indicating a cause of action then the falsity of the claim would be a matter to be determined at the trial and if at all the suit was found to be vexatious or based on false assertion, the plaint would be liable for compensatory costs under S. 35-A C.P.C. The judgment of the Supreme Court that was quoted by the Trial Judge also spoke that a meaningful reading of the plaint was necessary before rejecting a plaint under Order 7 Rule 11 C.P.C."

In *Mharaja Jagat Singh v. Lt. Col. Bhawani Singh and Others* (supra), wherein it has been held as follows-

"Where the sole successor of erstwhile ruler even after the merger of State was showing the private properties as HUF properties in the Income-tax and wealth-tax returns and the assessments were made by the tax authorities, treating those properties as HUF properties, the plaint filed by a coparcener of said successor claiming himself to be owner of one of the private properties as he was in physical possession of property due to declaration by tax authorities, cannot be rejected as not disclosing any cause of action. In such a case, the plea by the successor that the declarations before tax authorities were made on wrong legal advice, cannot be looked into because, while deciding the application under Order 7 Rule 11 C.P.C., the Court is only to look into the averments made in the plaint and the documents annexe therewith. It cannot, for the determination of the application, look into the defence set up by the defendants. The factum

whether such declaration was made on a wrong legal advice or not or was made with intention and knowledge or not, were the questions which gave cause to the plaintiff to base his claim and these should be gone into on merits, the question of estoppel will also be gone into after recording evidence."

In *Liverpool & London S.P. & I. Assn Ltd., v. M.V. Sea Success* (supra), wherein it has been held as follows-

"A cause of action is bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence.

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 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 ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars."

In *Sukhpal Singh Vs. State of Rajasthan and Others*, , wherein it has been held as follows-

"17. The issue of applicability of this Rule 7 order 11 C.P.C. was considered by the Hon"ble Supreme Court in *T. Arivandandam v. T.V. Satyapal and Another* (supra), and it was observed that the Court must give a meaningful reading to the plaint and if it is manifestly vexatious or meritless and in the sense of not disclosing a clear right to sue, the Court may exercise its power under Order 7 Rule 11 C.P.C. However, the Court has to take care that the grounds mentioned therein must be fulfilled and while doing so, the Court does not have to decide the legal issues. However, in a case where the validity of a particular document itself is under challenge, the same cannot be considered and decided."

29. So long as the Original Applications filed the 1st respondent disclose some cause of action, the same cannot be rejected under Order VII Rule 11 of C.P.C. A reading of the averments in the Original Applications filed by the 1st respondent, it definitely discloses a cause of action for filing the application. Therefore, the submissions made by the learned counsel for the appellant that the forged documents were created by the 1st respondent to claim ownership over the subject properties, cannot be a ground to reject the Original Applications filed by

the 1st respondent. I do not find any valid reason to reject the Original Application filed by the 1st respondent, under Order VII Rule 11 of C.P.C. All the issues involved and raised by the appellant in this case are only disputed questions of fact, which cannot be gone into at this stage and the same can be decided only after hearing the applications filed by the 1st respondent by conducting enquiry. For the foregoing reasons, all the above appeals are liable to be dismissed and accordingly, the same are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. The Special Court under TANPID Act, Chennai, is directed to dispose of O.A. Nos. 14 to 17 of 2012 as early as possible.