



C.R.P(MD)No.971 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.971 of 2023

and

C.M.P(MD)No.4440 of 2023

D.Sugumar

... Petitioner/Petitioner/
3rd Defendant

Vs.

1.T.Jeya Raj

...Respondent/Respondent/
Plaintiff

2.M.Dhana Sekaran

3.S.Jawahar @ Selvam

...Respondents/Respondents/
Defendants 1 and 2

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order made in I.A.No.504 of 2022 in O.S.No.109 of 2019 dated 14.02.2023 on the file of the District Munsif Court, Madurai Taluk, Madurai.

For Petitioner : Mr.V.P.Rajan

For R1 : Mr.K.Govindarajan
For Mr.J.Krishna Kumar



C.R.P(MD)No.971 of 2023

ORDER

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The present civil revision petition has been filed against the order made in I.A.No.504 of 2022 in O.S.No.109 of 2019, dated 14.02.2023 on the file of the District Munsif Court, Madurai Taluk, Madurai.

2. The petitioner is the third defendant before the District Munsif Court, Madurai in O.S.No.109 of 2019. The said suit has been filed by the first respondent for permanent injunction to restrain the petitioner and the respondents 2 and 3 herein from in any way interfering with the peaceful possession and enjoyment and to direct the petitioner and other respondents herein to pay for the cost.

3. In the suit, the petitioner herein filed I.A.No.504 of 2022 which has been dismissed by the District Munsif Court, Madurai by the impugned fair and decreetal order, dated 14.02.2023. The relevant portion of the order reads as under:

”மனுதாரர் தரப்பில் இந்த வழக்கில் வாதி தாக்கல் செய்துள்ள ஆவணமானது மோசடியாக தயார் செய்யப்பட்டது என்றும், வழக்கில் வாதி கேட்கும் பரிகாரம் கிடைக்கத்தக்கதல்ல என்றும், இவ்வழக்கு நிலைநிற்கத்தக்கதல்ல என்றும் எனவே வழக்கு நிராகரிக்கப்பட வேண்டிய ஒன்று என்றும் குறிப்பிட்டுள்ளதையும், எதிர்மனுவையும் மற்றும் வழக்கு ஆவணங்களையும் இருதரப்பு



C.R.P(MD)No.971 of 2023

வாதங்களையும் கவனமுடன் பரிசீலனை செய்யும்போது

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இந்நீதிமன்றம் இந்த மனுவை முடிவு செய்வதற்கு கீழ்க்கண்ட மேன்மை பொருந்திய முன் தீர்ப்புகளை கவனத்தில் கொள்கிறது.

The phrase "does not disclose the cause of action" has to be very narrowly construed. The rejection of the plaint at the threshold entails very serious consequences. This power therefore has to be used in exceptional circumstances, ought to be used only when the Court is absolutely sure that the plaintiff does not have an arguable case at all (Crescent Petroleum Limited V. M.V."MONCHEGORSK" AIR 2000 Bom 161 (168) : 2000 (1) Bom LR 297). The exercise of this power is not justified merely because the story told in the pleadings is highly improbable or which may be difficult to believe (Crescent Petroleum Limited V. M.V."MONCHEGORSK" AIR 2000 Bom 161 (168) : 2000 (1) Bom LR 297), plaint averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the plaint. (Liverpool & London S.P. & I Ass.Ltd. V. M.V.Sea Success, (2004) 9 SCC 512 (515))

எனவே மேற்கண்ட காரண காரியங்களின் அடிப்படையில் இந்த மனு ஏற்கத்தக்க இயலும் நிலையில் இருந்ததாக கொள்ள இயலாததாலும், மனுவின் உண்மைத்தன்மை பொறுத்து வழக்கு விசாரணை முடிவில் தான் நியாயமான முடிவு எட்ட இயலும் என்று கருதுவதாலும், இந்நிலையில் முடிவு செய்வது ஏற்படையதாகவும் நீதியின் நலனுக்கு உகந்ததாகவும் இருக்காது என இந்நீதிமன்றம் கருதுகிறது. எனவே இம்மனு தள்ளுபடி செய்யப்படுகிறது.

இறுதியாக இம்மனு தள்ளுபடி செய்யப்படுகிறது. செலவு தொகை இல்லை."

4. The specific case of the petitioner is that the petitioner's father had earlier filed a suit for partition in the year 1979 in O.S.No.369 of 1979 and that in the suit, the respondents 2 and 3 were party to the said



C.R.P(MD)No.971 of 2023

proceedings. It is submitted that the preliminary decree was also passed on 06.11.1988. A further appeal was filed by the defendants therein which included the respondents 2 and 3 herein as parties in A.S.No.126 of 2000, which was also dismissed by the Principal District Court, Madurai on 30.04.2004.

5. It is submitted that during the pendency of the aforesaid partition suit filed by the petitioner's father, the respondents 2 and 3 herein claims to have sold the property to the petitioner on 10.09.2001 and that the sale deed cancelled by the District Registrar in the exercise of power under Section 77A of the Registration Act on 14.10.2022. It is further submitted that no further steps have been taken by the first respondent herein to annul the order of the District Registrar on 14.10.2022 exercising the power under Section 77A of the Act.

6. It is submitted that the Trial Court has passed a cryptic order without any basis. It is submitted that the entire suit is based on the alleged sale deed, dated 10.09.2001, which now stands annulled/cancelled. Therefore, it cannot be said that there was any cause of action serving in the suit can be continued. Therefore, the trial Court



C.R.P(MD)No.971 of 2023

ought to have allowed the application by rejecting the complaint.

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7. The learned counsel for the first respondent on the other hand submits that the submission made by the learned counsel for the petitioner are not borne out in the affidavit filed in support of the I.A.No. 504 of 2022. It is submitted that the plaint filed by the first respondent in O.S.No.109 of 2019 declares the cause of action and therefore, it cannot be said that the plaint does not disclose the cause of action. It is submitted that mere cancellation of sale deed, dated 10.09.2001 on 14.10.2022 would not mean that there is no cause of action in the proceedings. That apart, it is submitted that none of the submissions made before this Court today are not part of the affidavit filed in support of the I.A.No.504 of 2022.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the first respondent.

9. The impugned order passed by the learned District Munsif Court, Madurai in I.A.No.504 of 2022 in O.S.No.109 of 2019, dated 14.02.2023 is a non-speaking order. It merely reproduce the decisions of this Court. It is not sufficient. It ought to have given more detailed



C.R.P(MD)No.971 of 2023

reason.

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10. Considering the fact that the petitioner has also not filed a proper affidavit, I am inclined to set aside the impugned order and remit the case back to the District Munsif Court, Madurai to pass a fresh order on merits. Liberty is given to the petitioner to file proper affidavit before the District Munsif Court, Madurai, in which case, the respondents are at liberty to file a counter. The District Munsif Court, Madurai shall pass a fresh final order in I.A.No.504 of 2022 on merits within a period of three months from the date of receipt of copy of this order.

11. The present Civil Revision Petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

11.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The District Munsif Court,
Madurai Taluk, Madurai

2.The Section Officer
Vernacular Section,



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Madurai Bench of Madras High Court,
Madurai.



C.R.P(MD)No.971 of 2023

C.SARAVANAN,J.

SN

C.R.P(MD)No.971 of 2023

11.04.2023