

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.4116 of 2015

and

M.P.No.1 of 2015

1.Saraswathy

2.Vasuki

3.Selvi

.. Petitioners/Petitioners/Defendants

Vs.

Nallasivam

.. Respondent/Respondent/Plaintiff

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.08.2015 made in I.A.No.737 of 2015 in O.S.No.488 of 2013 on the file of the I Additional District Munsif Court, Erode.

For Petitioners : Mr.N.A.Nissar Ahmed

ORDER

Heard the learned counsel appearing for the revision petitioners.

2. The revision petitioners have come forward with the present Civil Revision Petition challenging the impugned order dated 25.08.2015 made in I.A.No.737 of 2015 in O.S.No.488 of 2013, wherein the application filed under Order 7 Rule 11 CPC to reject the plaint on the ground that there is no cause of action came to be dismissed.

3. The learned counsel appearing for the revision petitioners would submit that the respondent herein had issued notice dated 04.07.2012 to the petitioners for vacating the suit premises on the ground of arrears of rent. In turn, the petitioners herein had also issued a reply dated 03.01.2013. So, it was the case of the respondent/plaintiff that the revision petitioners are in possession of the suit premises as tenants. While so, now the respondent herein had filed the present suit in O.S.No.488 of 2013 seeking for a permanent injunction restraining the revision petitioners from in any manner disturbing the peaceful possession and enjoyment of the respondent/plaintiff. Thus, the respondent/plaintiff had taken a stand

totally contra to his notice dated 04.07.2012. So, there arises no cause of action for filing the present suit and hence, the revision petitioners/defendants filed an application in I.A.No.737 of 2015 under Order 7 Rule 11 CPC to reject the plaint on the ground that there is no cause of action. However, the Trial Court has not considered the said factum while dismissing the application preferred by the revision petitioners and hence, the learned counsel for the revision petitioners prayed for setting aside the impugned order.

4. Considered the submissions made by the learned counsel for the revision petitioners and perused the typed set of papers.

5. The respondent herein as plaintiff had filed the suit for permanent injunction stating that the 'B' scheduled properties were allotted to Pavathal and others as per the partition deed dated 03.05.1974. The plaintiff had purchased the suit properties under a registered sale deed dated 19.12.2001 and from then on, he is in possession and enjoyment of the same. While so, the defendants who are utter strangers and having no right over the suit property demanded the plaintiff to sell the properties to them. Since the respondent/plaintiff refused to sell the same, the revision

petitioners/defendants attempted to interfere with the possession of the plaintiff on 29.11.2013 and hence, the respondent/plaintiff was forced to file a suit for injunction.

6. The revision petitioners who are the defendants in the suit had filed the application in I.A.No.737 of 2015 under Order 7 Rule 11 CPC to reject the plaint on the ground that there is no cause of action for filing the suit stating that on 04.07.2012, the respondent herein had issued a legal notice to the petitioners to vacate the premises on the ground of arrears of rent. The petitioners had also issued a suitable reply for the said notice. However, the petitioners had not vacated the premises and hence, there arises no cause of action for filing the present suit for permanent injunction. But the Trial Court without considering the said factum had dismissed the said application.

7. It is pertinent to note that the suit is for bare injunction and in the cause of action it was stated that the plaintiff had purchased the suit properties under a registered sale deed dated 19.12.2001 and from then on, he is in possession and enjoyment. Further, it was stated that the defendants attempted to interfere with the possession of the plaintiff on 29.11.2013 and hence, he has filed the suit for bare

injunction.

8. The case of the revision petitioners is that the respondent herein had issued notice to them to vacate the premises, as though they are the tenant under the respondent. But the revision petitioners had not vacated the premises as they are not the tenant under the respondent. As per the dictum of the Hon'ble Apex Court reported in ***AIR 2003 SC 759 (SalimBhai v. State of Maharashtra)***, an application for rejection of the plaint can be decided by the Court only on the basis of the averments made in the plaint and not the defence raised by the defendants and the documents filed on behalf of the defendants. In the instant case, a bare perusal of the plaint would reveal that there is cause of action. Furthermore, the cause of action is not a single fact, but it is a bundle of facts and it can be decided only at the time of trial.

9. In these circumstances, I do not find any reason to entertain this revision and accordingly, the Civil Revision Petition stands dismissed as devoid of merits. Consequently, connected miscellaneous petition is closed. No costs.

15.12.2015

pgp

R.MALA, J.

pgp

To

The learned Additional District Munsif,
Erode

C.R.P.(PD).No.4116 of 2015

Dated : 15.12.2015