

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.3315 of 2013
and M.P.No.1 of 2013

S.Ravichandran

.. Petitioner

Vs.

1. The Executive Officer,
Dharma Raja Vembuliamman Thirukoil,
Administrative Office,
Adi Mottai Amman Thiru Koil,
Kosapettai, Chennai 600 112.

2. K.G.Loganathan (given up)

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 21.3.2013 made in I.A.No.18725 of 2011 in O.S.No.2693 of 2011 on the file of III Assistant Judge, City Civil Court, Chennai.

For Petitioner : M/s.R.Gouri

For 1st respondent: Mr.R.Mahalingam (R1)
R2-given up

ORDER

Challenging the impugned order passed in I.A.No.18725 of 2011 in O.S.No.2693 of 2011 on the file of Assistant Judge, City Civil Court, Chennai on 21.3.2013 for dismissing the application

filed under Order 7, Rule 11 of C.P.C., the present Civil Revision Petition has been filed.

2. Learned counsel appearing for the petitioner would submit that the 2nd defendant in O.S.No.2693 of 2011 as petitioner has filed I.A.No.18725 of 2011 for rejection of plaint stating that at the time of filing the suit, the 1st defendant is dead. Since the suit against the dead person is nullity, the plaint has to be rejected. He further submitted that there is no cause of action for filling the suit against the 2nd defendant and that factum has not been considered by the trial Court. To substantiate his argument that the suit filed against the dead person is nullity, he relied upon the decision of this Court reported in **1991 LW 184 (State Trading Corporation of India Ltd. vs. Vaidyalingam)**.

3. He further contended that the entire cause of action devolves upon only the 1st defendant, since the 1st defendant died, there is no cause of action against the 2nd defendant. Hence he prayed for setting aside the impugned order.

4. Resisting the same, the learned counsel for the respondent would submit that the 1st defendant is a tenant under

plaintiff/temple and the 2nd defendant is a trespasser, but he is not a statutory tenant. The death of the 1st defendant has not been intimated to the plaintiff/temple. Since the 2nd defendant made an illegal construction, the temple authorities were forced to file a suit for permanent injunction restraining the defendants not to put up any construction in the temple property. Hence the suit is maintainable against the 2nd defendant. There is cause of action for filing the suit against him. Therefore, the trial court has rightly dismissed and prayed for dismissal of this Civil Revision Petition.

5. Considered the rival submissions made on both sides and perused the typed set of papers.

6. The 1st respondent/temple has filed a suit for an injunction restraining the defendants from putting up any construction over the temple's land stating that the 1st defendant is a tenant. As per the revised rent to be paid to the 1st respondent/temple, the 1st defendant had to pay a huge arrears of rent. On 5.8.2010, a total sum of Rs.50,000/- was paid by the 2nd defendant, but the rental receipt was issued in the name of 1st defendant. The 2nd defendant did not disclose the whereabouts of the 1st defendant, but on the

other hand, he attempted to make illegal constructions over temple/plaintiff's property. Hence the temple/plaintiff, after giving complaint, filed a suit for injunction and the 2nd defendant contested the suit by filing written statement. After that, he filed I.A.No.18725 of 2011 for rejection of the plaint.

7. The first limb of argument raised by the learned counsel for petitioner is that the plaint has to be rejected on the sole ground that the 1st defendant was dead much prior to the filing of the suit and hence, the suit itself is nullity. There is no quarrel over the same. Since the 1st defendant was died on 25.12.1993, the suit against him is nullity.

8. Now the Court has to decide whether the suit against the 2nd defendant has to be rejected or not on the basis that the suit has been filed against the 1st defendant who had already dead. As per the decision reported in **1991 LW 184 (State Trading Corporation of India Ltd. vs. Vaidyalingam)** the suit itself is nullity against the dead person alone , but not against the other person who is contesting the suit. So, the suit against the 2nd defendant is sustainable.

9. The 2nd limb or argument is that there is no cause of action for the suit against the 2nd defendant. It is well settled principle that the cause of action is not a single fact and it is a bundle of facts. On perusal of the plaint in paragraphs 3, 4 and 5, it is seen that after the 2nd defendant paid the amount, he has not disclosed the whereabouts of the 1st defendant. But admittedly, the 1st defendant alone is a tenant under the plaintiff/temple. The 2nd defendant is not a tenant, but he is only a trespasser.

10. Admittedly, in paragraph 7 of the plaint, it has been stated that the cause of action arose when the 2nd defendant has taken steps to put up some additional constructions over the plaintiff's property. So cause of action against the 2nd defendant is clearly mentioned in the plaint. In the circumstances, I am of the view, the cause of action for filing the suit has been clearly mentioned in the plaint. Therefore the plaint against 2nd defendant shall not be rejected for not mentioning the cause of action. So, I am of the view, the trial Court is right in dismissing the application for rejection of plaint in respect of 2nd defendant and the suit against the 1st defendant alone is dismissed as nullity.

R. MALA, J.

msr

11.In fine, the Civil Revision Petition is dismissed. The suit in O.S.No.2693 of 2011 is dismissed as against the 1st defendant alone as nullity. No costs. Consequently, connected Miscellaneous Petition is closed.

15.12.2015

msr

Index:Yes/No

Internet:Yes/No

To

The Principal District Court, Tiruppur.

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