

APPLICATION NO.5141 of 2015**IN****C.S.NO.412 of 2008****PUSHPA SATHYANARAYANA, J**

This application is filed by the applicant / first defendant to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure.

2. The suit is preferred by the son of the applicant, who is the plaintiff, for a relief of partition of properties and to allot 1/3rd share to him. The second defendant is the daughter of the applicant. The plaintiff also has sought for income and expenditure of the Hindu Undivided Family on 01.04.2005.

3. The application is filed by the first defendant, who is the father of the plaintiff on the ground that the plaintiff has not filed any document to show that the schedule mentioned properties were enjoyed as joint family properties and that the applicant was holding the same as Kartha of joint family property and not in his individual capacity. As the plaintiff had not filed any supporting documents to show that the properties were treated as joint

family properties, the applicant contended that the plaint did not disclose the cause of action.

4. It is further contended that the plaint has been filed on the presumption that the family is a Hindu joint family and such presumption is not valid in law to maintain a suit for partition, especially when the plaintiff has not filed any document to substantiate such averment. It was contended that the suit was not valued properly and the Court fees is also not correct. Hence, sought for rejection of the plaint.

5. The learned Senior Counsel appearing for the applicant did not press on the issue of valuation and jurisdiction and only harping on the issue whether there was a cause of action disclosed in the plaint.

6. The application was resisted by the plaintiff that the properties were only joint Hindu family properties and has pleaded that all the material facts with sufficient details disclosing a cause of action has been placed. As some of the properties were outside the jurisdiction of the Court, leave to sue

was obtained on 27.03.2008. Hence, the plaint cannot be rejected under Order VII Rule Code of Civil Procedure.

7. Order VII Rule 11 Code of Civil Procedure is only a mere procedure and it is a trite position of law. Rejection of the plaint can be decided by the Court only on the basis of averments made in the plaint and filing of written statement by contesting defendant is not necessary. No doubt, Order VII Rule 11 of the code does not disclose any impediment as to the stage for filing of an application thereunder. It is the duty of the Court to examine the plaint to ascertain any cause of action has been pleaded and whether any relief has been claimed against the defendant. The plea whether the plaintiff had any cause of action or not has to be determined on the basis of the materials, which may be produced by the parties at the appropriate stage in the suit. For the limited purpose of determining whether the suit can be rejected under Order VII Rule 11 C.P.C only the averments in the plaint have to be looked into. So long as the plaint discloses the cause of action, the plaint cannot be rejected for the mere reason that either in the opinion of the Court or in the opinion of the defendant, the plaintiff may not succeed.

8. An application under Order VII Rule 11 C.P.C itself is a demurrer. In para 5 of the plaint, it has specifically stated that the first defendant along with his wife and plaintiff and the second defendant constitute a Hindu undivided family of which the first defendant is the Kartha. The family owns extensive immovable and movable assets that have been shown by the first defendant in the Hindu undivided family income tax returns filed by him in his capacity as Kartha and the suit is filed for partitioning the same by metes and bounds and to allot 1/3rd share to the plaintiffs and also for rendition of accounts from the year 2005.

9. From the paragraphs 5 and 6 of the plaint, the materials facts constituting the cause of action are pleaded. Therefore, the rejection of the plaint at the threshold on the ground of non disclosure of cause of action may not be proper. What is required in law, whether a piecemeal reading of the plaint, or reading it in its entirety; whether the relief would be granted on the pleaded facts and the evidence adduced, is totally different matter from the reliefs claimed.

10. It is contended by the learned counsel for the applicant that the supporting documents for the claim of the plaintiff have not been produced as required under Order XIV. It has to be noted that the Court cannot probe into the facts on the basis of the controversy raised by the defendant. The rights of the plaintiff have to be decided only in the suit and the same cannot be considered while dealing with the plaint under Order VII Rule 11 of the Code of Civil Procedure. Only on a meaningful reading of the plaint, it is manifestly found that the suit is vexatious and meritless by not disclosing a cause of action or a right to sue, then the Court can exercise its power under Order VII Rule 11 C.P.C after considering the grounds mentioned therein. As stated earlier, though the application under Order VII Rule 11 C.P.C can be filed at any stage of the suit, the plea of non disclosure of cause of action should be raised at the earliest. But in this case, though the suit was filed in the year 2008 after filing of the written statement, the application is filed only in the year 2015. The plaintiff being a minor is represented by the Mother and Natural guardian, who is seeking a partition of the HUF of properties from his father. Therefore, it cannot be stated that there is no cause of action disclosed in the plaint.

11. The learned Senior Counsel for the applicant has placed his reliance on the decision of Hon'ble Supreme Court in ***CHURCH OF CHRIST CHARITABLE TRUST AND EDUCATIONAL CHARITABLE SOCIETY REPRESENTED BY ITS CHAIRMAN -VS- PONNIAMMAN EDUCATIONAL TRUST, REPRESENTED BY ITS CHAIRPERSON/MANAGING TRUSTEE [2012 (8) SCC 706]***. The said decision only speaks about the rejection of the plaint, only when the allegations are vexatious and meritless and not disclosing a clear right or material to sue. A simple reading of the plaint itself shows that it is only a suit for partition and the claim made by the son against father disclosing a cause of action. Hence, Order VII Rule 11 C.P.C has got no application to the present case.

12. In view of the above discussion, there is no merit in the case of the defendant and the plaint cannot be rejected for want of cause of action. Accordingly, the application is dismissed.

07.10.2016

srn

PUSHPA SATHYANARAYANA, J

srn

APPLICATION NO.5141 of 2015
IN
C.S.NO.412 of 2008

07.10.2016