

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2016

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.Nos.3225 and 3226 of 2016
and
C.M.P.Nos.16342 and 16343 of 2016

M.Murthy ... Petitioner in C.R.P.No.3225 of 2016

M.Anandharaj ... Petitioner in C.R.P.No.3226 of 2016

vs.

1. Rathinasabapathy

2. Indirani

3. A.Jeyakumar @ Rathinasamy

4. Pollachi Municipality

Rep by its Commissioner

Pollachi

5. Tamil Nadu Generation and Distribution

Corporation,

Rep by its Executive Engineer,

T.Kottampatti, Pollachi

... Respondents in both C.R.Ps

Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal order dated 11.01.2016 passed in I.A.No.391 of 2013 and I.A.No.392 of 2013 in O.S.No.552 of 2012 and O.S.No.556 of 2012 respectively on the file of the District Munsif, Pollachi.

For Petitioner : Mr.R.Kannan
in both C.R.Ps

For Respondent-1 : served-No Appearance

For Respondents 2 to 5 : Set ex-parte before Lower Court

COMMON ORDER

The third defendant in O.S.Nos.552 of 2012 and O.S.No.556 of 2012 have filed these revision petitions challenging the dismissal orders under Order VII Rule 11 C.P.C.

2. The plaintiff has filed the suits for relief of declaration. According to the revision petitioners, the suit filed as such, is an abuse of process of law and it is on an imaginary cause of action.

3. The reason given by the petitioners is that there is no pleading or averment regarding the right to sue and the plaintiff has got no cause of action on the date of filing of the suits. It is stated further that earlier, a suit filed by the plaintiff in O.S.No.90 of 2004 on the file of the Fast Track Court, Coimbatore, was not decided finally, as it was dismissed for default.

4. The present suits are based on a Will dated 25.03.1998. The plaintiff has deliberately failed to mention about the earlier suit. Hence, there is no cause of action. An objection with respect to the Court fees payable in the suits, is also raised to reject the plaint. The two objections raised by the petitioners are that there is no mention about the earlier suit filed by the plaintiff in O.S.No.90 of 2004, which was based on the same Will. Secondly, the valuation of the suit property is incorrect.

5. Even presuming that the suits are barred by *res judicata*, in view of the earlier suit being dismissed for default, the same can be

agitated only during the course of trial. In fact, the plaint does mention about the said suit in the cause of action paragraph. Therefore, the claim that there is non disclosure of action is unacceptable. Even otherwise, presuming that the disclose of cause of action is vague and incomplete, the same cannot be the ground for rejection of the plaint.

6. So far as the question of Court fees is concerned, rightly or wrongly, the plaints were accepted on payment of deficit Court fees and the Court was satisfied with regard to the *bona fides* of the plaintiff. Further, the payment of Court fees is a matter between the State and the Suitor. In the event of a plaint being rejected, the defendant would be benefited thereby. But, if an objection has to be raised in that behalf at the behest of a defendant, for rejection of the plaint in terms of Order VII Rule 11(c) C.P.C, several aspects of the matter are required to be considered, whereas, while deciding the application under Order VII Rule 11 C.P.C, the Court has to strictly consider only the plaint averments. The maintainability of the suit has to be governed only from the plaint averments and the Court cannot look into another document including the written statement filed by the defendant. Hence, the

learned District Munsif, had rightly dismissed the application under Order VII Rule 11 C.P.C as devoid of merits.

7. Accordingly, I do not find any infirmity or material irregularity in the impugned orders passed by the Court below. Hence, these Civil Revision Petitions are dismissed. No costs. Consequently connected miscellaneous petition is closed.

14.12.2016

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To

The District Munsif, Pollachi

PUSHPA SATHYANARAYANA.J

srn

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