

IN THE HIGH COURT OF JUDICATE AT MADRAS

DATED: 02.09.2016

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.1356 of 2012

1.Ramalingam

2.Pandian

... Petitioners

Vs.

1.Selvam

2.Seeman

3.Minor Latha

4.Minor Amutha

(Minors are represented by their mother
and natural guardian R.Selvamani)

5.Rajangam

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to struck off the suit filed in O.S.No.115 of 2011, on the file of the Sub-Court, Ariyalur.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.R.Thiagarajan (for R1 to R4)

ORDER

The defendants are the civil revision petitioners before this Court filed this petition by invoking jurisdiction under Article 227 of the Constitution of India, for struck of the suit in O.S.No.115 of 2011, on the file of the Sub-Court, Ariyalur.

2.The case of the petitioners/defendants 2 and 3 are that the first defendant had obtained a loan an amount of Rs.90,000/- on 30.01.2003 for construction of house and for his family expenses from the second defendant in the suit in O.S.No.115 of 2011 and executed a promissory note in favour of the second defendant on the said date. Since the first defendant has failed to discharge the loan with interest, the second defendant has filed a suit in O.S.No.59 of 2004, on the file of the Sub-Court, Ariyalur for recovery of the amount with interest due on the said suit promissory note.

3.The second defendant also states that he has taken steps to attach the properties of the first defendant in patta No.1111. The survey numbers and the extent is (1)S.F.No.82/11 to an extent of 0.38.5 ares; (2)S.F.No.683/11A to an extent of 0.12.5 ares; (3)S.F.No.683/17D to an extent of 0.04.5 ares; (4)S.F.No.683/19A2

to an extent of 0.13.0 ares; (5) S.F.No.683/20D to an extent of 0.16.5 ares; (6) S.F.No.83/2B2 to an extent of 0.01.5 ares; (7)S.F.N.709/6 to an extent of 0.26.5 ares. After contested by both the parties in the above said suit, the same was decreed on 23.02.2006 in favour of this second defendnat. But, the first defendant had not preferred any appeal as against the decree and it has become final and when he failed to satisfy the decree amount, the second defendant has filed the Execution Petition in E.P.No.47 of 2006 for attachment of the above said property for sale. But, even when the E.P. proceedings were going on the first defendant/J.D. did not pay any amount.

4.Though the decree amount with costs crossed an amount of Rs.1,46,070/-, the Court had ordered for sale of the property belongs to this first defendant in S.F.No.682/11 to an extent of 0.38.5 ares and S.F.No.709/6 to an extent of 0.26.5 ares, in public auction, one Mr.Pandian had took the property in auction for Rs.65,200/- on 07.01.2009. Even then the J.D. had not deposited the amount within the statutory period the Court had confirmed the sale on 01.04.2009. Pursuant to the above auction, the issuance of sale certificate, the Court auction purchaser Mr.Pandian had taken delivery of the property as per the sale certificate and properties were mutated in

the name of the Court auction purchaser Mr.Pandian is in exclusive possession.

5.The second defendant further states that the first defendant/J.D. had induced his elder brother Periyasamy, who filed a E.A.no.25 of 2010, claiming that S.F.No.682/11 to an extent of 0.38.5 ares, belongs to him and one Paramasivam who is his elder brother born through 1st wife of his father, since his father had purchased the property under a sale deed jointly in his name and Paramasivam, claiming half share over the said property, in that E.A.No.25 of 2010, the said Periyasamy had suppressed the material fact of the division in the family. The said petition was opposed by him by tooth and nail, his contention was when father Ganesan, who is still alive had effected a partition of his all family properties irrespective of purchase, as early as in the year 1982, family arrangement where the said S.F.No.682/11 to an extent of 0.38.5 was allotted to Mr.Rajangam the first defendant herein, in confirmation in UDR Survey patta No.1111 was exclusively stands in the name of Rajangam. After the family arrangement, the sons of Ganesan born through both of his wife had alienated their share in favour of third parties and produced the copy of the sale deed in E.A.No.25 of 2010

proceedings, but the first defendant had been prolonging the same without filing any counter and hence it was adjourned from time to time.

6.The second defendant also states that when the delivery was taken as early as on 23.02.2010, the said E.A.No.25 of 2010 is pending, adding fuel to the fire, the first defendant Rajangam had again induced his Children filed this suit for partition and separate possession, as if the alleged debt is tainted with illegality and immorality. He also states that the father of the first defendant and plaintiffs his children are living under one roof, the debt was borrowed for the construction of house, the cross examination in the suit manifest the same, this is a suit is an example of abusing the process of court and the plaint averments are nothing but false averments, does not stand for a moment's scrutiny. Therefore, the filing of the suit is the handi work of the father of the plaintiff, he wanted to grab at the properties and to cheat the decree amount either by hood or crook method.

7.The second defendant also states that all the properties of Rajangam had not included in the suit, but to escape from the clutches of law, if the court auctioned properties alone is shown in

the suit, it would make embracement, hence the father of the first defendant added some other properties, the plaintiff has no cause of action for filing the suit for partition, when the family remained joint family as per their contention, they should also liable for the debt contracted by the father. It is a collusive suit, instituted at the behest of the first defendant's father. The plaintiff's father canvassed fraudulent pleadings as if delivery is not recorded, amounts to a fraud played upon him and the Court. Therefore, the second defendant has filed an application in I.A.No.49 of 2012 and the same is pending, for rejecting the plaint on the ground that there was no cause of action, for filing the suit by the plaintiff in O.S.No.115 of 2011.

8.While pendency of the suit, the defendants 2 and 3 in O.S.No.115 of 2011 were filed the present civil revision petition before this Court sought for the prayer for struck off the suit in O.S.No.115 of 2011 from the file of the Sub-Court, Ariyalur by invoking the jurisdiction of under Article 227 of the Constitution of India.

9.I heard Mr.V.Raghavachari, learned counsel appearing for the petitioners and Mr.R.Thiagarajan, learned counsel appearing for the respondents 1 to 4 and perused the records.

10. During the course of arguments, the respondents/plaintiffs and the first defendant were made an objection that as per the Article 227 of the Constitution of India, the suit cannot be struck off by this Court, when the alternative remedy under Order 7 Rule 11 of CPC is available. Hence, they sought for the dismissal of the civil revision petition.

11. The judgment produced by the learned counsel appearing for the respondents in the case of ***M.P.Muthu v. The Winners Education and Charitable Trust, rep. By its Trustees and others*** reported in ***2011 (3) MWN (Civil) 487***, when this Court while passing the order in the above civil revision petition, it is stated that when an alternative remedy available under Order 7 Rule 11 of CPC, the defendant cannot invoke the jurisdiction under Article 227 of the Constitution of India, but the plaint could be rejected, if there is no cause of action by considering the Court under Order 7 Rule 11 of CPC.

12. The following judgment is held by this Court in the case of ***N.A.Chinnasamy and another v. S.Vellingirinathan*** reported in ***2013 (6) CTC 809***.

In the above judgment, this Court entertain the civil revision petition for struck off the suit in the above judgments on the ground that the suit was filed on the ground that the said plaintiffs in the said suit was played fraud on the Court. Therefore, in the above judgment, this Court held that the struck off the plaint can be filed by invoking the jurisdiction under Article 227 of the Constitution of India. But, the other cases referred above, this Court and the Hon'ble Apex Court very categorically held that the defendants have no right to file any civil revision petition by invoking the jurisdiction under Article 227 of the Constitution of India for struck off the plaint. But, there is a provision enshrined in the CPC and the defendant if at all want to reject the plaint, he can only invoking the jurisdiction under Order 7 Rule 11 of CPC on certain grounds particularly, no cause of action and under value of the suit and other grounds. The Order 7 Rule 11 of CPC states as follows:

"11.Rejection of plaint.-The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate;]

[(f) where the plaintiff fails to comply with the provisions of rule 9.]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

13.The learned counsel appearing for the petitioner also

produced a copy of the judgment rendered by the Hon'ble Supreme Court of India in ***Har Vilas v. Mahendra Nath and others*** reported in ***(2011) 15 Supreme Court Cases 377***, but the case is not at all relevant to this case.

14.All the above judgments referred above is clearly shows that the defendants cannot invoke the jurisdiction under Article 227 of the Constitution of India, but to invoke alternative remedy namely under Order 7 Rule 11 of CPC before the same Court where the suit is filed for rejecting the plaint on the ground stated above. But in this case, this petitioners/defendants 2 and 3, who invoke the jurisdiction under Article 227 of the Constitution of India have not at all maintainable before this Court for struck off of the suit in O.S.No.115 of 2011, but they have an alternative remedy under Order 7 Rule 11 of CPC for rejecting the plaint on the ground of cause of action or any other ground as per the above provision.

15.Therefore, considering the above, I am of the view that this civil revision petition is not maintainable before this Court for struck off of the plaint in O.S.No.115 of 2011 by invoking the jurisdiction under Article 227 of the Constitution of India, but the petitioners/defendants 2 and 3 have alternative remedy to approach

the very same Court namely the Sub-Court, Ariyalur by invoking the jurisdiction under Order 7 Rule 11 of CPC for rejecting the plaint and in fact the petitioner himself have filed an I.A.No.49 of 2012 for rejecting the plaint in O.S.No.115 of 2011 and the same is pending from 2012 onwards.

16.In the result:

(a) this civil revision petition is dismissed on the ground that the civil revision petition is not maintainable for struck off the plaint by invoking the jurisdiction under Article 227 of the Constitution of India.

(b) the learned Sub-Judge, Ariyalur is hereby directed to dispose the application in I.A.No.49 of 2012 filed for rejection of the plaint under Order 7 Rule 11 of CPC filed by this petitioners/defendants 2 and 3 within a period of one month from the date of receipt of a copy of this order, by giving fair opportunities to both the parties.

17.Accordingly, this civil revision petition is dismissed. No costs.

02.09.2016

Index:Yes

Internet:Yes

Note:Issue order copy on 11.01.2017

vs

To

The Sub-Court,
Ariyalur.

M.V.MURALIDARAN,J.

VS

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