

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1247 of 2016

&

C.M.P.No.6823 of 2016

Kshirod Kumar Jena

... Petitioner

vs.

1. T.S.Ganesan

2. Mangalam Krishnamurthy

3. B.Balakrishnan

4. S.Varadarajan

5. S.Anandhavalli

6. S.Krishnamurthy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 17.12.2015 in I.A.No.161 of 2014 in O.S.No.207 of 2013 passed by the Principal District Judge, Kancheepuram District at Chengalpattu.

For Petitioner : Mr.T.Arunakaran

ORDER

This matter stands listed today for admission. The first defendant in O.S.No.207 of 2013 pending on the file of the Principal

District Judge, Kancheepuram at Chengalpet is the petitioner in the Civil Revision Petition.

2. The respondents 1 to 6 in the Civil Revision Petition are the plaintiffs in the above said suit. The suit came to be filed for declaring that the respondents herein / plaintiffs have title to 6/8th share in the plaint 'C' schedule property for a consequential permanent injunction restraining the defendants therein from causing any detriment to the interests of the plaintiffs' peaceful possession and enjoyment of the suit 'C' schedule property and for costs.

3. Before filing the above said suit, the plaintiffs had filed an earlier suit OS.No.620 of 2011, which is now pending on the file of the Additional District Munsif Court, Alandur, for a permanent injunction not to interfere with their possession and enjoyment of the suit property therein and for a declaration that the sale deed dated 17.10.2005 registered as document No.5140 of 2005 on the file of the Sub Registrar of Assurances, Pallavaram, executed by the second and third defendants therein in favour of the first defendant therein, who is the present revision petition, is null and void.

4. Contending that the filing of the second suit O.S.No.207 of 2013 on the file of the Principal District Judge, Chengalpattu was nothing but an abuse of process of Court. The revision petitioner herein / first defendant filed an application I.A.No.161 of 2014 in O.S.No.207 of 2013 under Order VII Rule 11 C.P.C praying for the rejection of plaint in O.S.No.207 of 2013.

5. The learned Principal District Judge, after hearing, dismissed the said application by order dated 17.12.2015 holding that the revision petitioner herein had not made out a ground for rejection of plaint as contemplated under Order VII Rule 11 C.P.C. It is as against the said order, the present Civil Revision Petition came to be filed.

6. The arguments advanced by Mr.T.K.Arunakaran, learned counsel for the petitioner are heard. The certified copy of the impugned order and the copies of other documents including copies of the plaint in both the suits are also perused.

7. A defendant seeking an order rejecting the plaint should be in a position to bring his case within the ambit of rule 11 under Order

VII C.P.C. Rule 11 contains Sub Clauses (a) to (f). Sub Clause (a) makes the non-disclosure of a cause of action in the plaint, a ground for rejection of plaint. Sub Clauses (b),(c),(e) and (f) are not relied on by the revision petitioner. Hence, they need not be adverted to. If at all, the petitioner can try to bring the case within the ambit of Rule 11, it shall be only under Sub clause (d). Sub Clause 11(d) makes a plaint rejectable, if the suit appears from the statement in the plaint to be barred by any law.

8. Though the learned counsel for the petitioner would contend that the filing of the second suit in respect of the same subject matter will amount to abuse of process of Court, he is not in a position to say which provision bars such a suit to bring it under the purview of Sub Clause (d) of Rule 11. In addition, the relief sought for in the previous suit was for a declaration that the sale deed in favour of the revision petitioner herein was null and void. On the other hand, the latter suit is for a declaration that the plaintiffs have got 6/8th share in the plaint 'C' schedule property. The nature of the suits are different; the nature of reliefs sought are different. Hence, it cannot be held at the outset, that the filing of the second suit O.S.No.207 of 2013 shall even amount to abuse of process of Court to exercise the power of

superintendence of this Court to strike off the plaint, if not by exercising the power of revision against the order dismissing the application for rejection of plaint.

9. For all the reasons stated above, this Court comes to the conclusion that there is no merit in the revision and it does not even merit admission.

10. In the result, the revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

18.04.2016

Index: Yes/No
Internet: yes/No

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To

The Principal District Judge,
Kancheepuram District, Chengalpattu.

P.R.SHIVAKUMAR.J

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