

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2016

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.44 of 2016

and

C.M.P.No.247 of 2016

K.Mohammed Ibrahim
S/o.Mohammed Khasim
presently the Muthawalli
Mahabatha Sha Taikya & Mosque Wakf,
Koorambadi Village
Uppupettai Post
Arcot Taluk
Vellore District – 632 521 ...Petitioner/Petitioner/Defendant

Vs.

S.Srinivasan
S/o.Subbarayalu Naidu ... Respondent/Respondent/Plaintiff

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 29.07.2015 made in I.A.No.155 of 2011 in O.S.No.39 of 2011 pending on the file of the learned District Munsif, Arcot.

For Petitioner : Mr.W.M.Abdul Majeed

ORDER

At the time of admission, heard the argument advanced by the learned counsel for the revision petitioner in length.

2. The present Civil Revision Petition has been filed challenging the impugned order dated 29.07.2015 made in I.A.No.155 of 2011 in O.S.No.39 of 2011, wherein the application filed under Order 7 Rule 11 CPC to reject the plaint came to be dismissed.

3. The respondent herein as plaintiff has filed the suit in O.S.No.39 of 2011 for permanent injunction restraining the defendant, his men, agents and servants from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property, stating that the suit properties originally belonged to one Nanni Bivi from whom one Jamila bi purchased the same under the registered sale deed dated 19.07.1954. Thereafter, the said Jamila bi sold the property in favour of the plaintiff's father Subbarayalu Naidu under a registered sale deed dated 22.02.1973 and from the said date onwards, he was in peaceful possession and enjoyment of the same. It was further stated that since the petitioner/defendant attempted to

interfere with the possession, he was constrained to file the suit. The petitioner/defendant filed written statement stating that the properties belong to the Wakf and so, the Civil Court has no jurisdiction and the respondent/plaintiff has to file appropriate application before the Wakf tribunal. Hence, the petitioner/defendant filed an application under Order 7 Rule 11 CPC to reject the plaint. The Trial Court after hearing both sides had dismissed the said application and as against the same, the present Civil Revision Petition has been preferred.

4. Challenging the impugned order, the learned counsel appearing for the revision petitioner would submit that the petitioner/defendant is the Muthavalli of the Mohabbath shah Thakya Dargah and it was notified as wakf property and so, the Civil Court has no jurisdiction. To substantiate the said argument, the learned counsel relied upon the decision reported in **(2007) 1 MLJ 138, Abdul Suban v. Syed Tharu Hussain** and submits that there is a bar in jurisdiction of the Civil Court and prayed for setting aside the impugned order.

5. Considered the arguments advanced by the learned counsel for the revision petitioner and perused the typed set of papers.

6. The respondent herein as plaintiff has filed the suit for bare injunction claiming that the suit properties belong to his father who had purchased the same under a registered sale deed dated 22.02.1973 from one Jamila bi and from that onwards, he was in possession and enjoyment of the same. Since the petitioner/defendant attempted to interfere with the possession and enjoyment of the respondent/plaintiff, he was forced to file the suit.

7. At this juncture, it would be appropriate to incorporate Order 7 Rule 11 CPC:

***"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 returned 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.”

8. Further, it is a well settled dictum of the Hon'ble Apex Court that while deciding the application under Order 7 Rule 11 CPC, only the plaint averment had to be taken into consideration and not the documents filed on behalf of the defendants. On the basis of the plaint averment, there is no evidence to show that the properties in Old S.No.309, New No.309/1B measuring 0.93.0 Hectares belong to the wakf. In such circumstances, the issue has to be decided only at the time of trial, after letting in oral and documentary evidences.

9. At this juncture, it would be appropriate to consider the decision reported in **(2007) 1 MLJ 138, Abdul Suban v. Syed Tharu Hussain** relied on by the learned counsel for the revision petitioner. There is no quarrel over the ratio decidendi that only the wakf tribunal has jurisdiction and the Civil Court has no jurisdiction to entertain the suit pertaining to the wakf property.

10. In the instant case, as already stated, there is no iota of evidence to show that the suit properties belong to the wakf. In such circumstances, I am of the view that the Trial Court has considered the matter in proper perspective and dismissed the application preferred by the revision petition/defendant. However, it is left open to the revision petitioner to file appropriate application questioning the jurisdiction of the Civil Court in the earlier point of time.

11. In fine, the Civil Revision Petition stands dismissed as devoid of merits. Consequently, connected miscellaneous petition is closed.
No costs.

28.01.2016

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To

The learned District Munsif,
Arcot.

R.MALA, J.

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