

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.849 of 2016

&

C.M.P.No.4730 of 2016

S.M.Shanmugha Sundaram

... Petitioner

VS.

T.Janarthanan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 09.07.2015 made in I.A.No.784 of 2014 in O.S.No.80 of 2014 on the file of the District Munsif, Rasipuram.

For Petitioners : Mr.P.Mathivanan

ORDER

The first defendant in the original suit O.S.No.80 of 2014 pending on the file of the District Munsif, Rasipuram is the petitioner in the present revision.

2. The respondent herein filed the above suit against the petitioner herein and four other persons for: a) a declaration that he is entitled to the amount payable to the legal heirs of his deceased wife Sivasankari under: 1) Life Insurance Policy No.704667892, 2) SBI Life Insurance Policy No.44035231408, 3) Recurrent Deposit Nos.32892395039 and 33624769440 with the State Bank of India, Chamiers Road Branch, Nandanam, Chennai and 4) Provident Fund and other Death-cum-Retirement benefits payable to the legal heirs of Sivasankari from K.S.A. Power Infra Pvt. Ltd., the 5th defendant, b) a mandatory injunction directing the defendants 2 to 5 to pay the amount to the first respondent/plaintiff and c) a permanent injunction against the petitioner/first defendant from receiving the said amounts from defendants 2 to 5.

3. The petitioner herein/first defendant, who entered appearance, filed an application under order VII Rule 11 CPC praying for rejection of the plaint contending that the insurance policies were taken and deposits were made by himself in the name of his daughter Sivasankari and that by virtue of the provisions of the Benami Transaction Prohibition Act, 1988, he alone was entitled to the above said amounts. While referring to the Benami Transaction (Prohibition) Act, the petitioner has committed a mistake in referring to the year of

the Act as 2011. The other ground raised in the affidavit filed in support of the petition is that there was no cause of action for filing the suit. The existence or otherwise of the cause of action cannot be decided on the basis of the averment made by the defendants in the written statement or in the affidavit filed in support of an application filed under Order VII Rule 11 CPC. What Sub-clause (a) of Rule 11 says is that the plaint can be rejected if the plaint averments do not disclose the existence of a cause of action. Necessary and sufficient averments are found in the plaint disclosing the cause of action for seeking declaration, mandatory injunction and permanent injunction. The plea of there being no cause of action revealed by the plaint averments has not been substantiated. The other plea cannot be the ground on which the plaint can be rejected.

4. The learned trial Judge rightly held that the petitioner has not made out a case for rejection of the plaint. This Court is of the considered view that the order of the trial Court suffers from no defect or infirmity or illegality warranting interference by this Court. There is no merit in the revision and the same deserves dismissal at the threshold.

In the result, the Civil Revision Petition is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

16.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

The District Munsif
Rasipuram

P.R.SHIVAKUMAR.J.,

gpa

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