

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.955 of 2016
and C.M.P.No.5343 of 2016

K.Veeraraghavan

... Petitioner

vs.

1. T.Munusamy

2. C.Manohar

3. M.Pushpa

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order and decretal order made in I.A.No.899 of 2014 in O.S.No.320 of 2014 dated 25.09.2015 on the file of Additional District Munsif, Alandur, Kanchipuram District.

For Petitioner : Mr.S.Vijayakumar

For Respondent-1 : Mr.K.Sankaran

ORDER

The third defendant in O.S.No.320 of 2014 on the file of the Additional District Munsif, Alandur is the petitioner in the present revision. The defendants 2 and 3 in the said suit are the respondents 2 and 3 in the revision. The plaintiff in the said suit is the first respondent in the revision.

2. The first respondent Munusamy filed the above said suit

for the following reliefs:

i) *A declaration declaring that the settlement deed bearing document No.2185 of 1962 dated 18.10.1962 on the file of SRO, Pallavaram executed by Subramani in favour of his wife Gangamma and the sale deed document No.4826 of 1996 dated 15.04.1996 SRO Pallavaram, executed by the 3rd defendant in favour of the 1st and 2nd defendants as null and void;*

ii) *Permanent injunction restraining the defendants and their men or agent or any body claiming through them from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule mentioned property;*

iii) *Permanent injunction restraining the defendants and their men or agents from alienating the schedule mentioned property to any third party based on the settlement deed bearing document No.2185 of 1962 dated 18.10.1962 on the file of SRO, Pallavaram executed by Subramani in favour of his wife Gangamma and the sale deed document No.4826 of 1996 dated 15.04.1996 SRO Pallavaram, executed by the third defendant in favour of the 1st and 2nd defendants;*

3. The third defendant, who is the present revision

petitioner, filed an application I.A.No.899 of 2014 under Order VII Rule 11 C.P.C praying for rejection of the plaint on the ground that the plaint averments do not disclose proper cause of action; that the suit is undervalued and that the suit is also barred by limitation.

4. The application was resisted and after enquiry, the learned trial Judge, passed the impugned order dated 25.09.2015, dismissing the said application. It is as against the said order, the present Civil Revision Petition has been filed under Article 227 of the Constitution of India.

5. The matter stands listed today for admission. The first respondent has entered appearance through Counsel. The arguments advanced by Mr.S.Vijayakumar, learned counsel for the petitioner and by Mr.K.Sankaran, learned counsel for the first respondent are heard. The certified copy of the impugned order and the copies of the other documents produced in the form of typed-set of papers are also perused.

6. Aggrieved by the dismissal of his application filed under Order VII Rule 11 C.P.C praying for the rejection of plaint, the

petitioner has approached this Court with the present Civil Revision Petition invoking the power of superintendence of this Court under Article 227 of the Constitution of India. The grounds on which, the revision petitioner sought rejection of plaint are:

- (i) The plaint averments do not disclose a proper cause of action;
- (ii) The suit relief has been undervalued; and
- (iii) The suit is barred by limitation.

7. So far as the ground of undervaluation of the relief is concerned, it shall attract Sub Clause (b) of Rule 11 under Order VII CPC, only if such undervaluation is pointed out by the Court, a direction is issued to correct the valuation and a default is committed by the plaintiff to correct the valuation. Hence, the claim of undervaluation *per se* cannot be projected as a ground for rejection of the plaint. It has to be raised as a plea and a decision has to be invited regarding the correctness of the valuation, pursuant to which alone, a direction could be issued and rejection of the plaint can be made, provided such direction is not complied with.

8. So far as the question of limitation is concerned, normally it will not be a ground for rejection of plaint, as in most of the cases, it shall be a mixed question of law and fact to be decided on evidence

to be adduced by the parties. There may be minimum number of and exceptional cases, in which, the very averments made in the plaint itself will make it clear that the suit is barred by limitation. Only in such cases, sub clause (d) of Rule 11 under Order VII C.P.C will get attracted for the rejection of the plaint on the ground that the suit is barred by a statutory provision. In the present case, clear averments have been made in the plaint to the effect that the plaintiff came across the document, which is sought to be declared null and void, only just prior to the filing of a previous suit for injunction, which was filed in 2013 and on advice, the plaintiff has chosen to file the present suit for declaration and other reliefs. The averments also proceed to state that within three years from the date of knowledge, the suit came to be filed and hence, the suit is not barred by limitation. If all the contesting defendants claim that the suit is barred by limitation, it is a matter that can be decided not solely based on the plea made in the averments made in the plaint, but by considering the evidence to be adduced on both sides. When such is the case, Rule 11(d) of Order VII CPC shall not get attracted.

9. So far as the contention of the petitioner that the plaint does not disclose cause of action is concerned, the contention is not unqualified and it is qualified by a prefix proper. This Court is at a loss to understand what the petitioner wants to convey by referring to a

proper cause of action. Either it could have been stated that the plaintiff does not disclose any cause of action or that the cause of action alleged in the plaintiff is illusory, as opposed to being false. What the petitioner wants to contend is that a false cause of action has been alleged as a ground for rejection of the plaintiff. The falsity of the cause of action shall not be a ground for rejection under Sub Clause (a) of Rule 11. It shall be either total absence of disclosure of cause of action or the cause of action disclosed by the averments in the plaintiff should be illusory. The petitioner is not in a position to show that there is no cause of action disclosed by the averments made in the plaintiff or that the cause of action disclosed by the averments made in the plaintiff is not natural, but only illusory.

10. In view of the foregoing discussions, this Court does not find any defect or infirmity in the order of trial court dismissing the application filed by the revision petitioner for rejection of plaintiff warranting interference by this Court in exercise of its power of superintendence under Article 227 of the Constitution of India. The revision does not even merit admission and the same deserves to be dismissed at the threshold.

11. Accordingly, the Civil Revision Petition is dismissed. No

costs. Consequently, connected miscellaneous petition is closed.

20.04.2016

Index: Yes/No
Internet: yes/No

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To

The Additional District Munsif,
Alandur,
Kanchipuram District.

P.R.SHIVAKUMAR.J

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