

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

O.S.A. No.177 of 2016

P.Shyamala .. Appellant

-vs-

S.Ravi .. Respondents

Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of the Letters Patent against the Judgment and Decree dated 17.03.2015 passed in Application No.2719 of 2012 in C.S.No.480 of 2011 on the file of original side of this Court.

Application No.2719/2012

in CS.No.480/11: Application has been filed under order XIV Rule of O.S.Rules order VII Rule II(d) of CPC praying to reject the Plaint in C.S.NO.480 of 2011.

For Appellant

Mr.M.Palani

for Mr.C.P.Sivamohan

* * * * *

J U D G M E N T

(Judgment of the Court was delivered by
The Hon'ble Chief Justice)

On hearing the learned counsel for the appellant, we find that the approach adopted by the learned Single Judge to the extent that it may not be practical, in the facts of the present case, to reject the plaint, but rather that issues may be framed on perusal of the pleadings, is correct. We are of the view that when the issues are framed, it is always open to the learned Single Judge to consider whether any of the issues has to be tried as a preliminary issue. We may further add that it is not as if in case the plaint is not rejected every case must go to trial. If it is found that the suit proceedings are an abuse of process of law, the suit can be dismissed (vide

judgment in S.P.Chengalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs. and Others, (1994) 1 SCC 1)

2.The suit file be placed before the learned Single Judge for framing of issues on 01.11.2016 when the learned Single Judge would consider whether any of the issues can be tried as a preliminary issue or whether, as pleaded by the appellant, the suit is liable to be dismissed being an abuse of process of Court. Needless to say, any observations made in the impugned order cannot prejudice the learned Single Judge as they are only based on an application under Order VII Rule 11 of the CPC, which requires only the averments in the plaint and the documents filed with the plaint to be considered.

3.Original Side Appeal, accordingly, stands disposed of. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sra

To

The Sub Assistant Registrar,
Original Side, Madras High Court,
Chennai.

+1 cc to M/s.C.P.Sivamohan Advocate sr 57352

सत्यमेव जयते

O.S.A.No.177 of 2016

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