

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **24.01.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.101 of 2017
and
C.M.P.No.493 of 2017

Umapathy

.. Petitioner

vs

1. S.Omprakash
2. S.Suresh Kumar
3. S.Sathya
4. S.Murali

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.11.2016 passed by the learned VI Assistant Judge, City Civil Court, Chennai in I.A.No.198 of 2016 in O.S.No.4278 of 2015.

For Petitioner : Mr.S.Senthilnathan

ORDER

D3 is the revision petitioner. This revision is filed, challenging the order passed by the Court below in dismissing

the application filed by him under Order 7 Rule 11(a)(d) of the Code of Civil Procedure to reject the plaint.

2. The case of the plaintiffs is that the defendants 1 and 2 had sold and conveyed the suit property to the third defendant/revision petitioner herein on 15.09.2011 treating them to be the absolute owners of the suit property based on the Will executed by the grand father. Hence, they have filed the suit seeking declaration declaring that the sale deed dated 15.09.2011 executed by the defendants 1 and 2, as null and void and for a permanent injunction restraining them from putting up construction in the suit scheduled property.

3. Pending suit, the revision petitioner/D3 herein filed an application under Order 7 Rule 11 (a) and (d) of the Code of Civil Procedure to reject the plaint, as it is barred under Section 213 of the Indian Succession Act, 1925. According to D3, insofar as the plaintiffs are concerned, they are claiming a share in the suit property, which admittedly devolved upon the

registered Will but the execution of the same was doubted. The present suit with the prayer is not sustainable. There is no cause of action setting out the complete facts to grant the relief of partition.

4. The Court below, after hearing both sides, had dismissed the application by holding that there are triable issues involved in the suit and therefore, the same has to be decided only after full-fledged trial and whether the suit is barred under Section 213 of the Indian Succession Act or not cannot be decided at this stage. Further it has held that the Court cannot reject the plaint based on the averments made in the application filed under Order 7 Rule 11 of the Code of Civil Procedure and the relevant facts as set out in the plaint alone have to be looked into.

5. Heard the learned counsel for the petitioner.

6. It is a well settled law that it is the averments in the

plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. Unless the defendant prove that there is no cause of action and what is stated in the plaint is something illusory, with a view to get out of the clutches of Order 7 Rule 11 CPC, the application cannot be entertained. Unless the Court comes to a conclusion that if on a meaningful and not formal-reading of the plaint it is manifestly vexatious, and merit-less, in the sense of not disclosing a clear right to sue, the Court would exercise its power under Order VII Rule 11 C.P.C.

7. In the case on hand, the third defendant/revision petitioner is primarily objecting the suit on the ground that the alienation based on the Will is bad as there is no probate issued to the Will under Section 213 of the Indian Succession Act. It is also settled law that part of a particular plea cannot be

considered singularly but the whole plaint has to be read. A plaint cannot be rejected in part, if there is no cause of action. Therefore, there cannot be any compartmentalization, declination, configuration of the language in various paragraphs contained in a plaint. If that is to be done, it will run against the cardinal principle that the plaint has to be read as a whole. The pleading has to be construed as it stands, without any addition or subtraction and only the substance that has to be looked into.

8. Assuming for a moment that Probate has to be issued in the Will concerned, the mode of proving the Will is as per the Indian Evidence Act. Either the Will has to be proved in a suit for partition or otherwise, the method of proving the Will as per law is same. Merely because, the Will has not been probated, the suit has to be rejected, is a baseless allegation. The cause of action of being a bundle of facts, it is required to be proved in the course of the trial.

9. A reading of the plaint certainly discloses a cause of action as both the parties have admitted that the sale deed has been executed in favour of the third defendant. Besides there are also other triable issues in the suit. Hence, the suit cannot be rejected for want of cause of action as pleaded by the third defendant.

10. Therefore, I do not find any infirmity in the order passed by the Court below, warranting interference in this revision. Accordingly, the Civil Revision Petition fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

24.01.2017

vj2

Index : Yes/No

Internet: Yes

To

The VI Assistant Judge
City Civil Court, Chennai

PUSHPA SATHYANARAYANA,J.,

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