

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 06TH DAY OF FEBRUARY 2017

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.No.212 of 2017
in
C.S. No.33 of 2011

V.Padmanabha Kulasekara Doss @
P.K.Doss, S/o.Late P.D.Vaidyalingam,
Old No.17/New No.22, 1st Street,
Jayalakshmipuram, Nungamabkkam,
Chennai 600 034. ..Plaintiff

Vs

V.Sridharan,
S/o.Late P.D.Vaidyalingam,
Old No.17 New No.22, 1st Street,
Jayalakshmipuram, Nungamabkkam,
Chennai 600 034. ..Defendant

A.No.212 of 2017

V.Sridharan,
S/o.Late P.D.Vaidyalingam,
Old No.17/New No.22, 1st Street,
Jayalakshmipuram, Nungamabkkam,
Chennai 600 034. ..Applicant/Defendant

VS

V.Padmanabha Kulasekara Doss @
P.K.Doss, S/o.Late P.D.Vaidyalingam,
Old No.17/New No.22, 1st Street,
Jayalakshmipuram, Nungamabkkam,
Chennai 600 034. ...Respodent/Plaintiff

Application praying that this Hon'ble Court be
pleased to a) to consider to reject the plaint under
Order VII Rule 11 (a) C.P.C as the respondent / Plaintiff
failed to furnish proper cause of action as required

under Order VII Rule 11 (a) C.P.C.

(b) to consider to reject the plaint under Order VII Rule 11 (d) C.P.C. as the respondent /plaintiff failed to institute the suit in a representative capacity as administrator for administration of the entire estate for the benefit of all the legatees as ordered by the Hon'ble Court in T.O.S. No.34 of 2005.

This Application coming on this day before this court for hearing the court made the following order:

This application is filed by the applicant/defendant to reject the plaint. The applicant case are as follows:-

Applicant father had executed the Will dated 03.11.1986 bequeathing property to the plaintiff and the defendant with specific measurement in Will. The Will property extent to 80 feet from North to South and 40ft from East to West. To give effect to legacies as per the Will 82.5feet is required from North to South which does not exist and the available extent is only 80 feet from North to South. As per Will, if the respondent/plaintiff is given north to south 42.5ft, the applicant herein will be left with only 37.5ft North to south. Whereas the applicant should get 40ft North to South as per Will, it is seen that the legacies conferred on the applicant and the respondent are irreconcilable and the property cannot

be given to the legacies as per the Will. Further, it is the case of the applicant that as per the Letters of Administration the plaintiff has not taken any action to administer as ordered by this Court. The account also not been properly given as per the mandatory conditions imposed by this Court, the conditions in the letters of Administration has not been complied. Hence there is no cause of action of suit, hence the applicant/defendant prays for rejection of plaint.

2. It is the contention of the respondent/plaintiff is that the Letters of Administration has been granted after full fledged trial in his favour. Now the suit has been filed for recovery of possession from the defendant. The property has been properly identified, demarcated and bequeathed to the parties in the Will. Only for property bequeathed he has filed the suit for possession and hence the application filed to reject the suit if not maintainable.

3. Heard both sides.

4. The learned counsel for the applicant cited the judgment reported in **AIR 2000 SC 1908 - Balwant Kaur and another v. Chanan Singh and others** and the judgments reported in **(1977) 3 SCR 261 - V.Tulasamma v. V.Sesha Reddi** and **AIR 1970 SC 1963 - Badri Pershad v. Smt.Kanso**

Devi. There is no dispute with regard to principle set out in the above judgments, but facts in these application is entirely different.

5. It is the contention of the learned counsel for the applicant that as per the Will, the applicant is entitled to get 40feet North to South as per Will, whereas, respondent is entitled to get 42.5feet from North to South. If it is implemented, the applicant will be getting only 37.5 feet instead of 40feet and hence the Will cannot be given effect. The interim accounts have not been properly filed by the respondent/defendant in the suit and no cause of action arose for the present suit hence prayed for rejection.

6. The cause of action pleaded in the plaint is to the effect that the Will dated 03.11.1986 was executed by P.D.Vaidyalingam and he died on 08.08.1987, the plaintiff filed TOS.No.34 of 2005, on 15.06.2010 the TOS was decreed in favour of the plaintiff. The Plaintiff requests the defendant herein to deliver the vacant possession of the property and also issued legal notice dated 22.11.2010, till date the defendant has not chosen to handover the possession to the plaintiff. On the strength of the Letters of Administration, granted in favour of the plaintiff, the plaintiff filed the present

suit, after commencement of recording evidence, the applicant/defendant filed the present application raising the ground that the respondent/plaintiff failed to institute the suit in a representative capacity as administrator of the estate and legacies cannot be given effect. According to the respondent/plaintiff he has filed a suit on the basis of Letters of Administration for recovery of possession. It is not in dispute, that both the plaintiff and the defendant are in occupation of the property. Now the grievance is with regard to discrepancy in the allotment of their respective share. Therefore, the maintainability of the suit cannot be decided at this stage, the applicant has no locus standi to raise this issue at this stage, the maintainability of the suit can be decided in the trial itself. This application is filed to reject the plaint as the evidence is half way through. Therefore question as to whether the description set out in the Will was actually in existence, the same can be decided only after full fledged trial in the suit. On perusal of the entire plaint and the cause of action alleged the plaintiff has filed a suit for recovery of possession of the property which was bequeathed him. Hence, the application filed by the applicant is nothing but abuse of process of law. At this stage liable to be dismissed and the same is hereby dismissed.

7. In the result, the application is dismissed.

sd/.N.S.K.J

06.02.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/03.03.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies
of the Order/Judgment Decree in this format.