

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.10.2017

Coram

THE HON'BLE MR.JUSTICE **D. KRISHNAKUMAR**

C.R.P.(PD).No.3762 of 2017
and CMP.No.17513 of 2017

1. Gokula Rao

2. Santha Kumari

3. Karunya Devi

...Petitioners

Vs.

1. Prema Kumari

2. Shanthakumari

3. Lakshmi

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 23.08.2014 passed in I.A.No.461 of 2016 in O.S.No.215 of 2010 on the file of the Hon'ble District Court No.II at Kancheepuram.

For Petitioners : Mr.E.P.Senniyanigiri

For respondents : Mr.M.Soundarvijay Arun Ram
for R2/caveator

ORDER

According to the petitioners, the respondents have filed a suit in O.S.No.215 of 2009 for partition, mesne profit, permanent injunction and cost. Pursuant to that, the petitioners filed an application in I.A.No.461 of 2016 under Order 7 Rule 11 of the Code of Civil Procedure to reject the above plaint stating that there is no cause of action for the suit, there is under valuation of the suit property under Sections 37 (i) and 37 (ii) of the Tamil Nadu Court Fees and Suits Valuation Act and the said suit is barred by limitation. Written statement has been filed by the respondents in the said suit. The court below has framed issues and the case has been posted for trial. At this pre-trial stage, the present application has been filed by the petitioners herein. It has been held by the trial court that the issue raised in the application is a triable issue and the same can be decided at the time of trial. The other contentions of the petitioner that suit is under valued of the suit property, barred by limitation has also been rejected by the trial court.

2. The learned counsel for the petitioner would submit that the aforesaid suit is barred by limitation and hence, there is no cause of action arises in the suit. Therefore, the same is hit by Order 7 Rule 11 of the Code of Civil Procedure. Without appreciating the case of the

petitioner, the court below has erroneously dismissed the said application.

3. It is useful to read the provisions under Order 7 Rule 11 of the Civil Procedure Code as follows.

"Rejection of plaint – The plaint shall be rejected in the following cases:-

a) where it does not disclose a cause of action.

b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

d) where the suit appears from the

statement in the plaint to be barred by any law.

(Provided that the time fixed by the Court for the correction of the valuation or supplying the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff)."

4. It is useful to extract the decision rendered by the Hon'ble Supreme Court in the case of ***Kamala and Others Vs. K.T.Eshwara Sa and Others*** reported in **(2008) 12 SCC 661**, wherein it is held as follows:

" 34. The only contention raised before the learned trial Judge was the applicability of the principles of *res judicata*. Even for the said purpose, questions of fact

cannot be gone into. What can only be seen are the averments made in the plaint. What inter alia would be relevant is as to whether for the said purpose the properties were sold by reason of any arrangement entered into by and between the parties out of court; whether they had accepted the partition or whether separate possession preceded the actual sale; or whether the contention that a presumption must be drawn that for all practical purposes the parties were in separate possession, are again matters which would not fall for consideration of the court at this stage.

37. What would be its effect is again a question which cannot fall for determination under Order 7 Rule 11 (d) of the Code. These facts require adjudication. The identity of the properties which were the subject-matter of the earlier suit vis-a-vis the properties which were subsequently acquired and the effect thereof is beyond the purview of Order 7 Rule 11 (d) of

the Code.

45. The matter, however, was referred to a three-Judge Bench of this Court in *Balalaria Construction (P) Ltd. (1) v. Hanuman Seva Trust*. However, as no conflict of decisions of this Court was found, it was referred back to the two-Judge Bench again. A two-Judge Bench of this Court in *Balalaria Construction (P) Ltd. (2) v. Hanuman Seva Trust* held: (SCC p.661, para 8)

8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11 (d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is

barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11 (d) of the Code of Civil Procedure."

5. In view of the above decision, the contention of the petitioner cannot be accepted and the said ground is liable to be set aside. So far as the other ground, the value of the suit has been undervalued, under the provisions of the Tamil Nadu Court Fee and Suit Valuation Act, 1955, the trial court has held that the suit property has been properly valued and the same has been accepted by the Court. If the suit property has been undervalued under Sections 37 (1) and (2) of the said Act, the petitioner can very well establish the same before the trial court. On this ground also, Order 7 Rule 11 would not attract the case at this stage to reject the plaint.

6. On seeing the nature of relief as prayed for in the suit filed by the respondent herein for partition, mesne profit and

permanent injunction and on perusing the provisions and aforesaid decision, it is observed that the scope of Order 7 Rule 11 (b) of the Civil Procedure Code would not attract at this stage since the cause of action can be decided at the time of the trial. Therefore the said fact is mixed question of law and the fact is required to be decided at the time of trial.

7. In the light of the above facts and circumstances of the case and the decision cited supra, this Court is not inclined to interfere with the orders passed by the trial court, as there is no error or illegality in the order passed by the court below. The Civil Revision Petition is liable to be dismissed.

8. At this point of time, the learned counsel for the petitioner would submit that evidence of PW1 has been commenced and examined and seeks a direction from this court for earlier disposal of the suit.

9. On request made by the learned counsel for the petitioner, the trial court is directed to dispose of the said suit as expeditiously as possible preferably within a period of six months from

the date of receipt of a copy of this Order.

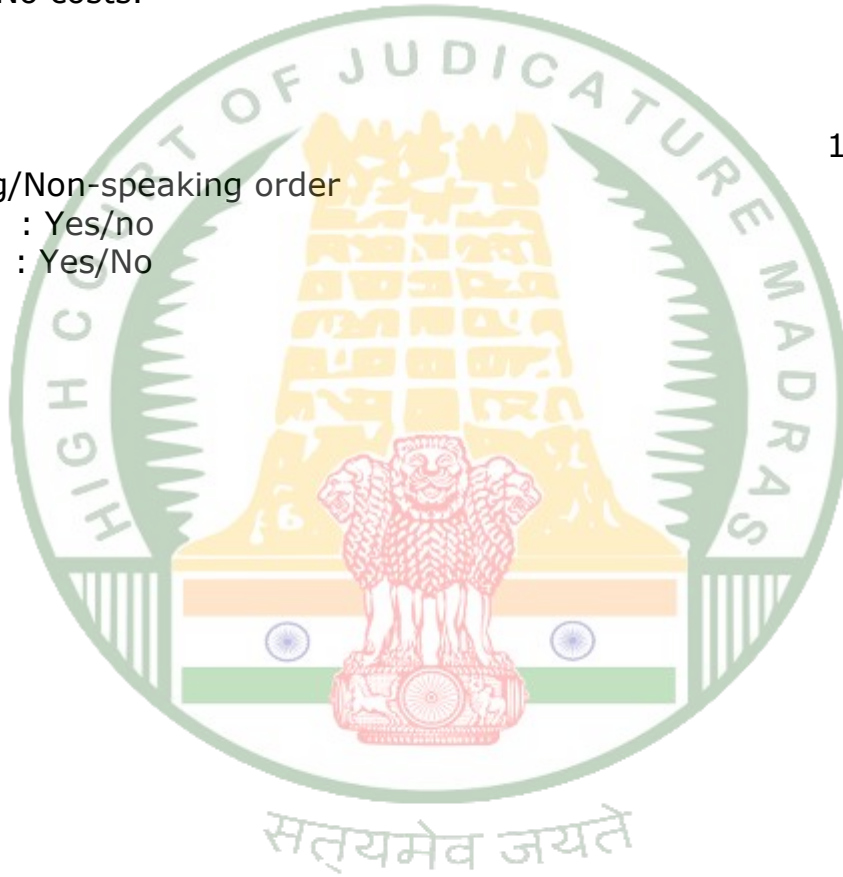
10. The Civil Revision Petition is dismissed with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

11.10.2017

Speaking/Non-speaking order

Index : Yes/no

Internet : Yes/No
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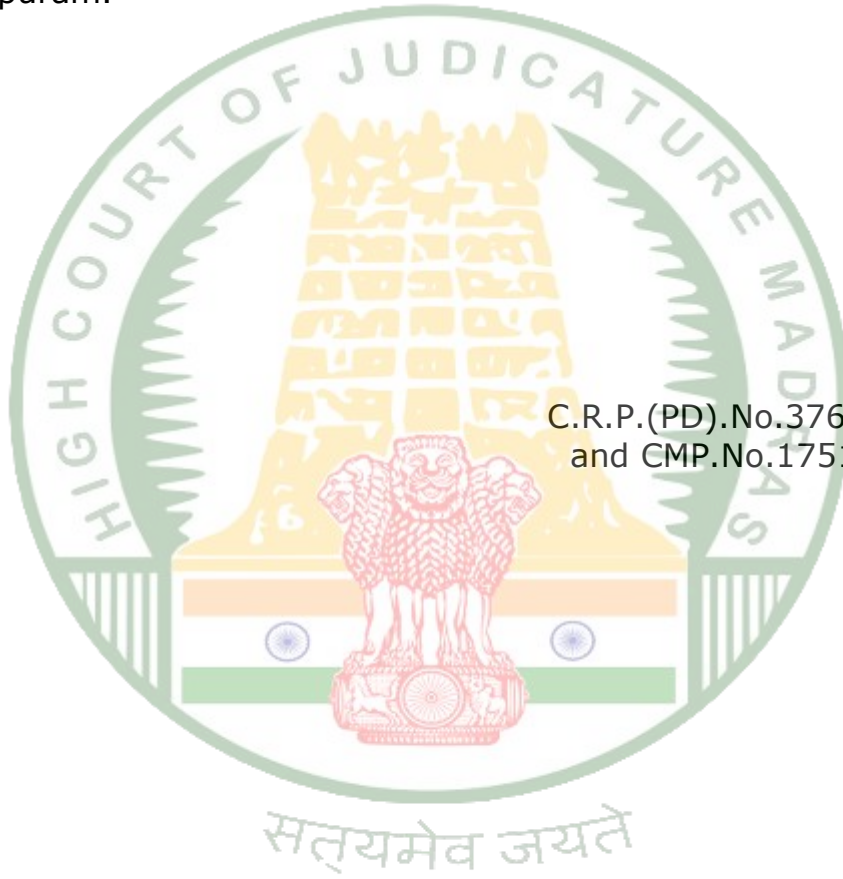


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D. KRISHNAKUMAR, J.

To

The Hon'ble District Court No.II,
Kancheepuram.



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