

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.No.3866 of 2017 &
C.M.P.No.18040 of 2017

1. Samuel
2. Elumalai
3. Sengani
4. Yasodha
5. Murugesan
6. Manjula
7. Pazhani
8. Munusamy
9. Kumaresan
10. Raji
11. Pandian
12. Sakthivel
13. Shankar
14. Karuppaiah
15. Kumar
16. Manoharan
17. Gnanavel
18. Mangalam
19. Ayyasamy
20. Punniyamoorthy
21. Malliga
22. Arul
23. Mani
24. Murugan
25. Ramesh
26. Rajamani
27. Prabhavathi
28. Sugumar

29. Pozhichalaur Makkal Nala Munnetra

Sangam by its President Mr. Gnanamani,
Vinayaga Nagar, Pozhichalur,
Chennai-600 074.

... Petitioners

Vs.

1. Govindammal
2. Ramani Babu
3. Deepu Abraham Babu
4. Yesaikkal

5. Dakshinamoorthy
6. Malaisamy
7. Udayar
8. Karuppusamy
9. Thangaraj
10. Ramar
11. Ravi
12. Raji
13. Sumathi
14. Kuppusamy
15. Loganathan
16. Munusamy
17. The Assistant Engineer,
TNEB, Pozhichalur,
Chennai-74.

... Respondents

Prayers: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.379 of 2017 in O.S.No.193/2010 dated 09.08.2017, on the file of the Additional District Judge, Chengalpattu.

For Petitioners : Mr.M.Kalyanasundaram
Senior Counsel for
M/s.R.Vasudean & S.Kavitha

For Respondents
1 to 3 : Mr.C.Jagadish

O R D E R

According to the petitioners, the petitioners are the defendants 13 to 24, 26 to 39, 41 and 43 in O.S.No.193 of 2010. The respondents herein have filed the above suit for declaration of title, permanent injunction, mandatory injunction and recovery of possession in respect of Survey Nos.231/2A1, 231/2A2, 231/2B and 231/2C measuring total extent of 1.26 acres. The petitioners/defendants have filed written statement in the aforesaid suit resisting the suit claim. Trial was commenced and documents were also marked on the side of the plaintiffs/respondents herein. The petitioners/defendants have filed in I.A.No.379 of 2017 under Order VII Rule 11 read with Section 151 of the Civil Procedure Code (herein after referred to as "CPC") to reject the plaint on the ground that the suit is barred by jurisdiction and the suit is barred by resjudicata. The Trial Court, after considering the contentions of both the parties, dismissed the said application by holding that the petitioner has filed the application, at the stage of cross examination of PW1 and therefore, the petitioners have a mixed questions of law and the same shall be considered at the time of trial. Challenging the dismissal of the application, the

petitioners have preferred the present Civil Revision Petition before this Court to set aside the same.

2. According to the learned counsel for the petitioners/defendants, the aforesaid suit property situated in Polichalur Village, was classified as Odai poramboke and the same was notified in the revenue records. The land in Survey No.231 along with Survey Nos.227 and 244 are classified by the Government of Tamil Nadu as early as in the year 1911, and therefore, the suit claim is barred by Jurisdiction. Further, according to the learned counsel for the petitioners/defendants, that the aforesaid suit was under valued as per Section 7 of the Tamil Nadu Court Fees and Suits Valuation Act and hence, the suit is liable to be rejected.

3. According to the learned counsel for the petitioners/defendants, already a suit has been file by one Shanthi and others in O.S.No.292 of 2002, before the Court of the District Munsif, Alandur, dated 23.12.2013, against the second plaintiff and and ex-parte decree has been passed in the said suit and hence, the present suit is barred by res-judicata. The other grounds raised by the petitioners/defendants is that the suit is barred by limitation as the plaintiffs had the knowledge of the petitioners/defendants' occupation of the property in Survey No.231 and 244 as early as in the year 1999. Therefore, the present suit filed by the respondents/plaintiffs would attract Order VII Rule 11 of the C.P.C. Hence, the suit ought to have been rejected by the Trial Court. The petitioner has also relied upon the judgment of the Hon'ble Supreme Court of India in the case of Madanuri Sri Rama Chandra Murthy vs. Syed Jalal reported in 2017 0 Supreme (SC) 410.

'8. The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under

Order VII Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

According to the learned Senior counsel for the petitioners, an application under Order VII Rule 11 of C.P.C. can be filed at any stage, the present application has been filed at the time of trial and therefore, the said application cannot be rejected on the ground of delay.

4. Per contra, the learned counsel for the respondents would submit that the grounds raised in the application under Order VII Rule 11 of the CPC is a disputed fact and the same shall be considered at the time of the trial. In so far as the suit filed by Shanthi and others in O.S.No.292 of 2002, for permanent injunction is concerned, the ex-parte decree granting permanent injunction shall not be executed except under due process of law. The present suit has been filed seeking various reliefs namely, declaration of title, delivery of vacant possession, permanent injunction, mandatory injunction in respect of Survey Nos.231/2A1, 231/2A2, 231/2B and 231/2C. There is no dictum of res-judicata in the present case. Therefore, the said contention of the learned counsel for the petitioner is liable to be rejected. In so far as the other

grounds raised by the learned counsel for the petitioner that the suit is barred by limitation is concerned, it is a mixed question of law. and the same can be decided at the time of trial. In so far as the value of the property is concerned, now, the trial has been commenced and PW1 has been examined. Therefore, the said fact can be raised at the time of trial. Further, according to the learned counsel for the respondents/plaintiffs, the specific stand taken by the petitioners/defendants in their written statement that they are in occupation of S.No.231/1 and 244 which are poramboke lands only and not in the suit properties. The relevant portion of the written statement is extracted hereunder:

"This defendant denies that entire allegations found in paras No.12 as false and admit that the defendants 1 to 43 are in occupation of S.No.231/1 and 244 which are poramboke lands only and not in the suit properties. The defendants are not in occupation of the suit schedule properties."

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials on record.

6. Admittedly, the suit property and the premises occupied by the defendants are different survey numbers. According to the defendants, they are in occupation of S.No.231/1 and 244 only. According to the learned counsel for the respondents/plaintiffs, the petitioners/defendants are in possession of the suit property as encroacher and therefore, they filed the present suit. To determine the real issue involved in the suit, an Advocate Commissioner has to be appointed to find out the actual possession of the petitioners/defendants.

7. Both side counsel agreed an application to be filed before the trial court for appointment of Advocate Commissioner to identify the property and determine the real issues involved in the suit.

8. It is needless to state that the trial Court may issue warrant suitably to the Advocate Commissioner to identify the property with the help of Taluk Surveyor.

9. The respondent/plaintiff shall file an application

within a period of two weeks from the date of receipt of a copy of this order, for appointment of Advocate Commissioner to inspect the suit property along with Taluk Surveyor and file a report before the court below. In the event of filing such application, the same shall be considered by the trial court and pass appropriate orders in accordance with law, within a period of eight weeks thereafter.

10. Accordingly, the Civil revision petition stands disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

25.10.2017
abr/vaan

FOR BEING MENTIONED:

This case having been posted under the caption "for being mentioned" on 03.11.2017, in pursuance of the order dated 25.10.2017, in the presence of the above said counsels this court made the following order:

On 25.10.2017, final order has been passed by this Court in the above Civil Revision Petition. Today, at the instance of the learned counsel for the respondents, the matter is listed under the caption "for being mentioned".

2. The learned counsel for the respondents would submit that already an Advocate Commissioner has been appointed by the trial court and report has been submitted by the Commissioner. The respondent also not disputed the above said fact. The learned counsel for the respondent further submitted that due to inadvertance, the aforesaid fact has not been stated before this Court.

3. The learned counsel for the petitioners would submit that already the respondents have made an objection for the Advocate Commissioner's report before the trial court, which is now pending. Therefore, request to modify earlier order to appoint an Advocate Commissioner and to pass appropriate order.

4. In view of the submission made by the learned counsel for the parties, the paragraphs 7, 8 & 9 in the order dated 25.10.2017 stands deleted. The trial court is directed to consider the report of the Advocate Commissioner, objection of the respondents and pass orders in accordance with law.

Sd/-

Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

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To

The Additional District Judge, Chengalpattu

+2cc to Mr.R.VASUDEVAN, Advocate, S.R.No. 75635

+2cc to Mr.R.VASUDEVAN, Advocate, S.R.No. 78017

+1cc to Mr.C.JAGADISH Advocate, S.R.No. 78321

+1cc to Mr.C.JAGADISH Advocate, S.R.No. 72485

CRP.PD.No.3866 of 2017
and CMP.No.18040 of 2014

MR (CO)
TR(30/11/2017)

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