

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.04.2017

CORAM:

THE HON'BLE MR. JUSTICE **M.SUNDAR**

C.R.P.(PD) No.1557 of 2015

and

M.P.No.1 of 2015

R.Kandan

..Petitioner

Vs.

1.Thilagam

2.K.Jothi

3.R.Kumar

4.The Chairman-cum-Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Chepauk,
Chennai-600 005.

.. Respondents

The Civil Revision has been filed under Article 227 of the Constitution of India against the fair and final order passed by the III Assistant Judge, City Civil Court, Chennai made in I.A.No.9904 of 2012 in O.S.No.2047 of 2011, dated 18.2.2015 and to set aside the same.

For Petitioner : Mr.C.Nithysh Sekhar

For Respondents : Mr.T.Anand for RR1 and 2
Mr.V.K.Rajagopalan for R-3
Mr.B.Kesavan for R-4

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ORDER

The first defendant in the suit is the revision petitioner before this Court.

2 The suit, being O.S.No.2047 of 2012 on the file of the III Assistant Judge's Court, City Civil Court, Chennai, was filed by two plaintiffs, inter-alia arraying the revision petitioner before this court as the first defendant.

3 The primary prayer in the suit is to direct the first defendant to effect partition and allot 2/4th share in the suit property to the plaintiffs. There is also a prayer for permanent injunction qua alienation, besides residuary prayers.

4 Be that as it may, the first defendant took out an application in I.A.No.9904 of 2012, inter-alia, under sub-clauses (b) and (d) of Rule 11 of Order VII of the Code of Civil Procedure, 1908 ("C.P.C.", for brevity). In other words, the first defendant took out the above application for rejection of plaint, invoking Order VII Rule 11(b) and Order VII Rule 11(d) C.P.C.

5 The primary contention of the first defendant in the reject the plaint application is that the suit is barred by *res judicata* (Section 11 C.P.C.) in the light of an earlier suit, being O.S.No.2770 of 2000 on the file of the XVII Assistant Judge, City Civil Court, Chennai, which was disposed of by a judgment dated 25.11.2002.

6 I have perused the order passed by the trial court in the reject the plaint application.

7 The trial court has dismissed the reject the plaint application, primarily, on the ground that the first defendant has not been able to demonstrate that the suit is liable to be rejected, from the averments in the plaint qua cause of action and *res judicata*.

8 I have also perused the plaint, which is part of the typed set of papers before this Court.

9 There is a cause of action paragraph, being paragraph 9, for whatever it's worth. Besides, there is no specific reference to the earlier suit.

10 It is well settled now that in a reject the plaint application, the petitioner should be able to demonstrate that the plaint is liable to be rejected, from the uncontraverted averments contained in the plaint. In addition to plaint, at best, admitted documents can be looked into and nothing more.

11 In that view of the matter, on perusal of the plaint and on hearing the submissions of the learned counsel at the Bar, I am convinced that this may not be a fit case for rejection of plaint, much less on the ground that there is no cause of action and that it is barred by law (Section 11 – *res judicata*).

12 It is submitted by both the learned counsel that pleadings are complete, issues have been framed and the suit is ready for trial. Both the learned counsel are also confident that they will be able to complete the trial and invite the judgment from the trial court within a time frame of four

months.

13 Owing to all that have been stated supra, I do not find any reason to interfere with the order of dismissal of the reject the plaint application by the trial court. Therefore, this civil revision petition is liable to be dismissed.

14 Though obvious, it is made clear that the trial court shall proceed with the trial uninfluenced by and untrammelled by any observation that may have been made by this court in this order, as all that have been said in this order is for the limited purpose of disposing of the revision directed against the dismissal of the reject the plaint application.

15 As stated supra, as both the learned counsel are confident of completing the trial and inviting the judgment within a time frame of four months, the trial court is directed to take up the matter and dispose of the same as expeditiously as possible and in any event, within four months from the date of receipt of a copy of this order.

16 With the above observations, this civil revision petition is dismissed. No costs. In the light of the order in the civil revision petition, the civil miscellaneous petition is closed.

03.04.2017

Index : Yes/No

vvk

To

The III Assistant Judge,
City Civil Court, Chennai.

M.SUNDAR, J.

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