

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2017

CORAM

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(PD) No.911 of 2017

India Silk House (P) Ltd.

Rep. By its Chairman & Managing Directors,

(1)Pritam Lalchand Mahtani, Director &

(2)Ashok Lalchand Mahtani, Director.

..Petitioner

-VS-

Anjuman-E-Mufid-E-Ahl-E-Islam

Rep. By its Hony. Secretary,

Dr.Syed Khaleefathulla.

..Respondent

Petition filed under Article 227 of the Constitution of India, praying against the order dated 07.12.2016 passed in I.A.No.163 of 2015 in O.S.No.474 of 2015 on the file of XVIII Addl. Judge, City Civil Court, Madras.

For Petitioner

: Mr.P.Shanmugam

for M/s.Shanmugha Asso.

For Respondent

: Mr.A.Abdul Rahim

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ORDER

Challenging the order passed in I.A.No.163 of 2015 in O.S.No.474 of 2015 on the file of the learned XVIII Additional Judge,

City Civil Court, Chennai, the defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.474 of 2015 for recovery of possession and for damages. The defendant filed an application in I.A.No.163 of 2015 under Order VII Rule 11 of CPC to reject the plaint on the grounds that the plaintiff has not paid proper Court fee and that the plaintiff has not produced the original Trust Deed. Further, the defendant contended that there is no cause of action for filing of the suit and in these circumstances, the plaint is liable to be rejected.

3.The plaintiff filed their counter and disputed the averments stated in the affidavit filed in support of the application. The trial Court, taking into consideration the case of both the parties, dismissed the application.

4.Mr.Shanmugam, learned counsel appearing for the petitioner / defendant submitted that the trial Court failed to consider the grounds raised by the petitioner in the application filed under Order VII Rule 11 of CPC and without considering the said grounds, the trial Court has erroneously dismissed the application. In support of his

contention, the learned counsel relied upon the following judgments:-

1. The Church of Christ Charitable Trust & Educational Charitable Society, Rep. By its Chairman vs. Ponniamman Educational Trust, rep. By its Chairperson, 2012 (4) CTC 308, wherein the Apex Court held as follows:

"12. In the case on hand, the Plaintiff-Respondent to get a decree for Specific Performance has to prove that there is a subsisting agreement in his favour and the Second Defendant has the necessary authority under the Power of Attorney. Order 7, Rule 14 mandates that the Plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the Power of Attorney when the Plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is. In the case on hand, only the agreement between the Plaintiff and the Second Defendant has been filed along with the Plaint under Order 7, Rule 14 (1). As rightly pointed out by the learned Senior Counsel for the Appellant, if he is not in possession of the Power of Attorney, it being a registered document, he should have filed a registration copy of the same. There is no such explanation even for not filing the registration copy of the Power of Attorney. Under Order 7, Rule 14 (2) instead of explaining in whose custody the Power of Attorney is, the plaintiff has simply stated 'Nil'. It clearly shows non-compliance of Order 7, Rule 14(2)."

2. Nesammal and 3 others vs. Edward and another, 1998-3-L.W. 505, wherein this Court held that the provisions of Order 7 Rule 11 are not exhaustive and the Court has got inherent powers to see that vexatious litigations are not allowed to take or consume the time of the Court. Further, this Court held that in appropriate cases, directions can be given by this Court as well as the Court in which the suit is filed not to entertain the

suit, if on reading the allegations in the plaint, it reveals that the same is abuse of process of law.

5. Countering the submissions made by the learned counsel for the petitioner, Mr. Abdul Rahim, learned counsel appearing for the respondent / plaintiff, submitted that the petitioner has not made out a case under Order VII Rule 11 of CPC for rejecting the plaint.

6. So far as the production of original Trust Deed is concerned, the respondent / plaintiff has produced the xerox copy of the same along with the plaint. Under Order VII Rule 14 (3) of CPC, the original document can be produced at a later stage. When the provisions of Order VII Rule 14 (3) of CPC permits the plaintiff to produce the document at a later stage, the contention now raised by the learned counsel for the petitioner that the plaintiff has not produced the original document cannot be accepted.

7. So far as the payment of Court fee is concerned, the trial Court was convinced that the plaintiff has paid the appropriate Court fee and that they were also exempted from paying the Court fee under G.O. Ms.No.1574, dated 12.06.1972. In the counter, the

plaintiff has also stated that they have also produced documentary evidence in support of their contention with regard to payment of Court fee. The contention raised by the defendant with regard to the payment of Court fee is a matter for evidence and the same can be established only at the time of trial.

8. With regard to the cause of action for filing of the suit is concerned, the plaintiff has clearly narrated the cause of action for filing of the suit. *Prima facie*, the averments stated in the plaint establishes the cause of action for filing of the suit. The other contentions raised by the defendant for rejecting the plaint cannot be raised as grounds under Order VII Rule 11 of CPC for rejecting the plaint. From a reading of the averments stated in the plaint, it is clear that there is no abuse of process of law and the disputes between the parties can be decided only after a full-fledged trial before the trial Court.

9. Though there is no dispute with regard to the ratio laid down by the Supreme Court in the judgment reported in **2012 (4) CTC 308**, referred supra, in the said case, the plaintiff has simply stated 'Nil' in the list of plaint documents column under Order VII Rule 14(2)

of CPC. In the case on hand, the plaintiff has produced the xerox copy of the Trust Deed along with the plaint and it is brought to the notice of this Court that along with the proof affidavit of the plaintiff, they have also produced all original documents before the trial Court. In these circumstances, the judgments relied upon by the learned counsel for the petitioner / defendant are not applicable to the present case.

10. For the reasons stated above, I do not find any reason to reject the plaint. The trial Court has rightly dismissed the application and I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is, accordingly, dismissed. No costs.

21.03.2017

Speaking/Non-speaking order

Index : No
Internet : Yes

sra

To

1.The XVIII Additional Judge,
City Civil Court, Chennai.

M.Duraiswamy, J.

(sra)

C.R.P.(PD) No.911 of 2017

21.03.2017
<http://www.judis.nic.in>