

IN THE HIGH Court OF JUDICATURE AT MADRAS

Dated: 31.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.3918 of 2011
and
M.P.No.1 of 2011**

1.Janakiraman (Deceased)

2.J.Anjilatchumi

3.J.Suganthi

4.J.Indumathi

(Petitioners 2 to 4 brought on record as
LRs of the deceased sole petitioner vide
order of Court dated 14.12.2016 in
MP.No.2 of 2013 in CRP.No.3918 of 2011)

.. Petitioners

Vs.

1.Thiruvazhagan

2.Thirumurugan

3.Rukumani

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the order and decretal order dated
29.07.2011 made in I.A.No.42 of 2011 in O.S.No.56 of 2009, on the
file of the Additional District Court, Cuddalore.

For Petitioners : Mr.T.Dhanyakumar

For Respondents : Mr.R.Gururaj (for R1 to R3)

ORDER

The civil revision petition is focused by the 1st defendant as against the order and decree dated 29.11.2011 made in I.A.No.42 of 2011, which was a petition for rejection of plaint filed under Order 7, Rule 11 C.P.C. The parties are referred here under according to their status and ranking before the trial Court.

2.A summarization of the relevant facts is absolutely necessary for the disposal of this Civil Revision Petition would run thus:

The plaintiffs 1 to 3 filed the suit as against the defendants 1 and 2 for partition and separate possession in O.S.No:56 of 2009 before the Additional District Court (FTC-II), Cuddalore.

3.The 1st defendant on receipt of summon in the said suit filed an application to reject the plaint in I.A.No.42 of 2011 on the ground that the suit filed by the plaintiffs is undervalued and the same is not recognized by the Court of law and therefore the plaint is liable to be

rejected as per Order 7, Rule 11 C.P.C. Further, the 1st defendant has raised plea that the plaintiffs have no cause of action for the present suit and the alleged cause of action is totally wrong and they created fabricated documents. Therefore the plaint is also liable to be rejected on the ground that it does not disclose the cause of action and the same is attracted the provision of Order 7, Rule 11 of C.P.C.

4.The plaintiffs have alleged in the counter affidavit that the suit does not contain circumstances to reject the plaint or even enquiry into such an application. The 1st defendant has made an imaginary statement with an intention to defeat the right of the plaintiffs. The plea of ouster is unfounded. The plaintiffs further stated that the factum of partition or ouster have to be proved through oral evidence and not through affidavit. Therefore the question of calling for enquiry under Order 7, Rule 11 of C.P.C does not arise. It is an attempt by the 1st defendant to divert the attention of the Court. The application is vague and confusing. Hence the plaintiffs prayed to dismiss the above application.

5.After hearing both parties, the learned Additional District Judge, Fast Track Court No.2, Cuddalore, has dismissed the application

by order dated 29.07.2011 under observation that the suit was properly valued and the Court fee paid under Section 37 (2) of the Tamil Nadu Court Fees and Suit Valuation Act is correct and sufficient. The learned trial judge further held that the plea of cause of action has to be decided as per oral and documentary evidence at the time of trial and not at this stage.

6.I heard Mr.T.Dhanyakumar, learned counsel appearing for the petitioner and Mr.R.Gururaj, learned counsel appearing for the respondents and all the materials available on records are perused.

7.Now the point for consideration before this Court is whether the plaint is liable to be rejected on the ground of under valuation of the suit and for want of cause of action?

8.It is argued by the learned counsel for the revision petitioner that the mother of the 1st defendant Ponnammal was the absolute owner of the suit property and his mother Ponnammal executed a Will in his favour on 05.07.1990 with regard to the suit property. The existence of the Will dated 05.07.1990 is well known to his entire family members. After the demise of his mother the Will is come to

force. So the 1st defendant is the absolute owner of the suit property and he is not a co-parcener or co-owner of the suit property as alleged by the plaintiffs therefore the question of joint possession of suit property by the 1st defendant along with the plaintiffs does not arise. Hence the valuation adopted by the plaintiffs and paid Court fee as per Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act is not correct and the same is unsustainable in law. So the 1st defendant prayed that the suit is liable to be rejected as it is undervalued.

9. That apart the 1st defendant has raised a plea that the plaintiffs have no cause of action for the present suit and the alleged cause of action is totally wrong. Hence according to the 1st defendant the plaint is liable to be rejected on the ground that it does not disclose the cause of action.

10. Per contra, the learned counsel for the respondents/plaintiffs argued that the 1st defendant claim title to the suit property under Will dated 05.07.1990, but he has not filed the Will. Further, the genuineness of the will is denied by the plaintiffs. The will dated 20.05.1999 alone is the last Will of the testatrix and the same was genuine. It is settled law that possession of one co-sharer is that of the

other. Hence, valuation under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act is proper and sufficient. The plea of ouster raised by the 1st defendant is unfounded. Therefore, the factum of partition or ouster have to be proved through oral evidence.

11.A close perusal of the order of the trial Court discloses that the ground raised by the 1st defendant is not sufficient to reject the plaint at the threshold and the same can be considered only at the time of trial. Further, the question of payment of Court fee, valuation of the suit and cause of action are mixed question of law and fact and the same can be considered into only after conducting full-fledged trial.

12.The trial Court has rightly held that the possession of one co-sharer is that of the other and therefore the Court fee paid by the plaintiffs under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act is proper and sufficient. The said finding of the trial Court does not call for any interference by this Court.

13.Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the

averments made in the plaint in their entirety must be held to be correct. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit.

14.A perusal of Order 7 Rule 11 of CPC makes it clear that the relevant facts which need to be looked into for deciding an application there under are the averments in the plaint and not the plea taken by the defendant in the written statement would be wholly irrelevant.

15.The well settled position is that while considering the application under Order 7, Rule 11 of CPC., Court is not required to take into consideration the defence set up by the Defendant in his Written Statement or other documents. The question whether Plaint discloses any cause of action and whether it is barred by any Law is to be decided by looking at the averments contained in the Plaint itself and not the defence set up in the Written Statement. While considering the Application, the strength or weakness of the case of the Plaintiff is not to be examined. It is fairly well settled that the Court has to find out from the allegations made in the plaint itself and not beyond it as to whether any vexations or frivolous litigation has been initiated by

the Plaintiff. The Court cannot take into account materials beyond the plaint to declare that the case of the Plaintiff is frivolous or is barred by any Law.

16.From the above, the plea of cause of action also could be decided only after conducting trial. The revision petitioner did not make out a case to reject the plaint. This Court find no irregularity or infirmity in the impugned order of the Court below. I do not find any merit in the civil revision petition and accordingly, the same is dismissed.

17.In the result:

(a) this Civil Revision Petition is dismissed by confirming the order passed in I.A.No.42 of 2011 in O.S.No.56 of 2009, dated 29.07.2011, on the file of the learned Additional District Court, Cuddalore;

(b) since the suit is for the year of 2009, the trial Court is directed to dispose the suit within a period of three months from the date of receipt of a copy of this order, without giving any adjournments to either parties.

No cost. Consequently connected miscellaneous petition is closed.

31.01.2017

Note: Issue order copy on 28.08.2017

Internet: Yes

Index: Yes

vs

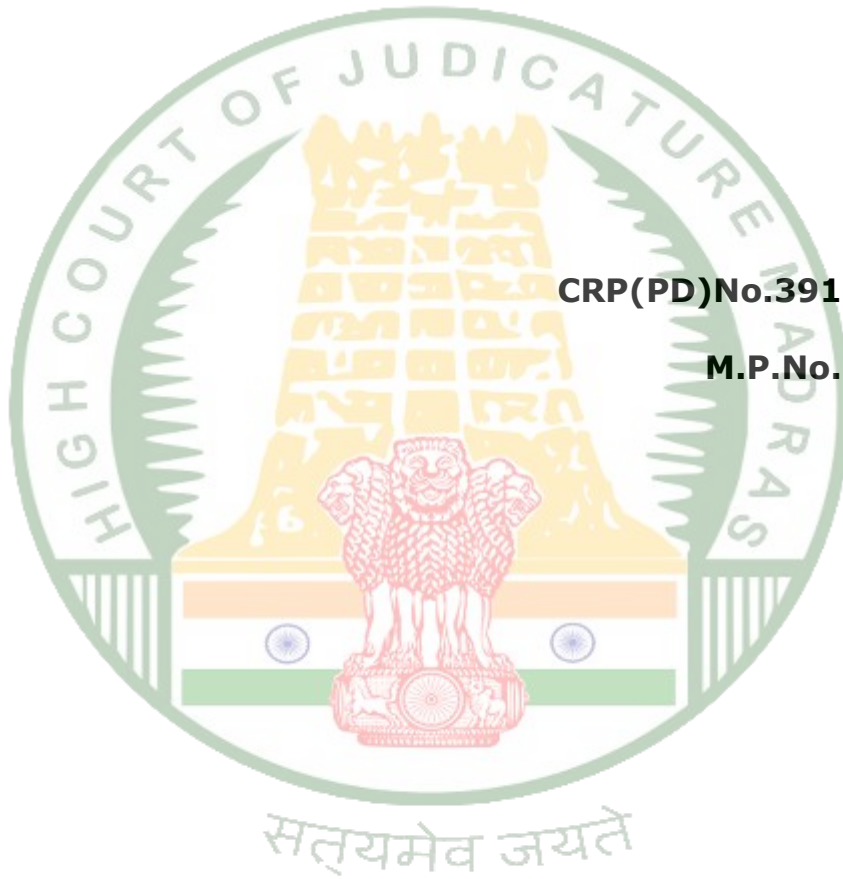
To
The Additional District Court,
Cuddalore.



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M.V.MURALIDARAN, J.

VS



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