

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.01.2017

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.561 of 2014
and
M.P.No.1 of 2014

1. Amalorepavam
2. Rufus Sabin
3. Enigo Shivani

... Petitioners

vs.

Rev.Sr.Arokia Mary Mother Superior
St.Annes Convent
Christianpet
Tel-Post, Katpadi
Vellore-59.

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 16.12.2013 passed by the learned District Munsif, Katpadi in I.A.No.214 of 2013 in I.A.No.3 of 2013 in O.S.No.192 of 2001.

For Petitioners : Mr.A.Thameem Mohideen

For Respondent : Mr.M.Muthupandian

ORDER

The plaintiffs are the revision petitioners.

2. The revision is directed against the order refusing to reject the proof affidavit filed by the respondent/eighth defendant in I.A.No.3 of 2013.

3. The brief facts of the case is as follows:

(i) The revision petitioners/plaintiffs filed the suit in O.S.No.176 of 2012 as against the defendants for partition, separate possession and for a permanent injunction.

(ii) Pending suit, the eighth defendant had filed an application under Order 7 Rule 11 of CPC in I.A.No.3 of 2013, in which, the plaintiff had also filed their counter. In the application filed under Order 7 Rule 11 CPC, the eighth defendant had filed the proof affidavit and sought permission to mark certain documents in the chief examination. As it is a settled principle that in Order 7 Rule 11 application, only the plaint averments are to be gone into, the revision petitioners/plaintiffs objected to the

filing of the proof affidavit and marking of documents in the I.A.

(iii) Aggrieved by the same, the revision petitioners/plaintiffs have filed an application in I.A.No.214 of 2013 to reject the said proof affidavit as not maintainable. However, the learned trial Judge dismissed the said application by stating that in an application like rejection of plaint, which will decide the maintainability of the suit itself, the parties seeking the relief can be permitted to let in evidence on their side, as the result may bring the suit to an end. Accordingly, the learned trial Judge permitted the eight defendant to produce the documents to substantiate her claim.

4. Challenging the said order of rejection, the above revision has been filed by the revision petitioners/plaintiffs.

5. Heard both sides.

6. The learned counsel appearing for the revision petitioners contended that the Court below ought not to have

dismissed the application filed by the plaintiffs seeking to reject the proof affidavit filed by the eighth defendant along with the application filed under Order 7 Rule 11 of CPC to reject the plaint. He would further submit that marking of documents produced by the respondent are not connected with the suit property. Accordingly, he prayed for setting aside the order passed by the court below.

7. In support of his contention, the learned counsel for the revision petitioners placed reliance on the following judgments of the Hon'ble Supreme Court:

(i) **(2015) 5 SCC 732 [Soumik Sil vs. Subhas Chandra Sil]** wherein it is held that the rejection of the plaint and the subsistence of the cause of action can be determined solely in terms of what is averred in the plaint and not what the plaintiff pleads in appeal or some other suit or any other document.

(ii) **(2015) 8 SCC 331 [P.V.Guru Raj Reddy rep.by GPA Laxmi Narayan Reddy and another vs. P.Neeradha**

Reddy and others] . Certain excerpts would run thus:

"5. Rejection of the plaint under Order VII Rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."

In view of the aforesaid judgments, the learned counsel for the revision petitioner prayed for setting aside the order passed by the court below.

8. Per contra, the learned counsel appearing for the respondent/eighth defendant submitted that the Court below

after considering all the materials placed before it, had rejected the application filed by the revision petitioners, warranting no interference in this revision.

9. In the present case, the stage of considering the averments made in the application filed under Order 7 Rule 11 of CPC has not yet reached and before that the proof affidavit has been filed in the said application by the eighth defendant and also marking certain documents. As held in the judgment of the Hon'ble Supreme Court referred to above, only a reading of the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Courts are required to do. The other material with respect to the knowledge of the plaintiff, for filing the case to give rise to a cause of action, cannot be considered at this stage. Even the averments raised in the written statement are irrelevant and immaterial while considering the application under Order 7 Rule 11 CPC.

10. In view of the above settled position of law, the order of the learned trial Judge accepting the proof affidavit and

allowing the eighth defendant to mark the documents are unwarranted and uncalled for, which is liable to be set aside.

11. Accordingly, the order 16.12.2013 passed by the learned District Munsif, Katpadi in I.A.No.214 of 2013 in I.A.No.3 of 2013 in O.S.No.192 of 2001 is set aside and the **Civil Revision Petition is allowed.** The learned trial Judge is directed to complete the hearing of I.A.No.3 of 2013 filed by the eighth defendant under Order 7 Rule 11 of CPC and dispose of the same on or before 28.02.2017. No costs. Consequently, the connected miscellaneous petition is closed.

23.01.2017

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Index: Yes/No

Internet: Yes

To

The District Munsif at Katpadi, Vellore District

PUSHPA SATHYANARAYANA.J

vj2

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