

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2017

DELIVERED ON : 07.09.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.1263 of 2012

and

M.P.No.1 of 2012

M.Jaffer Khan

.. Petitioner

vs

1.Bharathi Makkal Nala Sangam,
rep. by its Secretary C.Parthasarathy,
No.34, Bhagavathy Ammal Street,
Kolathur, Chennai-99.

2.M.Ramasamy Reddiar

3.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-3.

सत्यमेव जयते.. Respondents

Revision is filed under Section 115 of Civil Procedure Code, against the order and decretal order dated 12.11.2011 made in I.A.No.6129 of 2011 in O.S.No.4794 of 2010 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai, dismissing the said petition filed by the petitioner herein praying for rejection of plaint under Order VII Rule 11 CPC and praying to set aside the said fair order and decretal order.

For Petitioner : Mr.G.Saravanan

For Respondents : Mr.M.Kumaraswamy (for R1)
No Appearance (for R2 & R3)

ORDER

This Civil Revision Petition has been filed by the petitioner against the order dated 12.11.2011 passed in I.A.No.6129 of 2011 in O.S.No.4794 of 2010 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai, dismissing the petition filed by the petitioner under Order 7, Rule 11 of CPC.

2. The 2nd defendant is the petitioner, 1st respondent is the plaintiff, 2nd respondent is the 1st defendant and the 3rd respondent is the 3rd defendant in the suit.

3. Reference to parties in this order will be according to their rank in the suit.

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4. The plaintiff has filed the suit for declaration that the decree and judgment passed in O.S.No.1596 of 2008 by the learned V Assistant Judge, City Civil Court, Chennai dated 22.08.2008 as null and void and for permanent injunction restraining the 2nd defendant from

executing E.P.No.991 of 2009 in O.S.No.1596 of 2008 and for costs.

5. The 2nd defendant filed I.A.No.6129 of 2011 under Order 7, Rule 11 of CPC seeking to reject the plaint alleging that he was the absolute owner of the property bearing Door No.13-A, Plot No.161-A, Jambulingam Main Road, Annai Anjugam Nagar, Chennai-82 having purchased the same under a registered sale deed dated 19.04.1995 and he was in possession and enjoyment of the same. The 2nd defendant originally was running mechanic shop at No.13, Plot No.161, Jambulingam Main Road under one Ayyanar. Since there was dispute between the said Ayyanar and the 2nd defendant, the 2nd defendant had shifted his workshop to the suit property by paying rent to one E.P.Roosevelt.

6. It is further alleged that when Ayyanar and Sanjivi Naidu was trying to interfere with the peaceful possession and enjoyment of the suit property, the 2nd defendant and E.P.Roosevelt filed O.S.No.1209 of 1990 before the learned III Assistant Judge, City Civil Court, Chennai for permanent injunction restraining defendant therein from interfering with the peaceful possession and enjoyment of the suit property by the 2nd defendant. After contest, the suit was decreed on 30.03.1992. Since no appeal was filed, the decree and judgment

has become final. Thereafter, Ayyanar and Sanjivi Naidu exercised their influence and caused the 3rd defendant to interfere with the 2nd defendant's rights in enjoying the suit property. Immediately, the 2nd defendant and E.P.Roosevelt filed O.S.No.8095 of 1990 on the file of the learned IV Assistant Judge, City Civil Court, Chennai for permanent injunction restraining the 3rd defendant from interfering with the peaceful possession and enjoyment of the suit property and the said suit was decreed ex parte on 27.02.1991. Subsequently, 3rd defendant filed application to set aside the ex parte decree, but no stay was sought by the 3rd defendant and the decree was in full force.

7. Subsequently, the 3rd defendant was trying to interfere with the 2nd defendant's possession and the 2nd defendant immediately issued a telegram to the 3rd defendant stating that their action would amount to contempt of Court. Thereafter, the 3rd defendant laid a road in part of the suit property and the 2nd defendant filed contempt application against the 3rd defendant. Thereafter, the application filed by the 3rd defendant to set aside the ex parte decree was allowed and the 3rd defendant also filed the written statement, but did not participate in the proceedings and ultimately the suit was decreed on 04.07.2000.

8. It is alleged that the action of the 3rd defendant in laying road in part of the suit property despite orders of the Court was highly illegal. The suit property was the absolute property of the 2nd defendant. Even assuming for moment without admitting that the suit property forms part of unapproved layout, the 3rd defendant has no power under any Act to take possession of the property without resorting to legal procedure established under law and especially when the layout was formed long ago and the plots were sold immediately. If the 3rd defendant was having power to take possession of suit property which forms part of the unapproved layout, it should be done for the entire property covered in the suit layout and the 2nd defendant cannot be singled out.

9. It is alleged that all other plot owners were enjoying the property purchased by them and therefore, the action of the 3rd defendant in having interfered with 2nd defendant's right alone was high handed and arbitrary. Further the 3rd defendant has no right to take possession of any private land without obtaining any consent from the owner of the property. The 2nd defendant had filed the suit in O.S.No.1596 of 2008 before the learned V Assistant Judge, City Civil Court against the 3rd defendant praying for a decree directing the 3rd defendant to hand over possession of the property belonging to him.

By the judgment dated 22.08.2008, the said suit was decreed ex parte. Thereafter, one Ramachandran, the root cause for filing the present suit, filed I.A.No.25476 of 2009 in O.S.No.1596 of 2008 to set aside the ex parte decree and the same was dismissed on merits. The issue in the present suit was already decided and has become final in O.S.No.1290 of 1990 and O.S.No.8095 of 1990. Since the plaintiff was litigating under the same title as that of the defendants in O.S.No.1209 of 1990, the present suit is hit by res judicata.

10. The plaintiff has not disclosed in the plaint as to whether it is a registered association. Therefore, it cannot be termed as a person and as such the suit by a non-legal entity is not maintainable in law. Further, the plaint does not disclose any cause of action. On the sole ground, the plaint is liable to be rejected. It is alleged that the plaint averments would show as if the suit was filed on behalf of the residents of Annai Anjugam Nagar. Hence, the suit should have been filed in a representative capacity and due procedure as contemplated under the Code of Civil Procedure should have been followed. The same has not been followed and as such the plaint was liable to be rejected on the ground also. The plaintiff who was not a party to the suit in O.S.No.1596 of 2008 has no locus standi to question the validity of the decree passed in the said suit. Hence, the plaint is liable to be

rejected.

11. Resisting the petition, the plaintiff has filed counter stating that they have filed I.A.No.3434 of 2011 in O.S.No.4794 of 2010 to appoint an Advocate Commissioner and after seeing the said petition, as a counter blast the 2nd defendant had filed the petition under Order 7, Rule 11 of CPC to defeat the plaintiff's genuine claim over the suit property. The 2nd defendant took a view of res judicata. The 2nd defendant himself was in wavering mind and in hostilisation where he was standing. When his status was itself unknown to him, he had filed the petition to harass the Association. There are many triable issues and it must be decided in the trial only. The petition of the 2nd defendant is misconstrued and the allegations are not coming under any of the purview of the provisions of Order 7, Rule 11 of CPC. It is stated that the plaint and affidavits filed in support of I.A.Nos.9508, 9509 of 2010 and I.A.No.3434 of 2011 in O.S.No.4794 of 2010 may be treated as part and parcel of the counter.

12. Before the trial Court, on the side of the petitioner/2nd defendant Exs.P1 to P8 were marked and no documents were marked on the side of the 1st respondent/plaintiff.

13. Upon consideration of the rival submissions, the trial Court dismissed the petition holding that the averments in the petition does not satisfy the requirements under Order 7, Rule 11 of CPC and only in the trial, it has to be decided whether the cause of action alleged in the plaint was true or incorrect and that the petition of the 2nd defendant was devoid of merits. Aggrieved by the order of the trial Court, the 2nd defendant had filed the present Civil Revision Petition.

14. The learned counsel for the 2nd defendant submitted that the trial Court ought to have seen that the plaintiff has no locus standi to file the present suit and it ought to have seen that the plaint does not disclose that the plaintiff is a registered Association. He would submit that assuming for a moment that the plaintiff is a registered Association, even then the suit is liable to be dismissed on the failure of the plaintiff to follow the procedure as contemplated under Order 1, Rule 8 of CPC and the suit should have been filed in a representative capacity.

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15. The learned counsel next contended that the trial Court failed to see that the issue in the present suit was already decided and has become final in the earlier suits being O.S.Nos.1209 of 1990 and 8095 of 1990 and the trial Court erred in giving a finding that parties

in the earlier suits and the present suit are different. In fact, the plaintiff is claiming and litigating under the same title of the parties in the earlier suits as per Explanation VI to Section 11 of CPC and that the present suit is hit by the principles of res judicata.

16. The learned counsel then contended that the plaint does not disclose a cause of action and that the plaintiff which is not a party to the suit of which the decree is challenged in the present suit. The learned counsel submitted that the basic principle envisaged under Order 7, Rule 11 of CPC is to save the judicial time of the Court in deciding the vexatious suits and that the trial Court erred in dismissing the petition of the 2nd defendant and prayed for setting aside the order of the trial Court. In support, the learned counsel for the 2nd defendant relied upon the following decisions:

(i) *Nibro Limited v. National Insurance Co. Ltd.,*
reported in AIR 1991 Delhi 25.

(ii) *Kalyan Singh, London Trained, Cutter, Johri Bazar, Jaipur v. Chhoti and others, reported in*
1989 SCR Suppl. (2) 356.

(iii) *Noble Gabeeran and others v. Peter P.Ponnan*
and others, reported in (1999) 1 MLJ 392.

(iv) ITC Limited v. The Debts Recovery Appellate Tribunal, reported in AIR 1998 SC 634.

(v) Subash Market Association v. Municipal Corporation of Delhi, reported in AIR 2005 Delhi 209.

17. Per contra, the learned counsel for the plaintiff submitted that the plaintiff Sangam is a registered one and its Secretary has every right to question the decree since the residents of that area was affected by the decree in O.S.No.1596 of 2008. The learned counsel further submitted that there is no such plot No.161-A as claimed in O.S.No.1596 of 2008 by the 2nd defendant in Annai Anjugam Nagar and by suppressing the fact that it was a road, the 2nd defendant filed the suit and obtained an ex parte decree against the Corporation and based on the ex parte decree, the 2nd defendant filed E.P.No.991 of 2009, thereby trying to execute the said decree. According to the learned counsel, there is no such plot number in existence and only road in the name of Periyar Salai since the entire residents of Annai Anjugam Nagar was affected by the decree passed in O.S.No.1596 of 2008. The learned counsel submitted that the trial Court after analysing the materials produced before it rightly dismissed the petition and there is no ground to interfere with the same and prayed

for dismissal of the Civil Revision Petition.

18. I have heard Mr.G.Saravanan, learned counsel for the petitioner and Mr.M.Kumaraswamy, learned counsel for the 1st respondent and also perused the materials available on record. No representation on behalf of the respondents 2 and 3.

19. The point that arises for consideration is whether the trial Court was right in dismissing I.A.No.6129 of 2011 filed by the 2nd defendant.

20. In the plaint, the plaintiff averred that persons who purchased plots they themselves formed an Association under the name and style of "Bharathi Makkal Nala Sangam" to protect the interest of the inhabitants of the Nagar. Admittedly, there is nothing on record to show that the plaintiff Sangam was a registered Sangam. When the plaintiff Sangam instituted the suit on behalf of the inhabitants of Annai Anjugam Nagar, it has to follow the procedure as contemplated under Order 1, Rule 8 of CPC and the suit should have been filed in a representative capacity.

21. In *Boble Gambeeran and others v. Peter P.Ponnan*, supra,

this Court held as under:

"22. The Secretary of a Club or other association cannot sue alone in respect of a matter in which the association is interested even if he is authorised so to do by a resolution of the members of the association. The suit must be brought by all the members of the association, or by the Secretary on his own behalf and on behalf of the other members under Order 1, Rule 8."

22. In *Kalyan Singh, London Trained, Cutter, Johri Bazar, Jaipur v. Chhoti and others*, supra, the Hon'ble Supreme Court held:

"16. For a representative suit, the court's permission under Order 1, Rule 8 of the Code of Civil Procedure is mandatory. One does not know whether any such permission was obtained. The pleading in that suit or the order obtained under Order 1, Rule 8 has not been produced. There is no other evidence to support the contention of either of the parties. In the absence of necessary material the conclusion one way or the other as to the nature of the previous suit will not be justified."

23. In *Nibro Limited v. National Insurance Co. Ltd.*, supra, the Delhi High Court held as under:

"30.The plaintiff has not placed on record any resolution passed by the company authorising Shri G.Jhajharia to institute the suit. Shri G.Jhajharia did not come forward to make a statement that he was in a position to depose to the facts of the case. In the plaint signed by him, he claims to be a principal officer and director, but there is no evidence on record to indicate that he had the authority to institute the suit. The memorandum and articles of association of the plaintiff company are also not placed on record. Even after the suit was instituted by Shri G.Jhajharia, no resolution was passed by the company ratifying this action. No such decision of the board of directors is placed on record in the present case. The plaintiff has examined Shri Ashok Kumar Jhajharia. He has placed on record, exhibit PW-2/1, which is the resolution of the board of directors reappointing Shri G.Jhajharia as the director but this resolution does not empower Shri G.Jhajharia as a director to institute the present suit. Shri Ashok Kumar Jhajharia has stated that he was handling the day-to-day management of the plaintiff company including the insurance part of it. He, however, does not state that Mr.G.Jhajharia was handling the day-to-day management or was in charge of the insurance claim."

24. In the present case, both in the short and long cause title of the plaint, the plaintiff has been described as "Bharathi Makkal Nala Sangam", represented by its Secretary Shri C.Parthasarathy. There is no whisper in the plaint that Shri C.Parthasarathy was given authorisation to file the present suit and/or resolution passed by the plaintiff Sangam to institute the suit. The memorandum of articles of Sangam/Association of the plaintiff are also not placed on record. In the absence of any proof, this Court hold that Shri C.Parthasarathy had no authorisation to institute the suit.

25. As stated supra, assuming that the plaintiff Sangam is a registered Sangam, on the failure of the plaintiff to follow the procedure contemplated under Order 1, Rule 8 of CPC and the suit ought to have been filed in a representative capacity. For filing such representative suit, the Court's permission under Order 1, Rule 8 of CPC is mandatory. In the case on hand, no such permission was obtained. The averment of the plaint is silent about the filing of the suit in a representative capacity. The details of members of the plaintiff Sangam has not been produced. In the plaint, in cause of action paragraph, it has been stated that "on 24.02.2010 when the Association was formed and registered". Nothing on record to show that the plaintiff Sangam was registered. Therefore, this Court is of

the view that the suit must be brought by all members of the Sangam or by the Secretary on his own behalf and on behalf of the other members under Order 1, Rule 8 of CPC.

26. The reason for filing of the present suit has been averred by the plaintiff in paragraph 7 as under:

"7. ... on 25.11.2009 the plaintiff Sangam came to know that the 2nd defendant under pretext of an execution order, passed in E.P.No.991 of 2009 in O.S.No.1596 of 2008 on the file of IX Asst. City Civil Judge at Chennai and attempted to take delivery of possession in an imaginary air base flat bearing a fictitious flat No.161A but there is no such number flat in Annai Anjugam Nagar. Neither the 1st defendant nor the 2nd defendant having any right over in any place which named as flat No.161A. But the 2nd defendant brought bailiff and showed the Periar Street in where the said Road touch Jambulingam Road (formerly Jawahar Salai) ending with Jambulingam Road. The Periyar Street corner joining with the Dr.Karunanithi Salai where the Plot Nos.162 on the eastern side of the Road and Plot No.161, situated on the western side of the Road. Therefore, there is no Plot as such 161A."

27. The plaintiff has filed the suit for declaration to declare that the judgment and decree passed in O.S.No.1596 of 2008 dated 22.08.2008 as null and void and for permanent injunction restraining the 2nd defendant from executing E.P.No.991 of 2009 in O.S.No.1596 of 2008. The schedule of property mentioned in the suit (O.S.No.4794 of 2010) on hand reads thus:

"At Annai Anjugam Nagar, Periar Street (20' wide) running from North to South in between the Plot Nos.162, 141, 124, 113, 95, 82 and 62 on the eastern side and 161, 142, 123, 114, 94, 83 and 61 on the western side of the said Road. The said Road running from north (Jambulingam Main Road (formerly Jawahar Salai) through the above said Plots and ended with Dr.Karunanithi Salai, which shown in sketch situated within the SRO, Anna Nagar and Registration District of Central-Central."

28. The schedule of property in O.S.No.1596 of 2008 reads thus:

"The house and ground at Plot No.161-A, T.S.No.4, Block No.2, in Ayanavaram village, in the Madras Corporation Old Division No.52, New No.31, Jawahar Salai, Annai Anjugam Nagar, Chennai-82 bounded on the north by Jawahar Salai; south by E.P.Roosevelt balance land; east by Plot No.162 and west by Plot No.161 and 142

measuring north to south on the eastern side 44 feet and western side 38.6 feet, east to west on the southern side 20 feet and northern side 20 feet admeasuring 825 sq. ft. including hut measuring 100 sq. ft. on thereabout in the Registration Sub District of Anna Nagar and Registration District of Madras."

29. In the plaint in O.S.No.1596 of 2008, it has been averred that the 2nd defendant herein had purchased Plot No.161-A, Jambulingam Main Road, Annai Anjugam Nagar through a registered sale deed dated 19.04.1995 with specific boundaries.

30. By the judgment and decree dated 22.08.2008, O.S.No.1596 of 2008 came to be decreed ex parte. It is also seen that when a third party viz., S.Andalammal, represented by P.A.K.Ramachandran, filed I.A.No.24576 of 2009 to condone the delay of 439 days in filing petition to set aside the ex parte decree, the trial Court dismissed the petition by an order dated 25.02.2010. It is seen that one day before the dismissal of I.A.No.24576 of 2009, the plaintiff herein said to have formed an Association. The aforesaid would also clearly establish that formation of plaintiff Sangam and its registration alleged by the plaintiff are all only for the purpose of filing of the suit.

Without any proof being filed by the plaintiff, the trial Court erred in holding that the plaintiff Sangam is a registered Association.

31. It appears that originally, the 2nd defendant was running a mechanic shop at No.13, Plot No.161, Jambulingam Main Road, Annai Anjugam Nagar under one Ayyanar. Since there arose dispute between the 2nd defendant and Ayyanar, the 2nd defendant shifted his workshop to the suit property by paying rent to one E.P.Roosevelt. When Ayyanar was trying to interfere with the peaceful possession of the 2nd defendant, the 2nd defendant and E.P.Roosevelt jointly filed the suit being O.S.No.1209 of 1990 against Ayyanar and Sanjivi Naidu for permanent injunction. By the judgment dated 30.03.1992, O.S.No.1209 of 1990 came to be decreed, wherein the trial Court held that there was no proof to show that Plot No.161-A is a public road. The 2nd defendant and also E.P.Roosevelt have filed another suit being O.S.No.8095 of 1990 against the Commissioner of Chennai Corporation for permanent injunction and by the judgment dated 04.07.2000, the said suit was also decreed.

32. As stated supra, by a registered sale deed dated 19.04.1995, the 2nd defendant had purchased the suit property from E.P.Roosevelt with specific boundaries. The said sale deed till date in

force and was not cancelled and/or challenged by anybody. Therefore, it is clear that *prima facie*, the 2nd defendant established that he was the owner of the property bearing Door No.13-A, Plot No.161-A, Jambulingam Main Road, Annai Anjugam Nagar, Chennai and was in possession of the said property.

33. The 2nd defendant filed the suit in O.S.No.1596 of 2008 against the 3rd defendant herein for possession and the same was decreed ex parte on 22.08.2008 and the 3rd defendant has not taken effective steps to set aside the said ex parte decree. Since no stay of operation of the ex parte decree, the 2nd defendant had filed E.P.No.991 of 2009 for execution of the decree. The plaintiff is not party to the suit in O.S.No.1596 of 2008. Only after dismissal of the petition filed by one S.Andalammal, through P.A.K.Ramachandran, the plaintiff has filed the suit to declare that the decree dated 22.08.2008 passed in O.S.No.1596 of 2008 as null and void.

34. Since the issue in the present suit was already decided and has become final in O.S.Nos.1209 of 1990 and 8095 of 1990, the plaintiff cannot litigate under the same title as that of the defendants in O.S.No.1209 of 1990 in the present suit and the suit is therefore hit by the principles of res judicata.

35. The learned counsel for the plaintiff contended that after filing of the written statement and issues framed, the 2nd defendant cannot file petition under Order 7, Rule 11 of CPC and the trial Court has rightly dismissed the petition.

36. The power to reject the plaint under Order 7, Rule 11 of CPC can be exercised even after framing of issues. In *ITC Limited v. The Debts Recovery Appellate Tribunal and others*, supra, the Hon'ble Supreme Court held:

"The first point here is whether the power to reject the plaint under Order 7 Rule 11 C.P.C. can be exercised even after the framing of issues, and when the matter is posted for evidence. This point has arisen because the Division Bench of the High Court has referred to this aspect while dismissing the appeal.

We may stated that in the context of Order 7, Rule 11 C.P.C., a contention that once issues have been framed, the matter has necessarily to go to trial has been clearly rejected by this Court in Azhar Hussain v. Rajiv Gandhi, 1986 (Supp.) SCC 315 (p.324) as follows:

"In substance, the argument is that the Court must proceed with the trial, record the evidence,

and only after the trial is concluded that the powers under the Code of Civil Procedure for dealing with a defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to be ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court."

The above said judgment which related to an election petition is clearly applicable to suits also and was also followed in Samar Singh v. Kedar Nath (1987 (supp.) SCC 663). We therefore hold that the fact that issues have been framed in the suit cannot come in the way of consideration of this application filed by the appellant under Order 7 Rule 11 C.P.C."

Thus, it is clear that there is no prohibition on the part of the 2nd defendant to file petition under Order 7, Rule 11 of CPC.

37. According to the 2nd defendant, the plaintiff who is not a party to the suit in O.S.No.1596 of 2008 has no locus standi to question the validity of the decree passed in the suit. There is some force in the submission of the 2nd defendant. Hence on that ground also the plaint in O.S.No.4794 of 2010 is liable to be rejected. As

stated supra, the suit in O.S.No.1596 of 2008, the plaintiff is not a party and relief was sought against the 3rd defendant only. If the plaintiff wants to question the decree passed in O.S.No.1596 of 2008, it ought to have obtained leave first and then file the suit. In the case on hand, without there being any leave granted to the plaintiff by the Court, the plaintiff has filed the suit.

38. It is the say of the 2nd defendant that the plaint does not disclose any cause of action. The trial Court while dismissing the petition observed that only in the trial it has to be decided whether the cause of action alleged in the plaint was true or incorrect. The aforesaid observation of the trial Court is not correct. Where the plaint does not disclose a cause of action, the plaint can be rejected. At this juncture, it would be appropriate to extract the provisions of Order 7, Rule 11 of CPC:

"11. Rejection of plaint – The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provision of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

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39. It is the duty of the Court to examine the suit irrespective of any written statement or denial and reject the suit if it does not disclose a cause of action. To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No

amount of evidence can cure basic defect in the pleadings.

40. It is settled law that a suit which does not furnish cause of action can be dismissed. In the case on hand, admittedly, the plaintiff has given incorrect cause of action. One of the cause of action stated by the plaintiff is on 24.02.2010 when the Association was formed and registered. The aforesaid cause of action is incorrect, as only for the purpose of filing the suit, the plaintiff had stated so.

41. The Court has not only the power but the imperative duty also to strike off pleading in appropriate cases under Order 6, Rule 16 of CPC at any stage and to reject the suit itself under Order 7, Rule 11 of CPC, if no cause of action remains. A suit can be summarily rejected at the threshold of the stage if the basic defect persists even at that stage. The starting of the trial or settlement of issues is no bar to such an action. Order 7, Rule 11 of CPC does not place any restriction in that respect. Order 7, Rule 11 of CPC does not restrict the power of the Court or say that it could be only at any particular stage.

42. The whole purpose of conferment of powers under Order 7, Rule 11 of CPC is to ensure that a litigation which is meaningless

and bound to prove abortive should not be permitted to occupy the time of the Court. Even in an ordinary civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law.

43. The provisions of Order 7, Rule 11 of CPC are not exhaustive and the Court has got inherent powers to see that the vexatious litigations are not allowed to take or consume the time of the Court. In appropriate cases, directions can be given to the Court in which the suit is filed not to entertain the suit, if on reading the allegations in the plaint it is explicitly clear that the same is an abuse of process of law.

44. In the case on hand, admittedly, on reading of the allegations, it is clear that the present suit is abuse of process of law for the reason that the plaintiff which instituted the suit is not a registered Association/Sangam and failed to follow the procedure as contemplated under Order 1, Rule 8 of CPC.

45. The trial Court ought to have seen that the issue in the present suit is already decided and has become final in the earlier two suits referred to above. The trial Court failed to see that the basic principle envisaged under Order 7, Rule 11 of CPC is to save the judicial time of the Court in deciding the vexatious suit. Viewed from all angle, this Court is of the view that the trial Court committed error in dismissing the petition filed by the 2nd defendant and therefore, the same is liable to be set aside.

46. In the result:

(a) The Civil Revision Petition is allowed by setting aside the order passed in I.A.No.6129 of 2011 in O.S.No.4794 of 2010 dated 12.11.2011 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai.

(b) The suit in O.S.No.4794 of 2010 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai is struck off from the file. No costs.

Consequently, connected miscellaneous petition is closed.

07.09.2017

vs

Note: Issue order copy on 26.11.2018

Index : Yes

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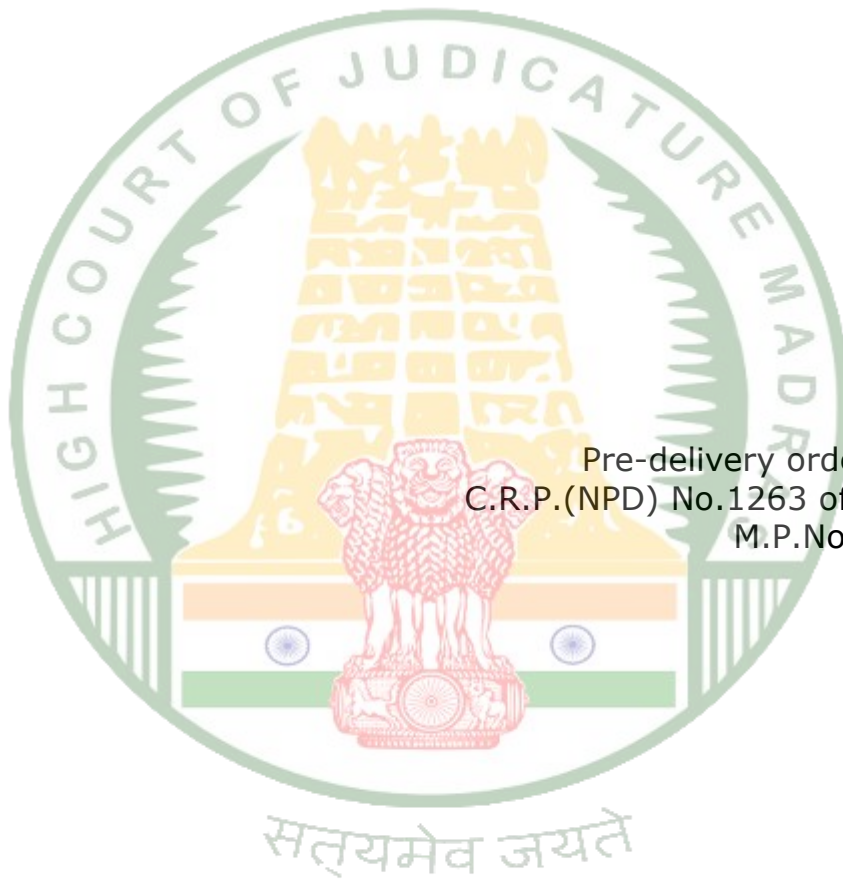
The VIII Assistant Judge,
City Civil Court, Chennai.



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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
C.R.P.(NPD) No.1263 of 2012 and
M.P.No.1 of 2012

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