

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.1624 of 2013

and

M.P.No.1 of 2013

1.S.Ramasamy
2.N.Ravi
3.S.Parthiban
4.Sulochana
5.A.S.Balaraman
6.D.Sethuraman
7.V.Selvi
8.R.Senthil Kumar
9.T.Adhikesavan
10.Mohana
11.Pushpavalli
12.Jayavelu
13.Shankar
14.K.Mathan

.. Petitioners

Vs.

1.T.Santhi
2.B.Sivakumar
3.Karthick
4.G.Suganthi
5.G.Prasad
6.G.Dinakar

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the Additional District Munsiff Judge, Poonamallee in I.A.No.470 of 2012 in O.S.No.16 of 2001, dated 10.10.2012.

For Petitioners : Mrs.C.Shyaamala

For Respondents : Mr.G.Dilipkumar

ORDER

The defendants are the civil revision petitioners before this Court, challenging the order passed in I.A.No.470 of 2012 in O.S.No.16 of 2001, dated 10.10.2012 by the learned Additional District Munsiff, Poonamallee.

2.The case of the respondents/plaintiffs is that they have filed the suit in O.S.No.16 of 2001, before the learned District Munsiff Court, Poonamallee, for declaration of title and for injunction restraining the defendants while trespassed into the 'A' schedule properties and for declaring the title of the first plaintiffs 2 to 4 over the 'B' schedule of property and for injunction and also for declaration of title of the plaintiffs 2 to 4 over the 'B' schedule of property and for

consequential injunction.

3.It is the case of the plaintiffs is that the first plaintiff is the owner in possession of the 'A' schedule property and the said property was purchased by the first plaintiff by virtue of his purchase and taking delivery of the possession under the sale deed dated 07.03.1980 from one Mr.V.Durai Mohan. The plaintiffs 2 to 4 are the owners of the possession of 'B' schedule property as heirs of Bakthavatchalu Naidu, who had acquired title and possession by virtue of his purchase under sale deed dated 04.06.1980 from one Mr.V.Durai Mohan. The patta for 'A' schedule lands stands in the name of the first plaintiff and the patta for the 'B' schedule property in the name of the plaintiffs 2 to 4, it was alleged by the plaintiffs that in the month of December 2000, the defendants 1 to 13 to enrich themselves at the expenses of the plaintiffs by making a false claim that the suit properties are Eri Panchayat in Survey No.695 of Ayanambakkam village and therefore, it amounts to a denial of the plaintiffs' title over the suit properties and poses on imminent threat to the possession of the plaintiffs over the suit properties which are situated in the Revenue Village, Kolady, Thiruverkadu firka, Ambattr Taluk, Thiruvallur Disttrict. Therefore, the plaintiffs were filed the suit for declaration of suit for permanent

injunction against the petitioners/defendants.

4. On receipt of the summon, the defendants were appeared through their Advocate and filed their written statement, the defendants 2 and 3 are adopted the written statement and 6th defendant has filed separate written statement. Thereafter, the plaintiffs were filed an application in I.A.No.3369 of 2004 for appointment of Advocate Commissioner to inspect the suit property, and to find out the exact area occupied by the defendants on the southeastern portion and also the western portion of the suit property in terms of linear measurement on four sides and boundaries on four sides and submitted a detailed report and Plan with the help of Taluk Surveyor.

5. Considering the plaintiffs' case, the learned District Munsiff, Poonamallee was pleased to dismiss the application on 18.12.2007, on the ground that when the plaintiff has filed the suit, it is pointed out in the suit schedule and the plaintiff cannot approach the Court by way of appointment of Advocate Commissioner to inspect the suit property and to find out the exact area occupied by the defendants.

6.After dismissing the said application, the defendants were filed an application in I.A.No.470 of 2012 under Order 7 Rule 11(a) r/w Section 151 of C.P.C. for rejection of the plaint.

7.In the affidavit filed in support of I.A.No.470 of 2012, this petitioners/ defendants stated that when the learned Additional District Munsif, Poonamallee has dismissed the Advocate Commissioner's application on 18.12.2007, the learned District Munsif has passed the orders as follows:

“While considering the case on hand, it is seen that the petitioner has filed this suit with respect to 2 schedules of property. 'A' schedule comprised of 1.72 acres in S.No.167/2 and 1.42 acres in S.No.165/1A1. 'B' schedule comprised of 4 acres 4 cents in S.No.167/2. The petitioner has avered that the defendants are in occupation of 30 cents in south eastern portion of suit property and 20 cents in western portion of suit property. He does not state as to whether the 30 cents occupied by the defendant is in 'A' schedule or 'B' schedule. Similarly it is also not stated as to whether the 20 cents occupied by the defendants lies in 'A' schedule or 'B' schedule. Further, having filed the suit for

declaration and recovery of possession, it is for the plaintiff to establish his case that the defendants have trespassed into the properties within specified boundaries, for specified extents. There are 13 defendants in the suit. The plaintiff does not state as to which defendant is in occupation of which portion. The plaintiff now seeks appointment of advocate commissioner to collect all these evidence for him. This is not permissible. An advocate commissioner cannot be appointed for collecting evidence or assist the parties to collect evidence when it is for the party to collect evidence and prove his case. The advocate commissioner cannot be appointment to find out to who is in possession of the property and to what extent, he is in possession of property. In the present case the defendants are in occupation of specified are in the suit 'A' & 'B' schedule properties to the establish the case. It is for the plaintiff to let in evidence and prove it. Hence, commissioner cannot be appointed to assist the party in collecting evidence, this petition is liable to be dismissed."

8.The petitioners/defendants further states that when the

plaintiffs have come forward with the above suit, the learned Judge has clearly held that when the plaintiffs have filed the suit for declaration and for injunctions, it is defend for trespassing into the property within the specific boundaries for specific extent. Since, there are 13 defendants in the suit, the plaintiffs does not state as to which petitioners had encroached in which Survey number and to what extent, in which the occupation of the portion of suit schedule property. Therefore, the plaintiffs have seek appointment of Advocate Commissioner to collect all the evidence from the Court, which is not permitted, since the Advocate Commissioner cannot be appointed for collecting the evidence or assist the parties to collect evidence when it is for the party to collect evidence and prove his case. Therefore, the petitioners/defendants have filed the said application stated that there was no cause of action for filing the suit, since the plaintiffs were not stated in their plaint in which the portion to each defendants as occupied by the plaintiffs property. Therefore, they filed the said application for rejecting the plaint under Order 7 Rule 11(a) of CPC on the ground that there was no cause of action.

9.A counter affidavit has been filed by the respondents/plaintiffs denying the allegations set out by the petitioners/defendants. The

respondents were denied that as per the provisions under Order 7 Rule 11(a) CPC, the petitioners have filed I.A.No.470 of 2012 is not covered and there is no ground raised to prove by the petitioners/defendants for rejecting the plaint, since the same is pending about 12 years and the suit was taken up for trial and the suit was the stage of partly heard. Therefore, they prayed for dismissal of the said application in I.A.No.470 of 2012.

10.Considering both side arguments, the learned Judge, Poonamallee has dismissed the petition in I.A.No.470 of 2012 on 10.10.2012, on the ground that all these facts raised by the petitioners/defendants about the encroachment made by the defendants will be come out only in the trial. The learned Judge also states that due to non-furnish of the entire facts in the plaint, the petitioners/defendants cannot say that there is no cause of action for filing the suit. Therefore, the prayer for rejecting the plaint, is not maintainable. Therefore, the learned Judge has dismissed the application filed by the petitioners/defendants in I.A.No.470 of 2012. Challenging the said order, the present Civil Revision Petition has been filed by the petitioners/defendants.

11.It is the case of the respondents/plaintiffs that these petitioners/defendants were encroached the property belongs to the plaintiffs. In the plaint, the plaintiffs were made the averments as follows:

“3.On the date of the plaint the 1st plaintiff is the owner in possession of 'A' schedule mentioned lands by virtue of his purchase and taking delivery of possession under sale deed dated 07.03.1980 from one V.Durai Mohan.

4.On the date of the plaint the plaintiffs 2 to 4 are the owners in possession of 'B' schedule mentioned lands as heirs of Bakthavatchalu naidu who had acquired title and possession by virtue of his purchase under sale deed dated 04.06.1980 from one Mr.V.Durai Mohan.

5.The patta for the 'A' schedule lands stands in the name of the 1st plaintiff and the patta for the 'B' schedule lands stands in the name of the plaintiffs 2 to 4.

6.The defendants 1 to 13 some time in December 2000 had conspired among themselves to enrich themselves at the expenses of the plaintiffs by making a false claim that the suit properties are Eri poramboke lands (in Survey No.695

of Ayanambakkam village). It amounts to a denial of the plaintiffs' title over the suit properties and poses on imminent threat to the possession of the plaintiffs over the suit properties which are situated in the Revenue village of Kolady, Thiruverkadu firka, Ambattur taluk. Hence the plaintiffs are constrained to file the suit for a declaration of their title and for consequential injunction restraining the defendants from trespassing to the suit lands."

12.As per the above averments, it is the case of the plaintiffs that the 'A' schedule property was belongs to the 1st plaintiff and the 'B' schedule property was belongs to the plaintiffs 2 to 4. As per the allegations that the 1st plaintiff has purchased the 'A' schedule property on 07.03.1980 and the 'B' schedule property was purchased by the plaintiffs 2 to 4 on 04.06.1980, from the very same vendor one Mr.V.Durai Mohan. But, on fair reading of the averment, it is made clear that both the sale deeds were executed on different dates. Apart from this, the plaintiffs 1 to 4 were not at all the relatives, but different persons were filed the suit jointly seeking for declaration in respect of 'A' schedule property by the 1st plaintiff and 'B' schedule property by the plaintiffs 2 to 4. Thus being the case, how the Court has number

the suit since the claim of the 1st plaintiff and the plaintiffs 2 to 4 were purchased the property in different dates, if the plaintiffs are jointly enjoying the property by purchasing the property in jointly, they can have the right to file one suit, but, how they filed the claim of 'A' schedule property by the 1st plaintiff and claim of 'B' schedule property by the plaintiffs 2 to 4 by way of one suit.

13. Apart from this, it is the allegation of the plaintiffs in the suit that the defendants had conspired among themselves and claimed that the suit properties were Eri Panchayat land in Survey No.695 of Ayanambakkam Village and denied the title of the suit property.

14. Excepting the above averments, there is no other averments that the plaintiffs filed the suit what is the cause of action, what they done and when the defendants were conspired and denying the title of the suit property and what is the encroachment made by each of the defendants and how they denied the title, but only averments made in the plaint in para-6 of the plaint are as follows:

“6. The defendants 1 to 13 some time in December 2000 had conspired among themselves to enrich themselves at the expenses of the plaintiffs by making a

false claim that the suit properties are Eri poramboke lands (in Survey No.695 of Ayanambakkam village). It amounts to a denial of the plaintiffs' title over the suit properties and poses on imminent threat to the possession of the plaintiffs over the suit properties which are situated in the Revenue village of Kolady, Thiruverkadu firka, Ambattur taluk. Hence the plaintiffs are constrained to file the suit for a declaration of their title and for consequential injunction restraining the defendants from trespassing to the suit lands."

15.While pendency of the above suit, the respondents/plaintiffs were filed a petition under Order 26 Rule 9 CPC for appointing an Advocate Commissioner in I.A.No.3369 of 2004. The prayer in the petition in I.A.No.3369 of 2004 is as follows:

"Petition filed under Order 26, Rule 9 CPC to appoint an advocate commissioner to inspect the suit property and to find out the exact area occupied by the defendants on the southeastern portion and also the western portion of the suit property in terms of linear measurements on four sides and boundaries on four sides and submit a detailed report and plan with the help of taluk surveyor."

16.The averments of the affidavit in the above Interlocutory Application is that the pending suit, in or about May 2001, the defendants had trespassed into the southeastern portion of the suit property measuring 30 cents and western portion of the suit property measuring 20 cents. Hence, the plaintiffs were filed the application seeking appointment of Advocate Commissioner for inspection of the suit property to note down the extent of trespass into the suit land in terms of linear measurements and boundaries. The plaintiffs also filed the petition sought for superimposing on the F.M.Book sketch clearly indicating the area occupied by the defendants and submitted a detailed enquiry report.

17.As per the averments made in the plaint as well as the affidavit in the Interlocutory Application in I.A.No.3369 of 2004 is that it is made clear that the averment made in the plaint that in the month of December 2000, these defendants have conspired among themselves to enrich themselves at the expenses of the plaintiffs by making a false claim that the suit properties are Eri poramboke title over the suit properties.

18. But, the respondents/plaintiffs sought for the relief in the Advocate Commissioner to find out the exact area occupied by the defendants in the southeastern portion. Therefore, it is made clear that the plaintiffs have not come forward with definite case that the defendants are encroached the particular area in the suit property. But, in the affidavit filed in the above Interlocutory Application, the plaintiffs said that in or about May 2001 alone. These defendants were encroached the southeastern portion of the suit property measuring 30 cents and western portion of suit property measuring 20 cents. Therefore, without any cause of action, the plaintiffs have filed the present suit for declaration and for permanent injunction.

19. Without looking into all these things, when the application filed by the petitioners/defendants in I.A.No.470 of 2012, the learned Judge has not considered the same in a proper manner. But, in the order in I.A.No.3369 of 2004 in O.S.No.16 of 2001, the learned Judge has passed the order as follows:

“While considering the case on hand, it is seen that the petitioner has filed this suit with respect to 2 schedules of property. ‘A’ schedule comprised of 1.72 acres in S.No.167/2 and 1.42 acres in S.No.165/1A1. ‘B’ schedule

comprised of 4 acres 4 cents in S.No.167/2. The petitioner has avered that the defendants are in occupation of 30 cents in south eastern portion of suit property and 20 cents in western portion of suit property. He does not state as to whether the 30 cents occupied by the defendant is in 'A' schedule or 'B' schedule. Similarly it is also not stated as to whether the 20 cents occupied by the defendants lies in 'A' schedule or 'B' schedule. Further, having filed the suit for declaration and recovery of possession, it is for the plaintiff to establish his case that the defendants have trespassed into the properties within specified boundaries, for specified extents. There are 13 defendants in the suit. The plaintiff does not state as to which defendant is in occupation of which portion. The plaintiff now seeks appointment of advocate commissioner to collect all these evidence for him. This is not permissible. An advocate commissioner cannot be appointed for collecting evidence or assist the parties to collect evidence when it is for the party to collect evidence and prove his case. The advocate commissioner cannot be appointment to find out to who is in possession of the property and to what extent, he is in possession of

property. In the present case the defendants are in occupation of specified are in the suit 'A' & 'B' schedule properties to the establish the case. It is for the plaintiff to let in evidence and prove it. Hence, commissioner cannot be appointed to assist the party in collecting evidence, this petition is liable to be dismissed."

20. When the plaintiffs in their petition for appointment of Advocate Commissioner filed in I.A.No.3369 of 2004 stated that the defendants were encroached 30 cents and 20 cents. Thus being the case, then the suit filed by the plaintiffs for the 'A' schedule property comprised of 1.72 acres in S.No.167/2 and 1.42 acres in S.No.165/1A1 and 'B' schedule property comprised of 4 acres 4 cents in S.No.167/2, were alleged to be encroached or interfered by the defendants are totally false statement. Therefore, the plaintiffs without any cause of auction, the plaintiffs have filed the present suit, which is not at all maintainable and hence it is clear it attract the provision of Order 7 Rule 11(a) of C.P.C.

21. When the plaintiffs in subsequent affidavit filed in I.A.No.3369 of 2004 they were made the averment that these

petitioners/defendants were encroached 30 cents and 20 cents, and hence it is clear that the suit itself has been filed without cause of action. As per the provision under Order 7 Rule 11(a) CPC, it is stated as follows:

“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 written 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 provisions of rule 9.]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers 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 papers, 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.]”

As per the Order 7 Rule 11(a), no cause of action will clearly states that without any cause of action, the suit has been filed.

22.It is my absolute view that when the plaintiffs were stated that the entire 'A' schedule property comprised of 1.72 acres and 'B' schedule property comprised of 4 acres 4 cents were claimed by the plaintiffs and when the averments made by the plaintiffs for the entire property of 1.72 acres and 4.04 acres were encroached by the defendants, how they filed the petition for appointment of Advocate Commissioner stated that in the month of May 2001, these defendants were encroached 30 cents and 20 cents of lands. Therefore, it is made clear that the suit itself is filed for no cause of action.

23. In support of their case, the learned counsel appearing for the petitioners has produced the following judgments:

I. *Saleem Bhai and others v. State of Maharashtra and others* reported in *AIR 2003 SC 759*

“9. A perusal of O. VII R. 11, C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power under O. VII, R. 11, C.P.C. at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Cls. (a) and (d) of R. 11 of O. VII, C.P.C., the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under O. 7, R. 11, C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the Court as well as

procedural irregularity. The High Court, however, did not advert to these aspects.

10. We are, therefore, of the view that for the aforementioned reasons, the common order under challenge is liable to be set aside and we, accordingly, do so. We remit the cases to the trial Court for deciding the application under O.7, R.11, C.P.C. on the basis of the averments in the plaint, after affording an opportunity of being heard to the parties in accordance with law.”

II. *Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee* reported in (2012) 5 MLJ 601 (SC)

“21. In the light of the above discussion, in view of the shortfall in the plaint averments, statutory provisions, namely, Order 7 Rule 11, Rule 14(1) and Rule 14(2), Form Nos. 47 and 48 in Appendix A of the Code which are statutory in nature, we hold that the learned single Judge of the High Court has correctly concluded that in the absence of any cause of action shown as against the 1st defendant, the suit cannot be proceeded either for specific

performance or for the recovery of money advanced which according to the plaintiff was given to the 2nd defendant in the suit and rightly rejected the plaint as against the 1st defendant. Unfortunately, the Division Bench failed to consider all those relevant aspects and erroneously reversed the decision of the learned single Judge. We are unable to agree with the reasoning of the Division Bench of the High Court.

22. In the light of the above discussion, the judgment and order dated 16.8.2011 passed by the Division Bench of the High Court in O.S.A.No.100 of 2006 is set aside and the order dated 25.1.2006 passed by the learned single Judge in Application No.3560 of 2005 is restored. The civil appeal is allowed with costs."

III. ***Sivananda Roy v. Janaki Ballav Pattnaik and others***
reported in ***AIR 1985 ORISSA 197***

"12. Now coming to the question as to whether there is cause of action against defendant No.4, it may be noted that defendant No.4 is not a party to the alleged contract nor he had the duty to ensure due performance thereof. The liability of defendant No.4, if any, would arise only, if he

has procured the breach of the contract said to have been subsisting between the plaintiff and defendants Nos.1 to 3. The material facts which require to constitute a complete cause of action against defendant No.4 in this case, according to me, are as follows:-

(i)That there was a valid contract between the plaintiff on one hand and defendants Nos.1 to 3 on the other.

(ii)Defendant No.4 had the knowledge of the said contract.

(iii)That defendant No.4 brought about the breach of the said contract.

(iv)That defendant No.4 intervened directly or indirectly as a consequence of which defendants Nos.1 to 3 did not perform their part of the contract.

13.In the plaint filed by the plaintiff there is absolutely no mention of the aforesaid material facts except a vague allegation in para 7 thereof to the effect that defendants Nos.1 to 3 broke their promise at the instance of defendants Nos.4 and 5 and, therefore, all the defendants are jointly and severally liable to compensate

the plaintiff. As already stated, the plaintiff need not plead the evidence which is necessary to prove each fact pleaded, but it must incorporate every fact which is necessary to be proved. The bald statement in the plaint that defendants Nos.1 to 3 broke the promise at the instance of defendants Nos.4 and 5 falls far short of the said requirement.

14. On a consideration of the materials disclosed in the plaint, I am unable to persuade myself to accept that the material facts necessary to constitute a cause of action against defendant No.4 have been pleaded by the plaintiff. The learned Munsif was justified in rejecting the plaint under O.7, R.11 C.P.C. for want of cause of action disclosed in the plaint as against defendant No.4."

24. Apart from this, the respondents/plaintiffs also filed an application in S.R.No.9554 of 2012 on 18.09.2012 for amendment of cause of action and the suit schedule which proves the contention of these petitioners/defendants that the plaintiffs filed the suit without cause of action. Hence, this Court finds that the suit is not maintainable as the material facts and averment of the suit, cause of action and suit schedule property are defective and contains no

boundaries and nowhere mentioned about how much extent each of the petitioners/defendants are trespassed the suit property. Therefore, the very filing of the suit is an abuse of the process of law as per the judgment in the case of ***Sivananda Roy v. Janaki Ballav Pattnaik and others*** reported in ***AIR 1985 ORISSA 197***, the language of Order 7 Rule 11 makes it imperative that the facts constituting the cause of action must find place in the plaint. It is necessary to prove the claim relief must find place in the plaint.

25. Therefore, in my absolute view that the respondents/plaintiffs have filed the suit without any cause of action, the order passed by the learned Additional District Munsif, Poonamallee in I.A.No.470 of 2012 is totally not correct and not consider the case in proper manner. Therefore, the order passed by the learned Judge in I.A.No.470 of 2012 is warranting interference by this Court and accordingly, the order is liable to be set aside and the suit to be rejected from its file.

26. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.470 of 2012 in O.S.No.16 of 2001 dated 10.10.2012, on the file of the Additional

District Munsif, Poonamallee;

(b) the suit in O.S.No.16 of 2001 is struck off from the file of the learned District Munsif, Poonamallee. No costs. Consequently, connected miscellaneous petition is closed.

26.04.2017

Index:Yes
Speaking Order

vs

To

The Additional District Munsif,
Poonamallee.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(PD)No.1624 of 2013
and
M.P.No.1 of 2013**

26.04.2017