

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.3746 of 2016

and

C.M.P.No.19061 of 2016

- 1.Selvaraj
- 2.Thirumurugan
- 3.Thangadurai
- 4.Mariyappan
- 5.Sivakumar
- 6.Palanisamy
- 7.Kuppusamy
- 8.Elumalai
- 9.Arapuli
- 10.Chinnapaiyan
- 11.Kaligounder
- 12.Sanjiv Gandhi
- 13.Thangarasu
- 14.Maharajan
- 15.Duraiswamy

16.Kannan

.. Petitioners/Petitioners/Defendants

-Vs.-

1.Sambornam

2.P.Ganesh

.. Respondents/Respondents/Plaintiffs

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order dated 01.08.2015 made in I.A.No.(un-numbered) of 2015 in O.S.No.8 of 2015 on the file of the I Additional District Munsif Court, Salem.

For Petitioner : Mr.K.S.Karthik Raja

ORDER

The petitioners have come forward with the present Civil Revision Petition challenging the fair and decreetal order dated 01.08.2015 made in I.A.No.(un-numbered) of 2015 in O.S.No.8 of 2015, wherein the application filed under Order 7 Rule 11 CPC to strike off the plaint came to be dismissed.

2.The learned counsel appearing for the revision petitioners would submit that the respondents herein as plaintiffs had filed the suit in O.S.No.8 of

2015 for permanent injunction restraining the defendants and their men from in any manner interfering and disturbing into the plaintiffs peaceful possession and enjoyment of the suit properties. The revision petitioners/defendants filed the written statement and contested the suit. While so, the revision petitioners/defendants also filed an application under Order 7 Rule 11 CPC to strike off the plaint stating that there is no cause of action for the suit and it is also barred by law. But the Trial Court without numbering the said application had rejected the same, as against which the present Civil Revision Petition has been preferred.

3.At the time of admission, the argument advanced by the learned counsel appearing for the revision petitioner was heard in length.

4.The respondents herein as plaintiffs had filed the suit for permanent injunction restraining the defendants and their men from in any manner interfering and disturbing into the plaintiffs peaceful possession and enjoyment of the suit properties stating that an Odai is situated towards east of the suit properties and the public are using the said Odai as burial ground for burying the dead bodies by accessing through the main road. Since it takes much time to reach the Odai through the main road, the northern side of the suit property is used as short cut to reach the Odai. While so, on 28.12.2014, the first

defendant who is designated as Panchayat President along with the other defendants used the northern side of the suit property to reach the Odai and when the same was objected by the plaintiffs, the defendants committed illegal atrocity, pursuant to which a case has been registered in Crime No.770/2014 for the offences punishable under Sections 147, 148, 447, 294(b) & 506(ii) IPC. When that being so, on 02.01.2015, the defendants attempted to trespass into the suit property and destroy the entire cultivation in the fields which existed in the suit property and hence, the respondents/plaintiffs were constrained to file a suit for permanent injunction.

5.The revision petitioners/defendants filed the written statement and contested the suit stating that the Odai is situated towards east of the suit properties and the same was used as burial ground. Since it takes much time to reach the Odai through the main road, the public are using the suit property on permissive possession. It was further averred that RDO proceeding was also conducted.

6.On perusal of the schedule of property, it is seen that the entire extent is more than 2.64 acres and admittedly, the entire property has not been used as a pathway for reaching the burial ground. Further, in paragraphs 8 and 9 of the plaint and also paragraph 12, the cause of action for filing the suit has

been mentioned. At this juncture, it would be appropriate to incorporate Order 7 Rule 11 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 written on paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any, granted by the Court;

(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 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 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.”

However, the cause of action is not a single fact but it is a bundle of facts which can be tested only at the time of trial and not at the threshold, while deciding the application under Order 7 Rule 11 CPC. Further, in paragraph 4 of the written statement it has been averred that a peace committee was appointed and the same was conducted by RDO, Salem and the plaintiffs agreed to take the dead bodies through the suit property. But as already stated, the suit property not only comprises of the portion through which the dead bodies were taken to the Odai, but it relates to an extent of 2.64 acres. Hence, the RDO proceeding cannot bind the same and the suit is not barred by law.

7. Further, it was pleaded that the Court fee paid is insufficient. But the said issue has to be decided only at the time of Trial because as per Section 27(c) of the Tamil Nadu Court Fees and Suit valuation Act, since the suit property is a punja land, 30 times of the kist has been taken into consideration for payment of Court fees.

8. In view of the above stated facts and circumstances, I am of the view that the Trial Court has considered all the aspects in proper perspective and rightly rejected the application preferred by the revision petitioners under Order 7 Rule 11 CPC. Hence, the Civil Revision Petition is dismissed as devoid of merits. However, I am inclined to direct the Trial court to dispose of the suit within a period of six months from the date of receipt of a copy of this order, after framing necessary issues and after affording opportunity to both the parties. Connected miscellaneous petition is closed. No costs.

23.01.2017

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To

I Additional District Munsif Court,
Salem.

R.MALA, J.

C.R.P.(NPD).No.3746 of 2016

Dated : 23.01.2017

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