

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.581 of 2016

1 S.Vinayagamurthy

2 S.Rajapandiyan

... Petitioners/Defendants 2 and 3

Vs

Narayanasamy

... Respondent/Plaintiff

This Civil Revision Petition is filed under Article 227 of Constitution of India against the order dated 31.08.2015 made in I.A.No.650 of 2015 in O.S.No.115 of 2015 on the file of the Principal District Munsif, Villupuram.

For Petitioner : Mr.N.Suresh
Respondent : No appearance

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ORDER

None appeared for the respondent for the last four hearings.

Counsel for the petitioner was directed to take notice to the counsel for the

respondent and proof of service also filed by the counsel for the petitioner. However, today also none appeared for the respondent. Therefore, the Civil revision petition is taken up for final disposal.

2 According to the petitioner, the respondent herein has filed suit in O.S.No.115 of 2015 for permanent injunction. According to the petitioner, the respondent/plaintiff have no title, nor possession of the property and there is no documentary evidence for the suit claim. According to the revision petitioners/defendants, they purchased the suit property from the plaintiff's father by registered document No.2990 of 1995 dated 21.7.1995 on the file of Sub Registrar, Villupuram and by virtue of said sale deed, the revision petitioners/defendants are the absolute owner of the suit property. Without challenging the sale deed, the suit filed by the respondent/plaintiff for permanent injunction is abuse of process of court. Therefore, he filed an application in I.A.No.650 of 2015 under Order VII Rule 11 C.P.C. for rejection of the plaint. Further, according the petitioners/defendants, the respondent/plaintiff has not paid the Court fee as per Tamilnadu Court fee and Suit Valuation Act, 1955. On the aforesaid grounds, the plaint filed by the respondent/plaintiff ought to have been rejected. However, the court below erroneously dismissed the application. Therefore, he filed the Civil revision petition before this court.

2 Heard the learned counsel for the petitioner and and perused the materials on record.

3 The provision under Order VII Rule 11 C.P.C. reads as under:

"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."

4 Learned counsel for the petitioners/defendants has submitted that a perusal of the prayer in the suit shows that the respondent/plaintiff has sought for permanent injunction and the respondent/ plaintiff in the plaint averments admitted that the suit property was sold by the plaintiff's father in favour of the revision petitioners/defendants in the year 1995 through registered document No.2990 of 1995, dated 21.7.1995.

5 The case set up by the revision petitioners/defendants would not attract the provisions under Order VII Rule 11 C.P.C. at this stage. The learned counsel for the revision petitioners relied upon the decision of this court in **DR.L.RAMACHANDRAN AND ANOTHER VS. K.RAMESH [2015(5) CTC 629]** wherein this Court in para 13 held as under:

"13. The defendants 7 & 8 purchased the suit property in the year 1982 from the defendants 5 and 6, who had purchased the suit property in the year 1979 by sale deed dated 3.1.1979 executed by the defendants 1 to 4. Thus, the suit has been filed after a period of 26 years to declare the sale in favour of the defendants 7 & 8 as null and void. This factual position is not in dispute. Equally, it cannot be disputed that the period of limitation for questioning such transaction is three years."

6 In the aforesaid case, the suit filed by the plaintiff is for declaration to declare that the sale deed executed as null and void whereas in the case in hand, the respondent/plaintiff filed suit for permanent injunction. Therefore, the plaint cannot be rejected at the threshold stage. The learned counsel for the petitioners/defendants also relied upon the decision of this court in **SOLAIAMMAL (DIED) & ANOTHER VS. RAJARATHINAM & OTHERS [(2003)3 MLJ 632]** wherein this court held that the the question relating to pecuniary Jurisdiction raised by the defendants has to be considered under

Order VII Rule 11 C.P.C. Further, in para 15, this Court held as under:

"15. To make it clear we may refer to instances of Territorial Jurisdiction. For instance in a suit for recovery of money, supply of goods, etc., to determine the question of Territorial Jurisdiction may not be a pure question of law. Since the question of Territorial Jurisdiction depends upon the cause of action which is a bundle of facts, which is purely a mixed question of law and facts, in those instances, the question of Territorial Jurisdiction cannot be settled without recording evidence. Therefore, most of the case the question of Territorial Jurisdiction may not be determined as preliminary Issue under Order 14, Rule 2 unless the circumstances of the case warrants."

In the present case, the respondent/plaintiff filed the suit for permanent injunction and paid Court fee. The question of pecuniary jurisdiction and abuse of process of court has to be considered after adducing oral and documentary evidence as it involves mixed question of law. The contention of the petitioner that the suit itself ought to have been dismissed at the threshold stage as the same was filed without pleading relief for declaration and merely filed suit for permanent injunction without producing any document to show that the respondent/plaintiff is in possession of the suit property cannot be accepted. Therefore, this Court is not inclined to interfere with the order passed by the court below.

D.KRISHNAKUMAR,J.

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7 Accordingly, the Civil revision petition stands dismissed. However, liberty is granted to the revision petitioner to file an appropriate application to raise preliminary issue for the maintainability of the suit. In the event of filing such application, the same shall be considered by the trial court and pass appropriate orders as expeditiously as possible without being influenced by any of the observation made in the present order. No costs.

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Index: Yes/No

Internet:Yes/No

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To

The Principal District Munsif, Villupuram.

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