

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Reserved on 11.01.2017**

**Pronounced on 24.01.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

**CRP(PD)No.3242 of 2013**

**and**

**M.P.No.1 of 2013**

C.Kuppusamy

.. Petitioner

Vs.

1.C.Baby

2.Rathinambal

3.C.Devilakshmi

4.M.Palanisamy

5.S.Govindasamy

6.U.D.Selvaraj

7.S.A.Arumugham

8.Thulasimai

9.D.N.Shanmugami

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 18.07.2013 made in I.A.No.306 of 2013 in O.S.No.176 of 2012, on the file of the I Additional District Judge, Erode.

For Petitioner : Mr.P.Kannan Kumar

For Respondents : Mr.A.K.Kumarasamy (for R1)

No Appearance (for R2 to R6)

R7 to R9 – set exparte by trial Court

**ORDER**

This revision petition arises out of an order dated 18.07.2013 passed by the learned I Additional District Judge, Erode in I.A.No.306 of 2013 in O.S.No.176 of 2012 pending on the file of the above said Court. The above said suit came to be filed by C.Baby, the first respondent herein, against the revision petitioner and respondents 2 to 9 for praying partition of the properties and further relief to render a true and complete account of business of late M.Chenniappan and to pay cost.

2.The revision petitioner/first defendant has filed an application in I.A.No.306 of 2013 under Order VII Rule 11 CPC praying for the rejection of the plaint in O.S.No.176 of 2012 on the ground that an earlier suit was filed by the same plaintiff, which was suppressed and the Court fee was also insufficiently paid, mis-jointer of parties and the company was not added as a defendant in the suit. The application was resisted by the first respondent herein/plaintiff and after enquiry, the learned trial Judge, by the impugned order dated 18.07.2013 dismissed the said application filed by the revision petitioner/first defendant. The said order of the trial Court is challenged in the present

civil revision petition before this Court by the petitioner.

3.Narrating the facts leading to the filing of the application in which the impugned order came to be passed will be helpful to understand the case. Admittedly, the suit properties belong to late M.Chenniappan, the father of the revision petitioner and the respondents 1 and 3 and the 2<sup>nd</sup> respondent's husband. The other respondents in this Revision are erstwhile partners of the firm and relatives. The first respondent has claimed partition in the property and the revision petitioner has objected the same citing the reason that already the competent civil Court in O.S.No.763 of 2010 has declared that the Will which was executed by M.Chinnappan in favour of the revision petitioner. In that decree, the properties were benefitted in favour of the Revision Petitioner.

4.The arguments advanced by Mr.P.Kannan Kumar, learned counsel for the petitioner and Mr.A.K.Kumarasamy, learned counsel for the first respondent are heard. The certified copy of the impugned order and the copies of the other documents produced in the form of typed set of papers are also perused.

5.The learned counsel for the revision petitioner has advanced

the following arguments:

(a)The first respondent Mrs.C.Baby has filed a suit in O.S.No.763 of 2010 before the Principal District Munsif Court, Erode, wherein, she is the third plaintiff. The suit in O.S.No.763 of 2010 was tried and decreed by the Principal District Munsif Court, Erode on 03.03.2011. The suit for declaration to declare the Will dated 14.09.2009, executed by her father late Mr.M.Chenniappan was genuine. The other plaintiffs are the revision petitioner and respondents 2 and 3 in this revision petition. In the above suit, they have marked several documents as exhibits and witnesses were also examined. After full-fledged trial the Principal District Munsif Court has granted decree in favour of the Revision Petitioner and also restrained the defendant. Pursuant to the decree passed, the properties are now vested with the revision petitioner and being co-sailed with the revision petitioner in the suit proceedings, she/the first respondent cannot claim the present relief. The decree passed in O.S.No.763 of 2010 was duly registered with the Registration Department and the plaintiff/the first respondent has also given no objection certificate for Patta Transfer, Property Tax and Electricity Connection, etc.

(b)The learned counsel appearing for the petitioner further

contended that the first respondent herein has filed the present partition suit in O.S.No.176 of 2012, by suppressing the earlier suit filed by her. The 5<sup>th</sup> respondent being one of the plaintiff in the suit and after the decree was passed and knowing fully well of the earlier proceedings has conveniently suppressed the suit in O.S.No.763 of 2010 in the plaint filed in O.S.No.176 of 2012. Further, in the earlier suit and also in the present suit, the properties are one and the same.

(c)The learned counsel for the revision petitioner further contended that the suit was valued at Rs.3,49,68,750/- and Court fee of Rs.750/- alone paid. But, the relief prayed is to render accounts and pay the plaintiff/ 1<sup>st</sup> respondent her 5/16<sup>th</sup> share. The valuation of Court fee is incorrect, since the plaintiff is not in joint possession of the suit property, the Court fee has to be paid only as per market value in accordance with Section 37(1) Tamil Nadu Court Fees and Suit Valuation Act and on that ground also, the plaint has to be rejected.

(d)The learned counsel for the revision petitioner has argued that the respondents 4 to 9 are no way connected to the properties of late M.Chenniappan, since the relief is in the nature of partition, the trial Court failed to note that the mis-jointer of parties by the plaintiff

and prayed for rejection of plaint.

(e)The learned counsel for the revision petitioner further contended that in the suit in O.S.No.176 of 2012, the plaintiff has prayed to furnish the business accounts of late M.Chenniappan. But, the private limited company has not been arrayed as a defendant in the suit. For furnishing business accounts, the company should be party and non-jointer of party also to be taken note for rejection of plaint. Further, the plaintiff Mrs.C.Baby has not explained in her plaint that how she is entitled 5/16<sup>th</sup> shares.

(f)The learned counsel for the revision petitioner has further contended that they have marked 15 documents in support of their claims and also filed detailed written statement before the I Additional District Court, Erode. But, the trial Court without considering the same passed the impugned order. The learned trial Judge without verifying the documents submitted by the revision petitioner in the written statement, passed the impugned order, holding that the revision petitioner has not submitted the documents. Further, the judgment and decree passed in O.S.No.763 of 2010 are Court documents and it has already been submitted along with the written statement in

O.S.No.176 of 2012.

6.Per contra, the learned counsel Mr.A.K.Kumarasamy appearing for the 1<sup>st</sup> respondent/plaintiff has contended that the suit in O.S.No.176 of 2012 is for partition and the same has to be decided by its own merits. The rejection of plaint will curtail the remedy available to the plaintiff to mark some documents and evidences before the trial Court. Further, if any insufficiency in payment of Court fee arose, and if the Court orders for payment of deficit Court fees, the same can be paid.

7.Upon considering the arguments advanced by the learned counsel for the petitioner and the learned counsel for the 1<sup>st</sup> respondent, this Court has to decide whether the plaint in O.S.No.176 of 2012 is liable to be struck off or not?

8.The Code of Civil Procedure under Order VII Rule 11 deals about the rejection of plaint as per Order 7 Rule 11 of 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.]”

9. Apart from the reasons given in the Civil Procedure Code, the plaint can also be rejected for the abuse of process of law and for suppression of material facts, and to curtail vexatious litigations, by exercising the powers under Article 227 of the Constitution of India.

10. The learned counsel appearing for the petitioner has submitted various judgments for rejection of plaint. The Hon’ble Apex Court in **2006 (3) SCC 100** has held that rejection of plaint is permissible only if the suppressed fact is material. Further, in the judgment reported in **2011 (1) MWN (Civil) 113**, it has been held that plaint can be rejected when there is a clear abuse of process of law. In the judgment reported in **CDJ 2016 MHC 1511** it has been pointed out that the abuse of process of Court can be checked by the High Court under its power of Superintendence under Article 227 of the Constitution of India, for even striking of plaint.

11. In a judgment reported in **1998 (3) CTC 165**, this Court has held that the Court can reject the plaint, when the decree of the Court

suppressed and the defendant re-agitated the matter by filing fresh suit. This Court as well as the Hon'ble Apex Court on many occasions has held that the inherent powers of the High Court and the powers under Article 227 of the Constitution of India, has to be used sparingly. But, the case on hand does not deserve any leniency and earlier suit has filed by the same plaintiff with regard to the same property has been suppressed. The plaintiff has approached the Court below with unclean hands and suppressed the earlier suit. In a situation like this, this Court has to exercise the powers conferred upon it to control the abuse of process of Court.

12.The first respondent/plaintiff has not given any reason for filing the earlier suit in O.S.No.763 of 2010 and for filing the present suit in O.S.No.176 of 2012 while filing reply to the I.A.No.306 of 2013 in O.S.No.176 of 2012. Moreover, she has not given any reply about the suppression of earlier suit in the reply filed by her. The argument advanced by the first respondent also does not give any reply as to why the first respondent/plaintiff has filed earlier suit and present partition suit for the same properties. The learned counsel for the first respondent has not given any reason regarding why the earlier judgment and decree in O.S.No.763 of 2010 was suppressed in

O.S.No.176 of 2012.

13.In view of the above prevailing circumstances, this Court has to come to the conclusion that the plaint in O.S.No.176 of 2012 is clear abuse of process of Court and this Court in a compelling circumstances has to exercise its power under Article 227 of the Constitution of India.

14.The learned trial Judge, without properly appreciating the facts and without properly applying the principles of law regarding the rejection of plaint, choose to arrive at an erroneous conclusion that the revision petitioner failed to substantiate their case that the plaint was liable to be rejected on the ground of suppression of facts. There cannot be a better case than the present suit to be an abuse of process of Court, which can be checked by this Court under its power of superintendence under Article 227 of the Constitution of India for even striking off the plaint.

15.For all the reasons stated above, this Court comes to the conclusion that the order of the trial Court cannot be sustained and the same deserves to be interfered with and set aside.

16.In the result:

(a)This Civil Revision Petition is allowed by setting aside the order passed in I.A.No.306of 2013 in O.S.No.176 of 2012 dated 18.07.2013 on the file of the learned I Additional District Judge, Erode.

(b)The O.S.No.176 of 2012 is struck off from the file of the learned I Additional District Judge, Erode.

16.Accordingly, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

**24.01.2017**

Index:Yes  
Internet:Yes

vs

To

The I Additional District Judge,  
Erode.

**M.V.MURALIDARAN, J.**

VS

**Pre-Delivery order made in**  
**CRP(PD)No.3242 of 2013**  
**and**  
**M.P.No.1 of 2013**

**24.01.2017**

**<http://www.judis.nic.in>**