

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3784 of 2012
& C.M.P.No.7076 of 2016
& M.P.No.1 of 2012

R.Vasanthakumar

.. Petitioner

Vs.

J.Radhakrishnan

.. Respondent

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.02.2012, made in I.A.No.475 of 2011 in O.S.No.268 of 2011 on the file of the Principal Subordinate Judge, Coimbatore.

For Petitioner : Mr.K.Sukumaran

For Respondent : Mr.Prof.S.Krishnasamy

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 21.02.2012, made in I.A.No.475 of 2011 in O.S.No.268 of 2011 on the file of the Principal Subordinate Judge, Coimbatore.

2. The petitioner is second defendant, respondent is the plaintiff in O.S.No.268 of 2011, on the file of the Principal Subordinate Court, Coimbatore. The respondent filed suit for declaration and for recovery of possession of the suit property, measuring 1.25 acres in Survey No.532 of Idigarai village, Coimbatore District.

3. Petitioner filed written statement on 13.12.2011 and is contesting the suit. According to the respondent, 3 acres of land in Survey No.532 was allotted to his father, by partition deed dated 24.03.1949, which was registered as Document No.1489 of 1949. Subsequently, by partition between the respondent, his brother and father, 3 acres of land, registered as Document No.3591 of 1992, dated 30.12.1992, was allotted to the respondent. Till the death of the respondent's father, his father was in possession and enjoyment of the suit property. After the death of the father, the respondent verified the contents of partition deed, out of which he came to know that the first defendant, who is not a party in this application, encroached the suit property and obtained U.D.R. Patta in the year 1996 and sold 1.65 acres to the petitioner. The respondent has taken steps for cancellation of U.D.R Patta. The Revenue

Authorities have rejected the request of the respondent. Therefore, he has filed the suit for declaration and recovery of possession. The petitioner filed I.A.No.475 of 2011, under Order 7 Rule 11 and Section 151 of C.P.C to reject the plaint in O.S.No.268 of 2011.

4. According to the petitioner, the plaint does not disclose any cause of action and without any material facts, the respondent has filed the suit and prayed for rejection of the plaint. The respondent's father was not allotted 3 acres, but was allotted only a lesser area. The first defendant did not encroach the suit property.

5. Before the learned Judge, no oral evidence was let in by the petitioner and respondent. The petitioner marked 4 documents as Exs.P1 to P4, while the respondents marked Exs.R1 to R19.

6. The learned Judge, considering the averments in the affidavit, counter affidavit, averments in the plaint and documents filed along with plaint, came to the conclusion that the respondent's father was not allotted 3 acres, but he was allotted only 1.5 acres. The learned Judge also concluded that first

defendant, who is the vendor of the petitioner, sold larger extent, 1.65 acres of land, while he is entitled to only 1.5 acres. The learned Judge, dismissed the application on the ground that the respondent has stated that the cause of action for filing the present suit arose when the first defendant encroached in the year 2009 and plaint discloses the cause of action.

7. Against the said order of dismissal dated 21.02.2012, made in I.A.No.475 of 2011 in O.S.No.268 of 2011, the present civil revision petition is filed by the petitioner.

8. The learned counsel for the petitioner reiterated the averments made in affidavit filed in support of I.A.No.475 of 2011 and grounds of revision and submitted that the plaint does not disclose the cause of action.

9. The learned counsel appearing for the petitioner in support of his contention relied on the following judgments:

(I) Church of North India Vs. Lavajibhai Ratanjibhai and others, reported in (2005) 10 SCC 760:

39. A plea of bar to jurisdiction of a civil Court must

be considered having regard to the contentions raised in the plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety. The court may not be justified in determining the question, one way or the other, only having regard to the reliefs claimed dehors the factual averments made in the plaint. The rules of pleadings postulate that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil Court, it may be rejected in terms of Order 7 Rule 11 of the C.P.C.

(II) Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others, reported in (2004) 3 SCC 137:

10. In Saleem Bhai V. State of Maharashtra it was held with reference to Order 7 Rule 11 of the Code 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 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 clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are germane: the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

11. In I.T.C. Ltd. V. Debts Recovery Appellate

Tribunal it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code.

20. There is distinction between "material facts" and "particulars". The words "material facts" show that the facts necessary to formulate a complete cause of action and the statement or plaint becomes bad.

Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the sit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not stay in express terms about the filing of a written statement. Instead, the word "shall" is

used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.

(III) Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and others, reported in AIR 2012 SCC 2638:

3. The expression "cause of action" has not been defined either in the Civil procedure code or elsewhere and is more easily understood than precisely defined. This Court has in OM Prakash Srivastava V. Union of India & Anr. (2006) 6 SCC 207: (AIR 2007 SC (Supp) 1834 : 2006 AIR SCW 3823) attempted an explanation of the expression in the following words:

The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself.

4. It is equally well settled that while examining whether a plaint or an election petition discloses a cause of action, the Court has a full and comprehensive

view of the pleading. Averments made in the plaint or petition cannot be read out of context or in isolation. They must be taken in totality for a true and proper understanding of the case set up by the plaintiff.

6. Where this Court held that the disclosure of a cause of action in the plaint is a question of fact and the answer to that question must be found only from the reading of the plaint itself. The Court trying a suit or an election petition, as the position is in the present case, shall while examining whether the plaint or the petition discloses a cause of action, to assume that the averments made in the plaint or the petition are factually correct. It is only if despite the averments being taken as factually correct, the Court finds no cause of action emerging from the averments that it may be justified in rejecting the plaint.

(IV) Raj Narain Sarin(Dead) through LRS. And others Vs. Laxmi Devi and others, reported in (2002) 10 SCC 501:

3. It is convenient to note at this juncture that in an application for rejection of the plaint under Order 7 Rule 11, the law has been rather well settled for quite some time in a long catena of cases that the plaint should be taken as it is and the application should be considered on the basis of the averments in the plaint itself and no external aid is available to the court for the purpose. It has also been the well-settled principle of law that the law court should be rather hesitant to exercise the

jurisdiction under Order 7 Rule 11 unless the factual score warrants such exercise and the matter in issue falls within the four corners of the requirement of the statute.

(V) S.E.Zarina Begum and others Vs. P.M.S.Latiff, reported in

2016 (3) CTC 444:

11. As rightly contended by the learned counsel for the petitioners, the pleadings incorporated in the plaint do not disclose a Cause of Action and on the other hand, it shows vexation and an attempt at abuse of process. Hence this Court comes to the conclusion that the Plaint is liable to be rejected under sub-clause (a) of Rule 11, under Order 7 of the Code of Civil Procedure. The learned Trial Judge failed to consider the plaint averments properly and the same led to the passing of the impugned Order dismissing the application filed under Order 7, Rule 11, C.P.C., for the rejection of the plaint. The said order cannot stand the scrutiny of this Court and this Court does have no hesitation in setting aside the order.

10. The learned counsel appearing for the respondent submitted that the respondent approached the Revenue Authority for change of U.D.R. Patta. The Revenue Authority have rejected the request of the respondent. In the circumstances, he has filed the suit for declaration. The Trial Court has to decide the relief

sought for, based on the averments in the plaint, documents filed along with the plaint and oral and documentary evidence let in by parties. The respondent has made averments in the plaint, disclosed the material facts and cause of action that can be decided only after the trial, while delivering the judgment. The present petitioner has purchased the property on 10.02.2011. The petitioner's vendor encroached the property and obtained UDR patta. The petition filed by the petitioner to cancel the UDR patta was rejected by the District Revenue Officer, by order dated 25.10.2010. The respondent filed the suit for declaration and possession, clearly mentioning the cause of action for the suit. The learned counsel for the respondent in support of his contention, relied on the following judgments:

(I) Saleem Bhai and others Vs. 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.

(II) Sopan Sukhdeo Sable and others Vs. Assistant Charity

Commissioner and others, reported in 2004(2)Supreme 40:

15. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

11. Heard the learned counsel appearing for both the sides and perused the materials on record and judgments relied on by

the counsel for both the parties.

12. The petitioner has sought for rejection of the plaint, on the ground that the plaint does not disclose any material facts and does not disclose any cause of action. The learned counsel appearing for the petitioner further contended that the respondent's father was not allotted 3 acres, but was allotted only lesser extent. This contention is contrary to the averments in the plaint and relief sought for in the suit.

13. The respondent is seeking declaration and possession of the suit property. The respondent has alleged that the first defendant has encroached the suit property in the year 2009 and in view of the alleged encroachment of the property, the respondent approached Revenue Authority to get the patta changed in the U.D.R. Proceedings. The said request was rejected. The respondent filed suit for declaration and recovery of possession. He has stated so in the plaint and also mentioned in the cause of action. It is well settled that while deciding the application in Order 7 Rule 11 C.P.C, the averments in the plaint and documents filed along with the plaint alone has to be considered. The contention of the defendant

in the written statement and documents relied on by the defendant are not relevant to decide the application filed under Order 7 Rule 11 C.P.C. In the arguments relied on by the learned counsel for parties, the above principles only had held to be considered by the Courts. A reading of the plaint as a whole reveals cause of action for the relief sought for by the respondent. In view of the above facts, the civil revision petition is liable to be dismissed as devoid of merits.

14. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also closed. Since, the suit is of the year 2011, the learned Principal Subordinate Judge, Coimbatore is directed to dispose of the suit as expeditiously as possible, in any event, not later than three months from the date of receipt of a copy of this order.

WEB COPY

26.07.2017

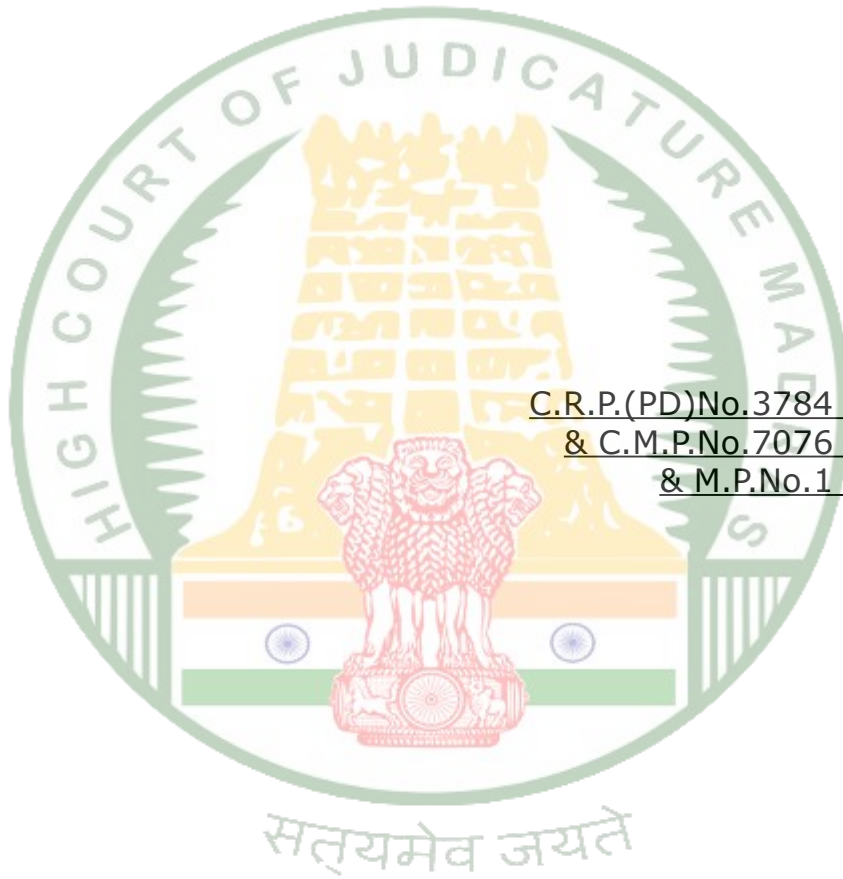
Index : Yes/No
gsa

To

The Principal Subordinate Judge, Coimbatore.

V.M.VELUMANI, J.

gsa



C.R.P.(PD)No.3784 of 2012
& C.M.P.No.7076 of 2016
& M.P.No.1 of 2012

WEB COPY 26.07.2017