

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2017

Coram

The Hon'ble Ms. Justice V.M.Velumani

C.R.P. (PD) No.760 of 2017
and
C.M.P.No.3781 of 2017

1.B.Krishnamurthy
2.M.B.Venkataratnam

... Petitioners /Defendants 1 & 2

Versus

1.K.Saraswathi
2.V.Mahalakshmi
3.K.Nalini
4.B.Nagalakshmi
5.L.Aparna
6.M.Vijayalakshmi

... Respondents / Plaintiffs

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order in I.A.No.78975 of 2015 in O.S.No.1009 of 2015 dated 04.01.2016 of the learned XIII Assistant Judge City Civil Court, Chennai in dismissing the petition for rejection of the plaint.

For Petitioners .. Mr.K.S.V.Prasad

For Respondents .. Mr.K.J.Parthasarathy

ORDER

The revision petitioners are the defendants 1 and 2. The respondents have filed the suit in O.S.No.1009 of 2015 praying for the following reliefs :-

(a) Directing the 1st defendant to render true and proper accounts from the rental income of the suit property from 01.01.2013 to the date of decree ;

(b) Granting permanent injunction restraining the 1st and 2nd defendants from in any way alienating, encumbering or any acts, things, writings and lease contrary to the settlement deed dated 05.02.1961 in Book No.I, Volume No.1418, pages from 465 to 468 in the office of the Sub Registrar, Sowcarpet in respect of the suit schedule property.

2. The revision petitioners filed written statement and also I.A. No.78975 to reject the plaint in the month of September 2015.

3. According to revision petitioners / defendants 1 and 2 the suit property belongs to the father of the first petitioner and he has executed a settlement deed dated 05.02.1961 settling the property initially to his wife

and after her life time on the first petitioner / 1st defendant. After the death of their mother in the year 1982, the first petitioner / 1st defendant is in possession and enjoyment of the suit property.

4. Learned counsel for the revision petitioners / defendants 1 and 2 contended that as per the settlement deed dated 05.02.1961 any income if accumulated on the date of the 1st petitioner's death will go to his children which means if there is no accumulation they do not get anything and the suit is not maintainable, since there is no cause of action to file the above suit. As per settlement deed dated 05.02.1961, the 1st petitioner's / 1st defendant's children shall get right over the property, only after the life time of the 1st petitioner / 1st defendant and also stated that the suit has not been properly valued and not paid the correct Court fee and submitted that the Court has no pecuniary jurisdiction to entertain this said suit.

5. This respondents / plaintiffs have filed counter affidavit refuting the averments made by the revision petitioners / defendants 1 and 2 and submitted that the respondents have valued the property correctly and paid correct Court fee. The disputed question of fact can be decided only in the trial by appreciating the evidence let in on behalf of the parties.

6. The learned trial Judge after considering the averments made in the affidavit filed in support of the petition and counter affidavit, dismissed the application holding that while considering the application for rejection of plaint, it is not necessary to examine the defence taken by the defendants, but only upon the perusal of averments made in the plaint and the documents filed in support of the plaintiff's case. The plaintiff case can be decided only after the evidence let in by the parties and the contention that the suit is filed without any cause of action cannot be decided at this stage and dismissed the application.

7. Aggrieved by the dismissal order of the trial Court, the present Civil Revision is filed by the defendants 1 and 2.

8. Heard, the learned counsel for the petitioner and the learned counsel for the respondent.

9. The contention of the learned counsel for the revision petitioners is that the respondent / plaintiff filed the suit without any cause of action and the learned judge erroneously viewed the matter and come to the conclusion that the suit is maintainable.

10. The learned counsel appearing for the respondents / plaintiffs submitted that the plaintiffs have only prayed for rendition of account. This question of fact can be decided only at the time of trial and the plaint cannot be rejected at this stage.

11. It is well settled that while considering the application for rejection of the plaint, the Court has to examine the averments made in the plaint and the documents filed in support of the plaint. The contention of defendants and documents relied on by defendants cannot be considered at the stage of hearing the application to reject the plaint.

12. Thus by considering the above principle, the learned Judge has rightly exercised her discretion and dismissed the application and there is no illegality in the impugned order.

13. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.04.2017

Index : Yes / No
Internet : Yes / No
Speaking / Non speaking

vsi2

V.M.VELUMANI, J.

vsi2

To
The XIII Assistant City Civil Judge,
Chennai

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