



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2017

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.1727 of 2017

and

C.M.P. (MD) No.9416 of 2017

and

C.M.P. (MD) No.10444 of 2017

1.S.Ramanathan

2.Vasanthi@Vaijyanthi Mala ..Petitioners/Petitioners/Defendants

vs.

Kalyanasundaram

... Respondents /Respondent/Plaintiff

PRAYER: Petition filed under Article 227 of the Constitution of India, against the order dated 21.02.2017 made in I.A.No.1043 of 2016 in O.S.NO.69 of 2013, on the file of the District Munsif Court, Sivagangai.

For Petitioners : Mr.Isac Mohanlal
Senior Counsel
for Mr.P.Balan

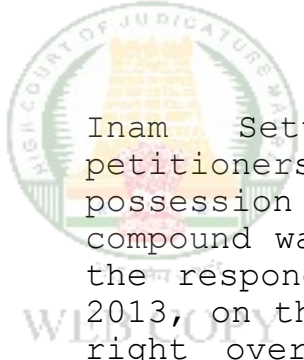
For Respondent : Mr.T.Kumar

ORDER

The above Civil Revision Petition has been filed against the order dated 21.02.2017 made in I.A.No.1043 of 2016 in O.S.NO.69 of 2013, on the file of the District Munsif Court, Sivagangai.

2. The petitioners herein are the defendants in the suit in O.S.NO.69 of 2013 and the defendants are in possession and enjoyment of 11 cents with house and compound wall in S.No.73/4 at Kalayarkovil Town, Somanathamangalam group, Sivagangai District since 1982. The petitioners would further aver that the property was purchased by the father of the second petitioner herein/second defendant vide a registered sale deed dated 12.11.1982.

3. The respondent herein owns the neighbouring property with house and compound wall in S.No.73/4H at Kalayarkovil Town, Somanathamangalam group, Sivagangai District through the deed of



Inam Settlement, dated 14.03.1966. According to the petitioners/defendants, both parties have been in peaceful possession and enjoyment of their respective properties bounded by compound walls over the past 31 years. While so, in the year 2013, the respondent herein/plaintiff instituted a suit in O.S.No.69 of 2013, on the file of the District Munsif Court, Sivagangai, claiming right over an extent of 1168 sq.ft allegedly lying inside the petitioners' property.

4. According to the petitioners/defendants, there is no cause of action for instituting the above suit and also there is no averment in the plaint to state as to how and from whom the plaintiff derived title over the said extent. The respondent/plaintiff claims rights by stating that a survey was done on 12.01.2012, after the settlement in the year 1996 and through the revenue officials, the respondent/plaintiff came to know that the petitioners/defendants had encroached and put up constructions over the said extent of 1168 sq.ft. Therefore, the petitioners/defendants filed an application in I.A.No.1043 of 2016 seeking to reject the plaint under Order 7 Rule 11 r/w 151 C.P.C., on the ground that the suit had been instituted without any cause of action and with the sole aim of harassing the petitioners herein/defendants.

5. After hearing both sides, the learned District Munsif dismissed the I.A. Stating that the cause of action can be decided in the suit by trial. Against which, the present Civil Revision Petition has been filed by the petitioners/defendants.

6. The learned Senior Counsel appearing for the petitioners would submit that if the averments in the plaint does not disclose any real cause of action or any enforceable right/claim to file the suit, the trial Court should exercise its power under Order 7 Rule 11 C.P.c., to reject the plaint. The learned Senior Counsel further submitted that when the petitioner for rejection of plaint is filed under Order 7 Rule 11 r/w Section 151 C.P.C., the trial Court should first decide as to whether any cause of action exists for trying the suit.

7. In support of his contentions, the learned Senior Counsel would rely upon the following decisions:

(i) In *T.Arivandandam Vs. T.V.Satyapal and another* reported in (1977)4 Supreme Court Cases 467, wherein the Honourable Supreme Court held as follows:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant



misuse of mercies of the law in receiving plaint. The learned Munsif must remember that if on a meaningful not formal reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C., taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C., an activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good."

(ii) In *I.T.C. Limited Vs. Debts Appellate Tribunal and Others* reported in (1998)2 Supreme Court Cases 70, wherein the Honourable Supreme Court held as follows:

"5. The appellant filed Writ Petition No.8564 of 1997 in the Karnataka High Court which was again dismissed by an order dated 9-4-1997 holding that the question has to be decided at the trial and that it could not be stated that there was no cause of action at all disclosed in the plaint against the appellant. Against the said judgment the appellant filed Writ Appeal No.2876 of 1997 which was dismissed on 14-8-1997 holding that at the stage of an application under Order 7 Rule 11 C.P.C., in order to find out whether the plaint did not disclose a cause of action, the Court should not look into anything else except the plaint. Further, after the issues were framed and the case was posted for evidence, it was not desirable to consider the application filed under Order 7 Rule 11 C.P.C."

(iii) *Saleem Bhai and Others Vs. State of Maharashtra and Others* reported in (2003)1 Supreme Court Cases 557, wherein the Honourable Supreme Court held as follows:

"9. A perusal of Order 7 Rule 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 Order 7 Rule 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 clauses (a) and (d) of Rule 11 of Order 7 C.P.C., the averments in



the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 C.P.c., cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects."

(iv) In *Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others* reported in (2005) 10 Supreme Court Cases 51, wherein the Honourable Supreme Court held as follows:

"23. *Osborne's Concise Law Dictionary* defined "cause of action" as the fact or combination of facts which give rise to a right or action. In *Black's Law Dictionary* it has been stated that the expressions cause of action is the fact or facts which give a person a right to judicial relief. In *Stroud's Judicial Dictionary* a cause of action is stated to be the entire set of facts that give rise to an enforceable claim; the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment.

24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded."

8. Countering the submissions made by the learned Counsel for the petitioners/defendants, the learned Counsel for the respondent/plaintiff would submit that so far as the suit is concerned already, the respondent/plaintiff claims the right of declaration and mandatory injunction on the strength of a deed of settlement dated 14.03.1966 and subsequently the Advocate Commissioner has been appointed and he inspected the suit property with the help of surveyor and measure the same and found that the petitioners/defendants have encroached the portion of a land of the respondent/plaintiff and raised constructions in the encroached area. He further submitted that trial Court found that it is purely based on facts and no serious point of law is involved and hence, he prayed for dismissal of this Civil Revision Petition.

9. In support of his contentions, he relied upon the following judgments:



1. In *J.Lili Jabakani and Other Vs. T.A.Chandrasekher* reported in 2006(5) CTC 848;
2. In *Wipro Limited and another Vs. Oushadha Ayurvedic India P.Ltd., and others* reported in 2008(3) CTC 724;
3. In *Sivagangai Municipality Vs. C.Meenakshisundaram and another* reported in 2009(2) CTC 68;
4. In *Munusamy Vs. Elumalai naicker and 4 others* reported in 2009(2) CTC 601;
5. In the *Ootacamund club Vs. H.S.Mehta* reported in 2009(5) CTC 627; and
6. In *Indrakumar Mahendran Vs. G.R.Pathmaraj and Others* reported in 2010(6) CTC 202.

10. By relying upon the judgments, the learned Counsel for the respondent/plaintiff would submit that this Court as well as the Honourable Supreme Court held that the Court will not go into the merits of the plaint as well as the rival contentions made by the defendant on the merits of the suit claimed, while considering the application filed under Order 7 Rule 11 C.P.C. On the other hand what is to be seen is as to whether the plaint as such discloses the cause of action or not. Further careful perusal of Order 7 Rule 11 (a) C.P.C., shows that the rejection of plaint is warranted only when the plaint does not disclose the cause of action. On the other hand, if the plaintiff states the various facts and circumstances which are materials for filing the suit and claims that there are the cause of action, it is enough to hold that the plaint discloses the cause of action.

11. Heard the learned Senior Counsel for the petitioners/defendants and the learned Counsel for the respondent/plaintiff and perused the materials available on record.

12. From the judgments relied on by the learned Senior Counsel would go to show that the cause of action should be decided only based on the reading of the plaint and it cannot be decided on a subsequent filing of written statement or any other document which has been filed subsequently. The cause of action should be decided only on the basis of the averments made in the plaint and whether the averments in the plaint will constitute the cause of action, it could be decided as a preliminary issue. The trial Court is erred in stating that the issue can be decided along with other issues and therefore, this Court is inclined to set aside the order passed by the trial Court and remand back the matter before the trial Court to decide the cause of action as a preliminary issue.

13. At this stage, the learned Senior Counsel for the petitioners/defendants would submit that the matter has been transferred from the Court of District Munsif, Sivagangai to the Court of Principal District Munsif, Manamadurai and renumbered as O.S.No.149 of 2017.



14. The learned Counsel for the respondent/plaintiff would submit that the matter may be disposed of within a time frame as fixed by this Court.

15. In view of the above, the matter is remanded back to the Principal District Munsif Court, Manamadurai and the learned District Munsif is directed to decide the petition filed under Order 7 Rule 11 C.P.C., as a preliminary issue, within a period of six weeks from the date of receipt of a copy of this order. The trial Court is directed to decide the issue purely on merits and in accordance with law, without being influenced by any of the observations made in this order.

16. In the result, this Civil Revision Petition is disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1.The Principal District Munsif ,
Sivagangai

2.The Principal District Munsif,
Manamadurai

+One cc to Mr.P.Balan, Advocate, SR.No.91908

+One cc to Mr.T.Kumar, Advocate, SR.No.91912

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