

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD)No.1335 of 2018

and

C.M.P.No.6979 of 2018

Selvi

.. Petitioner

Vs.

Paramasivam

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order and Decretal order dated 05.01.2018 made in I.A.No.317 of 2015 in O.S.No.125 of 2015 on the file of the Principal Sub Judge, Vridhachalam.

For Petitioner : Mr.R.Arumugam

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned Principal Sub Judge, Vridhachalam in I.A.No.317 of 2015 in O.S.No.125 of 2015 dated 05.01.2018.

2. The defendant in O.S.No.125 of 2015 on the file of the Principal Sub Judge, Vridhachalam, is the revision petitioner herein.

3. According to the petitioner, the respondent herein has filed a suit in O.S.No.125 of 2015 seeking recovery of money. In the aforesaid suit, the petitioner has filed an application in I.A.No.317 of 2015 to reject the plaint. The trial Court had dismissed the application on the ground that the plaint does not disclose the cause of action and hence, there is no material to establish the raise of cause of action in favour of the respondent and also barred by law. Aggrieved by the said order, the petitioner has filed the present civil revision petition before this Court.

4. The learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court reported in the case of **Krishna Janardhan Bhat vs. Dattatraya G.Hegde, 2008 STPL(L.E.Crim) 29108 SC** and another decision in the case of **Church of Christ Charitable Trust and Educational Charitable Society, represented by its chairman vs. M/s.Ponnamman Educational Trust represented by its Chairperson/Managing Trustee, 2012 STPL 18054 SC**. In this case, the suit is for recovery of money based on the promissory note dated 26.12.2014, but no such document was

filed by the respondent herein along with the plaint. Whereas, the pronote filed by the petitioner would go to show that the date of promissory note is mentioned as 20.12.2014. Therefore, there is no material evidence to substantiate the claim. Further the learned counsel would contend that as per Section 269 SS and 271 D of the Income Tax Act, wherein it is stated that any cash transaction for more than Rs.20,000/- is barred by law. Therefore, there is no material to establish the raise of cause of action in favour of the respondent and hence, the impugned order is liable to be set aside.

5. Heard the learned counsel for the petitioner and also perused the available records.

6. On a perusal of the records would go to show that the discrepancy in the pleading and suit promissory note with regard to the date of financial transaction between the respondent and the deceased son of the petitioner is only due to typographical error, in which, the petitioner cannot take advantage. The respondent had filed application to amend the plaint stating that the date of the promissory note was wrongly mentioned as 26.12.2014. In plaint, the date of the promissory note has been mentioned as 26.12.2014 instead of 20.12.2014 and the said application to amend the plaint is pending

before the trial Court. The question that has to be decided whether the plaint discloses the cause of action and barred by law. The decision relied on by the learned counsel for the petitioner is not applicable to the facts of the present case on hand.

7. At this juncture, it is pertinent to refer the provisions of Order VII Rule 11 of the Civil Procedure Code, which is extracted here under:

“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. (Provided that the time fixed by the Court for the correction of the valuation or supplying 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)."

There is no sufficient grounds to invoke provisions under Order VII Rule 11 of the Civil Procedure Code for allowing the application. The aforesaid fact is a triable issue and the same can be decided on merits in the suit. Therefore, the mixed question of fact and law can be decided at the time of trial by adducing oral and documentary evidence. Hence, at this stage, the order of the Court below is perfectly in accordance with law.

8. Further, this Court finds that the averments made in the plaint, which discloses cause of action and also not barred by law. It is settled proposition of law that at the time of deciding an application under Order VII Rule 11 of C.P.C. the Court has to see only the averments of the plaint and documents annexed with the plaint and not the defence taken by the defendant (petitioner) and also the document filed by the defendant. Therefore, this Court finds that there is no illegality or infirmity in the order passed by the trial Court.

P.VELMURUGAN,J.

Kkd

9. Considering the facts and circumstances of this case, the civil revision petition is dismissed in the admission stage itself. The impugned order passed in I.A.No.317 of 2015 in O.S.No.125 of 2015 on the file of the Principal Sub Judge, Vridhachalam dated 05.01.2018 is hereby confirmed. No costs. Consequently, the connected civil miscellaneous petition is closed.

10.04.2018

Index:Yes/No

Internet : yes/No

Speaking order / Non speaking order

kkd

To

The Principal District Sub Court,

Vridhachalam.

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