

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD)No.3737 of 2017 and  
CMP.No.17375 of 2017

1. Janaki Manohari  
2. Sashwat

... Petitioners

Vs.

1. Jagan M.Seshadri  
2. Kapaleshwar

... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India seeking to set aside the order dated 16.08.2017 passed by the V Additional Family Court, Chennai in I.A.No.1261 of 2015 in O.S.No.180 of 2015 for rejecting the plaint.

For Petitioners : Mr.V.Kuberan for M/s.Rank Associates  
For Respondents : Mr.N.S.Nandakumar for R1

**ORDER**

The civil revision petition has been filed seeking to set aside the order dated 16.08.2017 passed by the V Additional Family Court, Chennai, in I.A.No.1261 of 2015 in O.S.No.180 of 2015.

2 The revision petitioners are the defendants 1 and 3 in the suit in O.S.No.180 of 2015 filed by the first respondent/plaintiff on the file of the V

Additional Family Court, Chennai, for declaration to declare that the plaintiff is not the father of the defendants 2 & 3 therein. The revision petitioners filed an interlocutory application in I.A.No.1261 of 2015 under Order VII Rule 11 of CPC, seeking to reject the plaint on the ground that there is no cause of action arose for filing the suit. The first respondent/plaintiff filed his counter in the said application and denied the allegations levelled against him.

3 The trial Court after considering the arguments advanced on either side and after perusing the materials available on record, dismissed the application in I.A.No.1261 of 2015 dated 16.08.2017.

4 Aggrieved against the above order dated 16.08.2017, the revision petitioners/defendants 1 & 3 have come forward with the present civil revision petition.

5 According to the learned counsel for the revision petitioners the marriage between the first revision petitioner and the first respondent was dissolved by a decree of dissolution dated 12.06.2003. Thereafter the first respondent/plaintiff filed a suit to declare that the plaintiff is not the father of the defendants 2 & 3 therein, viz., the children and for permanent injunction

restraining them from using the name of the plaintiff in any manner including in the wedding invitation, records viz., passport etc. The suit filed by the first respondent/plaintiff is barred by law and the plaintiff did not disclose any cause of action for filing the suit. The first respondent/plaintiff had not disputed the paternity of the children at any point of time and hence he cannot seek the prayer as mentioned supra. Further, he has not taken any steps to prove that he is not the biological father and he did not chosen to undergo any DNA test to oppose the same. Once the first respondent/plaintiff admitted the paternity of the children and in the absence of any proof showing that he is not the biological father, the prayer sought for by him before the trial Court is not maintainable. The trial Court failed to consider the nature of suit and relief sought for by the first respondent/plaintiff, dismissed the application filed by the revision petitioners seeking to reject the plaint. One of the grounds taken by the trial Court to reject the application is that the second applicant/second defendant in the suit, was set *exparte* and that he cannot seek rejection of plaint.

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6 The learned counsel for the revision petitioners placed his reliance on the decision of the Hon'ble Supreme Court reported in **2014 (3) CTC 757 (S.Kamalam vs. Rajamani)**, wherein it is held that even without

filed an application under Order IX Rule 7 CPC for setting aside the exparte order and got an order of set aside, the parties can very well continue the proceedings and the said provision has been interpreted in a catena of cases. The learned counsel for the revision petitioners submitted that for the reasons stated above, the order dated 16.08.2017 made in I.A.No.1261 of 2015 passed by the trial Court is liable to be dismissed and seeks to allow the revision.

7 The learned counsel for the first respondent/plaintiff contended that the suit is not barred by limitation or hit by any other law and it is maintainable under Section 38 of the Specific Relief Act. When the relief sought for in the suit is against the defendants 2 & 3, they have to contest the case, but the second defendant was already set exparte before the trial Court. While that being so, he cannot seek the relief of rejection of plaint. Further, the second and third defendants namely the children are not ready to accept the plaintiff as their father and they did not give any respect to the plaintiff and the name of the plaintiff was not printed in the wedding invitation card of the second defendant. It is the grievance of the first respondent/plaintiff that when his own children namely the second and third defendants are not ready to accept him as a father, his name should not be used in any event, in any manner in the official records pertaining to defendants 2 & 3. Hence the first respondent/plaintiff filed the suit for the reliefs stated supra.

8 The learned trial Judge after considering all the above facts and circumstances, rightly dismissed the application filed by the defendants 1 to 3 by an order dated 16.08.2017. Hence the first respondent/plaintiff seeks dismissal of the civil revision petition.

9 On a careful perusal of the records, it reveal that the marriage between the first revision petitioner and the first respondent was dissolved by a decree of dissolution dated 12.06.2003. The first respondent/plaintiff filed a suit to declare that the plaintiff is not the father of the 2nd and 3rd defendants therein, namely the children and for permanent injunction restraining them from using the name of the plaintiff in any manner including in the wedding invitation card, records and passport etc. It is seen that the first respondent/plaintiff had not disputed the paternity of the children at any point of time and he has not taken any steps to prove that he is not the biological father and chosen to undergo for DNA test to oppose the same. Further he has admitted that he is a biological father of the second and third defendants and also the counsel for the petitioner would submit that the petitioner will not at all go for DNA test.

10 It is well settled proposition of law that at the time of deciding the application under Order VII Rule 11 CPC, the Court has to look into the averment of the plaint and supporting documents produced with the plaint. If it was not disclosed cause of action, the Court shall reject the plaint. Further, it is well settled proposition of law that cause of action mean bundle of case. For ascertaining the cause of action entire plaint has to be looked into but not only isolated wards.

11 In view of the above factual position, this Court is of the considered opinion that once the first respondent/plaintiff admitted the paternity of the children and in the absence of any denial that he is not the biological father, there is no cause of action for filing this suit and hence the the order dated 16.08.2017 made in I.A.No.1261 of 2016 in O.S.No.180 of 2015 passed by the V Additional Family Court, Chennai, warrants serious interference.

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12 In the result, the revision petition is allowed by setting aside the order dated 16.08.2017 made in I.A.No.1261 of 2015 passed by the V

Additional Family Court, Chennai, and the suit in O.S.No.180 of 2015 pending on the file of the V Additional Family Court, Chennai, is hereby rejected. Consequently connected miscellaneous petition is closed. No costs.

12.04.2018

Index:Yes/No

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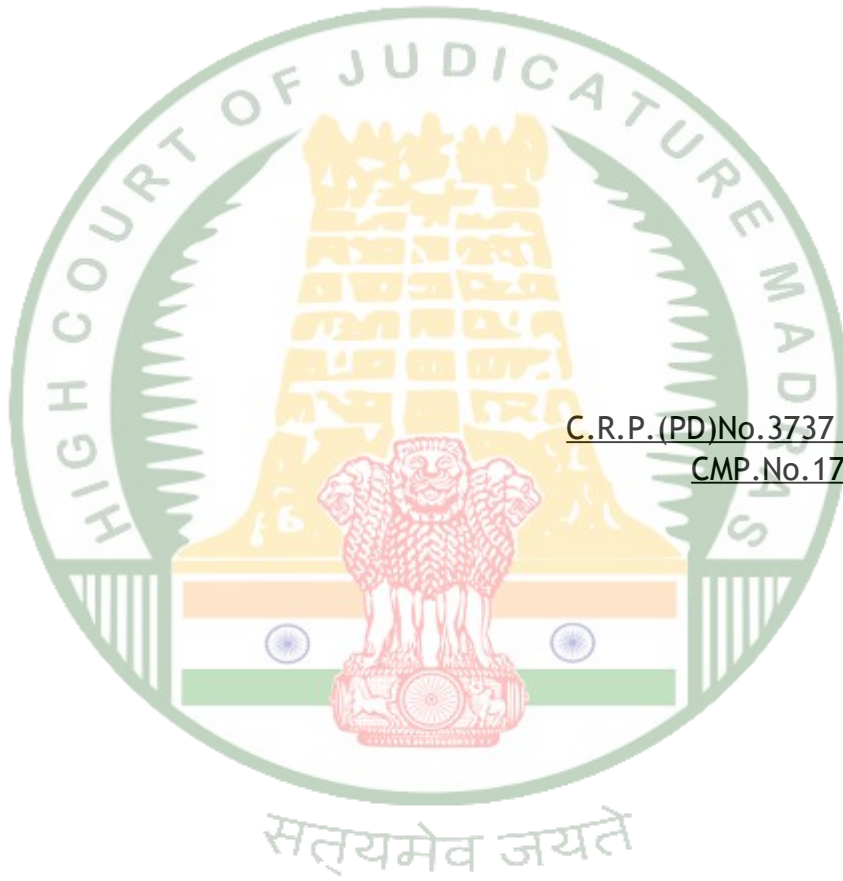
The V Additional Family Court, Chennai



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P.VELMURUGAN, J.,

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