

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.04.2018

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

**CRP(PD)No.494 of 2018
and
C.M.P.No.2579 of 2018**

G.Velayutham

.. Petitioner

Vs.

1.Malliga
K.Ganesan (Deceased)
G.Krishnaveni(Deceased)
2.G.Thiruvengadam

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 20.04.2017 passed in I.A.No.423 of 2016 in O.S.No.405 of 2009 on the file of the Subordinate Judge, Tambaram.

For Petitioners :M/s.T.Ravidevan

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ORDER

The revision petitioner is the defendant in the suit. The respondent has filed the suit for partition. The revision petitioner already filed a written statement before the trial Court and the trial was also commenced.

2. The petitioner before the trial Court filed I.A.No.423 of 2016 in O.S.No.405 of 2009 seeking to reject the plaint under Order VII Rule 11 of CPC. The trial Court after hearing dismissed the application. Aggrieved against the order passed by the trial Court in I.A.No.423 of 2016 in O.S.No.405 of 2009, the revision petitioner has preferred the present Civil Revision Petition.

3. The learned counsel for the revision petitioner would submit that the property mentioned in the plaint schedule is not existing and also there is no cause of action. The trial Court has failed to consider the fact that the plaintiff has not disclosed the cause of action and there is no cause of action to file the suit and therefore the order passed by the trial Court is liable to be set aside.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on records.

5. While deciding the application under Order VII Rule 11 of CPC, the Court has to look in the plaint and not defence taken by the defendant. In this regard, it is useful to refer the decision of the Hon'ble Apex Court in the case of (2017) 13 SCC 174 reported in *Madanuri Sri Ramachandramurthy Vs Syed Jalal*, the relevant portion of the Judgment is extracted hereunder:

"The plaint can be rejected under Order 7 Rule 11 CPC if conditions enumerated in the said provision are fulfilled. The power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the Court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of

the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. The question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the Court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

6. In this regard, the reading of the entire plaint, it is known that the plaintiff has disclosed a cause of action, which is bundle of facts. This Court finds there is no illegality or infirmity in the order passed by the trial Court.

7. Hence, this Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

04.04.2018

Index:Yes/No
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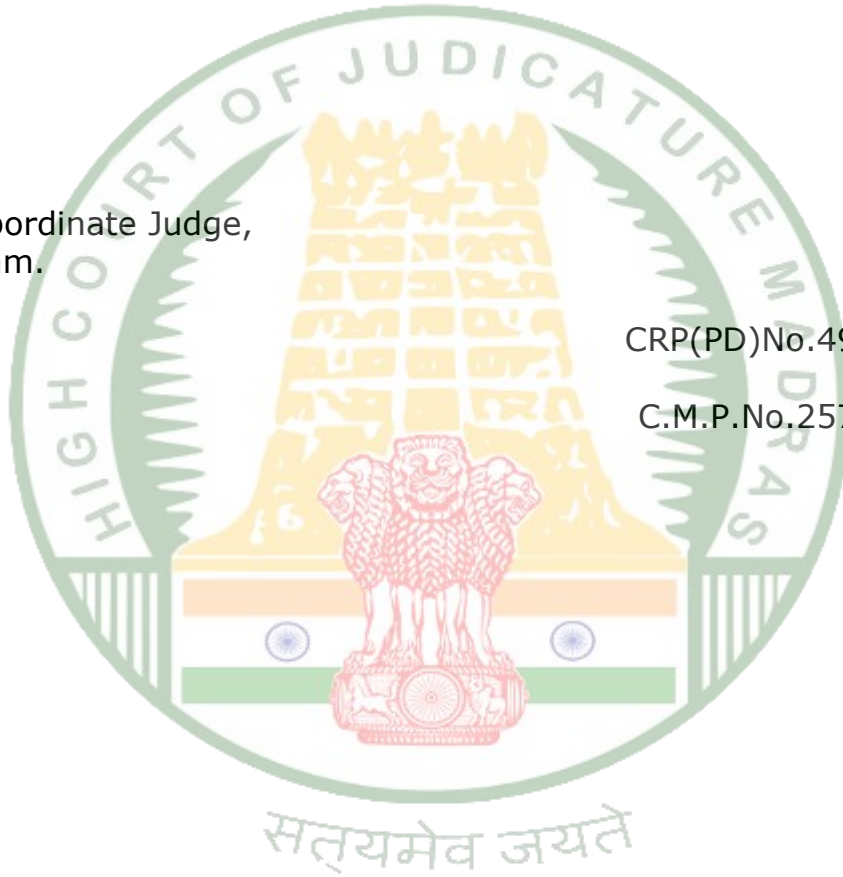
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P.VELMURUGAN, J.
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To

The Subordinate Judge,
Tambaram.

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