

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(PD).No.911 of 2018

and

C.M.P.No.4934 of 2018

1.Gopal
2.Sibi

... Petitioners

Vs.

1.Ellan
2.Kamalam
3.Nesamani
4.Esammal

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal Order dated 10.11.2017 made in I.A.No.14 of 2017 in O.S.No.131 of 2012 on the file of the Sub-ordinate Judge, Perundurai.

For petitioners : Mr.D.R.Arun Kumar

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ORDER

This Civil Revision Petition is filed to set aside the fair and Decreetal Order dated 10.11.2017 made in I.A.No.14 of 2017 in O.S.No.131 of 2012 on the file of the Sub-ordinate Judge, Perundurai.

2. According to the petitioners, the respondents/plaintiffs

have filed a suit for partition and separate possession in O.S.No.131 of 2012 on the file of the Subordinate Court, Perundurai. The petitioners/ defendants have filed the written statement on 18.02.2013. The suit was taken up for trial, the respondents/ plaintiffs side evidence is concluded and at this stage the petitioners/defendants have filed the present application under Order VII Rule 11 of the Code of Civil Procedure to reject the plaint.

3. The revision petitioner/defendant has raised a ground that no cause of action arose to file the suit. The respondents/plaintiffs have not produced any documents to prove that they are having right or interest over the suit property. Hence, there is no cause of action arises in the suit. The next contention raised by the revision petitioner is that the suit is liable to be rejected on the ground that the suit property has been undervalued by the petitioner and paid deficit stamp duty. Without considering the contention raised by the petitioner, the Court below erroneously dismissed the present application.

4. The respondents/plaintiffs have filed a suit for partition and separate possession against the petitioners/defendants. Plaintiffs' side evidence was closed and the suit was posted for defendants' side evidence. At this stage, petitioners/defendants have

filed the present application under Order VII Rule 11 C.P.C. Counsel for the petitioner argued before this Court that the respondents/plaintiffs have not produced any document at the time of filing the suit. Hence, there is no cause of action arises for the relief of partition and separate possession. The respondents/plaintiffs have filed the suit in the year 2012. Written statement was filed on 18.2.2013. Plaintiffs' side evidence was closed. When the suit is posted for defendants' side evidence, I.A.No.377 of 2016 has been filed for further cross examination of P.W.1 and the same was allowed. Thereafter, the present application in I.A.No.14 of 2017 has been filed under Order VII Rule 11 C.P.C. to reject the plaint. Therefore, it is clear that the petitioners/ defendants have filed the present application at the fag end of the trial in the suit. Therefore, the trial court has rightly rejected the ground raised by the petitioner.

5. The next contention raised by the learned counsel for the petitioner is that the value of the property is more than Rs.30 lakhs whereas the respondents/plaintiffs undervalued the property and paid deficit stamp duty and therefore, the suit is not maintainable. The revision petitioner has filed the written statement on 18.2.2013. In the written statement, the petitioners/defendants have not stated that the value of the suit property is more than Rs.30 lakhs. Now, the revision petitioner has raised a new plea that the

suit property has been undervalued by the respondents/defendants. Trial has already commenced in the suit. Therefore, after providing opportunities to the parties concerned, the question of undervaluation of the suit property by the respondents/plaintiffs will be gone into by the trial Court during trial in consonance with the provisions of the Act. Therefore, this Court cannot interfere with the order of the court below as the issues raised by the petitioners/defendants cannot be decided at the threshold stage.

6. The relevant portion of Order VII Rule 11 of the Code of Civil Procedure is extracted as follows:

"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)."

7. The learned counsel appearing for the petitioner contended that the amount has not been paid by the petitioner. The said fact cannot be questioned at this stage and the same shall be considered before the trial Court. There is a bundle of the fact which is necessary for the plaintiff to prove the afore said suit. The decision of the Hon'ble Supreme Court in the case of **Om Prakash Srivastava Vs. Union of India and Anr.** reported in **2006 (6) SCC 207**, in which it was held that "by "cause of action" it is meant 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, a bundle of facts, which is necessary for the plaintiff to prove in order to succeed in the suit"

8. In the light of the decision of the Hon'ble Supreme Court in the case of **Balasaria Contruction (P) Ltd Vs. Hanuman Seva Trust and Others** reported in **(2006) 5 SCC 658**, wherein the Apex court has held "*that plaint cannot be dismissed as barred by limitation without proper pleadings, framing of issue of limitation and taking of evidence, which is a mixed question of law and the same can be decided at the time of trial*". As far as the limitation is concerned, this disputed fact cannot be decided at the threshold stage.

9. In fine, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

14.03.2018

Speaking order/Non-speaking order
Index: Yes/No
ah/vaan
To
The Sub-ordinate Judge, Perundurai.

D.KRISHNAKUMAR.J,

ah/vaan



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