

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P.(PD) No.3779 of 2017

&

C.R.P.No.4131 of 2013

and

C.M.P.No.17593 of 2017

&

M.P.No.1 of 2013

1.J.Mallika

2.J.Ganesh

...petitioners in both C.R.P's

Vs.

1.S.Koteeswaran

2.K.Hemapriya

3.K.Goutham

Minor rep. By his father

S.Koteeswaran

4.R.Padmanabhan

5.R.P.Ramesh

6.P.Rajalakshmi

7.D.Gajalakshmi

8.B.Sundari

..... Respondents in C.R.P.(PD) No.3779 of 2017

1.S.Koteeswaran

2.R.Padmanabhan

3.R.P.Ramesh

4.P.Rajalakshmi

5.D.Gajalakshmi

6.B.Sundari

...Respondents in C.R.P.No.4131 of 2013

**PRAYER IN C.R.P.(PD) No.3779 of 2017 :** Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to allow this CRP by setting aside the Fair and Decreetal Order passed by the 3<sup>rd</sup> Additional City Civil Court, Chennai dated 15.09.2017 made in I.A.No.4083 of 2017 in O.S.No.12167 of 2010.

**PRAYER IN C.R.P.No.4131 of 2013 :** Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the Order dated 05.07.2013 made in I.A.No.1464 of 2012 in O.S.No.12167 of 2010 on the file of the III Additional Judge, City Civil Court, Chennai.

For petitioners : Mr.N.Vanaraj in both C.R.P's

For Respondents in C.R.P.(PD) No.3779 of 2017

For RR1 :Mr.Sugumar R.Rajalu

For RR2 to R8 :No appearance

For Respondents in C.R.P.No.4131 of 2013

For RR1 :Mr.Sugumar R.Rajalu

For RR2 to R6 : No appearance

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COMMON ORDER.

Before the trial court, the petitioners herein had filed two applications. One in I.A.No.1464 of 2012 under Order 7 Rule 11 of CPC to reject the plaint and another application in I.A.No.4083 of 2017 under Order 1 Rule 10 (2) of CPC to strike out the third defendant in the original suit. By two separate orders dated 05.07.2013 and 15.09.2017, both the applications were rejected. As against the said order passed in I.A.No.1464 of 2012, the petitioners herein had filed revision in CRP.No.4131 of 2013 as

against the order passed in I.A.No.4083 of 2017, C.R.P.No.3779 of 2017 has been filed before this Court. Since the issue involved in both the applications as well as the orders passed are one and the same, the C.R.P's are disposed of by common order.

2. The petitioners herein are the defendants 1 and 2 in the suit before the trial court. According to the learned counsel for the petitioners, the first respondent herein had suppressed certain material facts with regard to execution of a sale deed, which will have a bearing on the entire cause of action. The learned counsel for the petitioners submitted that, in case these facts had been incorporated in the plaint, there would not be any cause of action and therefore the plaint is liable to be rejected. It is his contention that since the trial court has not considered these suppression of facts, the plaint is liable to be rejected. He further contended that the third defendant herein is neither a necessary party nor a proper party to the suit proceedings. He would submit that since the suit is one for partition, and the third defendant is the husband of the fifth defendant herein, admittedly he is not entitled for any share in the suit property. As such, he has been unnecessarily impleaded as a party and the defendants therefore seek for deletion of the third defendant from the suit.

3. The learned counsel for the respondent on the other hand would submit that the suppression of material facts in the plaint, is not fatal. According to him, the recitals in the documents produced with the plaint, itself is a self explanation and therefore specific pleadings are not required. Even otherwise, he submitted that the suppression of these facts would not entitle the petitioners herein to seek for rejection of the plaint. The learned counsel also submitted that this ground of suppression of facts, was not raised before the trial court in the application filed under Order 7 Rule 11 of the CPC. Therefore, the petitioners would not be entitled to raise this ground in the present revision.

4. Insofar as the rejection of the third defendant from the suit is concerned, the learned counsel for the respondent submitted that the third defendant himself had admitted in the counter that he is not entitled for any share in the property. Above all, the application to delete the third defendant from the suit proceedings had been made only by the defendants 1 and 2 and since the third defendant here has not chosen to file any application under Order 1 Rule 10(2) CPC., these petitioners are not entitled to seek for deletion of the third defendant from the suit proceedings.

5. I had given careful consideration to the submissions made by the respective counsels. This is a suit for partition. Before adverting to the grounds raised by the learned counsel for the petitioners, in the present revision, it will be appropriate to look into the scope of Order 7 Rule 11 of CPC, in the light of the ground raised by the petitioners herein before this Court. One of the main grounds raised by the learned counsel for the petitioners seeking for the rejection of the plaint is that, certain material facts are suppressed in the plaint and if the plaintiffs have not suppressed such material facts, it would not have created any cause of action for filing the suit. In support of the contentions, the learned counsel for the petitioners relied upon the judgment of the Hon'ble Apex Court reported in 1994 (1) SCC 1 [ **S.P.Chengalvaraya Naidu (Dead) by Lrs Vs. Jagannath (Dead) By Lrs and others**] and 2012 (8) SCC 706 [Church of Christ Charitable Trust and Educational Charitable Society Rep. By its Chairman Vs. Ponni Amman Educational Trust, Rep. By its Chair person/Managing Trustee].

6. Order 7 Rule 11 CPC is self contained provision, which lists out various circumstances under which a plaint can be rejected in the threshold and for the purpose of rejecting the plaint, the averments made in the plaint alone requires to be considered, which proposition of law, is well settled . The ground now raised before this Court is that the respondents herein had suppressed certain material facts and that the trial court has not taken a cognizance of the same for the purpose of rejecting the plaint. The Hon'ble Apex Court in judgment reported in **2006 (3) SCC 100 [Mayar (H.K) Limited and others Vs. Owners & Partners Vessel M.V Fortune Express and Others]**, had held that the suppression of material facts alone cannot be a ground for rejecting the plaint under Order 7 Rule 11 CPC and it was further held that such a rejection would be permissible only if there is suppression of material facts in the sense that if had not been suppressed, it would have affect the merits of the case. In other words, the grievance of the petitioner seems to be that the trial court had not gone into these aspects of suppression of material facts while rejecting their application under Order 7 Rule 11 of C.P.C.

7. On the contrary, the learned counsel for the respondent submitted that this ground of suppression of facts was not canvassed before

the trial court. Admittedly, the petitioners had not raised this ground before the trial court. The affidavit filed in support of the application under Order 7 Rule 11 CPC also does not evidence such a plea having been raised before the trial court. As such, there may not be any infirmity in the impugned order passed by the trial court in not rendering a finding on suppression of facts, while rejecting the petitioners' application under Order 7 Rule 11 CPC. The issue as to whether the suppression of such facts would not give rise a cause of action, is a matter for deliberations and when such crucial grounds have not been pleaded or put forth before the trial court, it would not be appropriate for this Court to set aside the order of the trial court on this ground. As such, it has to be only concluded that whatever grounds were raised before the trial court for the purpose of rejecting the plaint under Order 7 Rule 11 CPC were properly considered and that there is no other infirmity in the order as such.

8. The learned counsel for the petitioners also relied upon the judgment and decree of the Hon'ble Apex Court in 1994 (1) SCC 1 [ S.P.Chengalvaraya Naidu (Dead) by Lrs Vs. Jagannath (Dead) By Lrs and others] and 2012 (8) SCC 706 [Church of Christ Charitable Trust and Educational Charitable Society Rep. By its Chairman Vs. Ponni Amman

Educational Trust, Rep. By its Chair person/Managing Trustee], and submitted that the suppression of material facts would be a ground for rejecting the plaint.

9. The judgment cited by the learned counsel in 1994 (1) SCC 1 [ S.P.Chengalvaraya Naidu (Dead) by Lrs Vs. Jagannath (Dead) By Lrs and others] relates to the position of law in the case of a judgment and decree obtained by fraud wherein certain observations have been made with regard to the suppression of material facts, which is not the case in hand. Insofar as the judgment reported in 2012 (8) SCC 706 [Church of Christ Charitable Trust and Educational Charitable Society Rep. By its Chairman Vs. Ponni Amman Educational Trust, Rep. By its Chair person/Managing Trustee] is concerned, it was held by the Hon'ble Apex Court that the non disclosure of cause of action against the appellant could be a ground for the purpose of rejecting the plaint under Order 7 Rule 11(a) CPC.

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10. In the present case, the ground of suppression of material facts was not canvassed before the trial court and that the trial court cannot be held to have passed a non speaking order, without any such plea before

it. Hence, the judgements relied upon by the learned counsel for the petitioners may not be of any help to the petitioners.

11. Insofar as the order of rejecting the petitioners' request to dismiss the suit against the third defendant is concerned, the said application has been filed by the defendants 1 and 2 herein. The learned counsel for the petitioners would submit that there is a collusion between the plaintiff and the third defendant in the suit. The third defendant herein had chosen to file a separate written statement in the suit in which he has categorically come out with a statement that he is not entitled to any share in the suit property. If at all the third defendant is of the view that he is not a necessary party, it is always open to him to file an application Under Order 1 Rule 10(3) CPC. On the other hand, the defendants 1 and 2 herein had chosen to file an application to remove the third defendant from the suit proceeding and particularly, when they had taken a plea that there is a collusion between the plaintiff and the third defendant, it would not be appropriate to dismiss the suit against the third defendant on the request of the defendants 1 and 2 herein. In other words, the defendants 1 and 2 are not aggrieved persons against having the third defendant impleaded in the suit proceeding.

12. Hence, it can only be derived that the trial court had properly appreciated the legal position and chosen to reject the prayer of the defendants 1 and 2 to dismiss the suit against the third defendant.

13. At this juncture, learned counsel for the petitioners submitted that while passing orders in the application filed under Order 7 Rule 11 CPC, the trial court had ventured to give a finding that the suit property is admittedly an ancestral property. The pleading as well as the submissions of the counsels go to reveal that the petitioners herein had not admitted that the suit property is an ancestral property and as such, the finding of the trial court in this said order that the suit property had been admitted by the petitioners as ancestral property, cannot be correct. Nevertheless, this aspect could always be deliberated during the course of trial and final arguments and as such, it is made clear that the trial court shall not place reliance on such a finding that the suit property is an ancestral property.

14. In the light of the above observations, in my view, there is no infirmity or illegality in the Orders of the trial court in refusing to reject the plaint as well as refusing to reject the removal of the third defendant from the suit proceedings. Hence both the Civil Revision Petitions stand dismissed. No costs. Consequently connected miscellaneous petitions are closed.

16.11.2018

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Internet: Yes  
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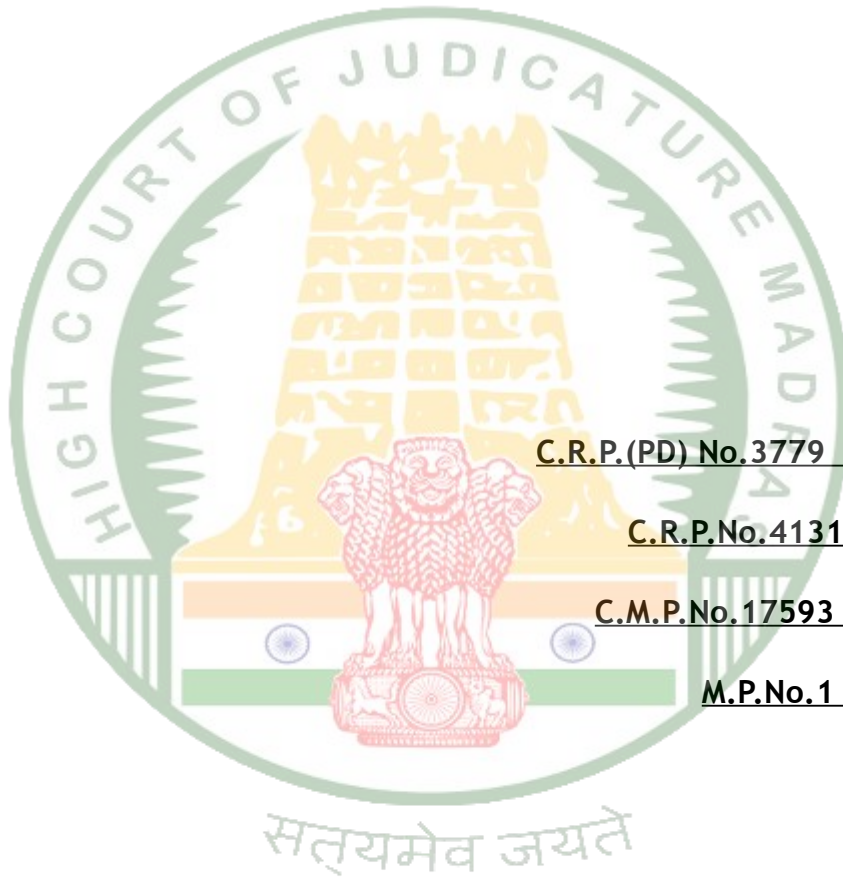
To  
The 3<sup>rd</sup> Additional City Civil Court, Chennai.



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M.S.RAMESH. J.,

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