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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.06.2018

Delivered on : 24.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.1581 of 2017

and

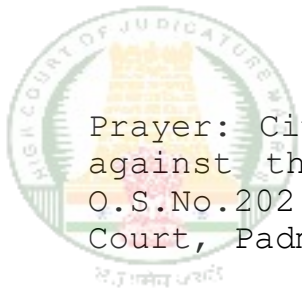
C.M.P. (MD) No.8875 of 2017

Christhurajan

.. Petitioner/Petitioner/7th Defendant

vs.

- 1.The People of Kunjukarumbu Thottam Oor,
Rep. by T.Judu Vijil ... 1st Respondent/1st Respondent/Plaintiff
- 2.The District Collector,
Kanyakumari District,
Nagercoil.
- 3.The Revenue Divisional Officer,
Padmanabhapuram Division,
Thuckalay, Thuckalay Post.
- 4.The Block Development Officer,
Thiruvattar Block, Thiruvattar,
Kanyakumari District.
- 5.The Village Administrative Officer,
Cherukol, Cherukol Vilage,
Kalkulam Taluk, Kanyakumari District.
- 6.The Divisional Officer,
District Fire and Rescue Services,
Kanyakumari Division, Nagercoil.
- 7.The President,
Cherukol Village Panchayat,
Cherukol,
Kattathurai Post, Kattathurai Village,
Kalkulam Taluk,
Kanyakumari District. .. Respondents 2 to 7/Respondents 2 to 7
/Defendants



Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the Order dated 08.08.2017 made in I.A.No.76 of 2017 in O.S.No.202 of 2016 on the file of the Additional District Munsif Court, Padmanabhapuram.

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For Petitioner

: Mr.R.Vijayakumar

For Respondents

: Mr.G.Aravinthan (for R1)

Mrs.VPM.Vaishnavi, for R2 to R7

Government Advocate

ORDER

This Civil Revision Petition has been filed challenging the fair and decreetal order passed in I.A.No.76 of 2017 in O.S.No.202 of 2016 by the learned Additional District Munsif, Padmanabapuram dated 08.08.2017, dismissing the application filed under Order VII Rule 11 of Civil Procedure Code.

2.The learned counsel appearing for the petitioner submits that the first respondent herein as plaintiff has filed a suit for declaration in his favour to declare that the plan in Building Approval No.75 of 2016 issued in favour of the petitioner / 7th defendant in respect of the suit schedule properties is null and void and also for permanent injunction, restraining the 7th defendant thereon, his men and agents and persons claiming through him, from establishing and running cashew-nut industry or any other industry in the suit schedule properties.

3.The case of the first respondent/plaintiff before the Court of the learned Additinoal District Munsif at Padmanabapuram is that the petitioner herein attempted to set up a cashew nut roasting industry in the village of Kunjukurumbu Thottam Oor, in a residential property. He states that since the establishment of the said industry will be hazardous to the health of the villagers, which also will create respiratory problems to the people of his village, hence checked with the officials namely the other respondents/defendants regarding approval/permission obtained by the petitioner, having found that the petitioner has not obtained any proper permission/approval in a proper manner more particularly from Pollution Control Board, which is an essential requirement for running a Cashew nut roasting industry. Apart from this, the property is only a dwelling house - residential property and has been converted as an industry by the 7th defendant, which is not correct. Hence, the suit has been filed by him, in representative capacity, on behalf of the people in Kunjukurumbu Thottam Oor Village, challenging the sanction of planning permission issued by the seventh respondent panchayat and also for the relief of a



permanent injunction restraining the petitioner herein from running a cashew nut roasting industry.

4. In the said suit, the first respondent/plaintiff, has filed three applications namely, I.A.No.720 of 2016 seeking to institute a suit in representative capacity, I.A.No.721 of 2016 for temporary injunction and I.A.No.722 of 2016, seeking for appointment of Advocate Commissioner to inspect the suit property. According to the petitioner herein, who is the seventh defendant in the suit, filed counter affidavit in the applications in I.A.Nos.720 to 722 of 2016, also filed an application in I.A.No.76 of 2017 seeking to reject the suit in O.S.No.202 of 2016 for want of jurisdiction and also raised issue as to maintainability of the suit. The first respondent/plaintiff resisted the said application by filing a counter affidavit, questioning the classification of the suit schedule properties, which are residential and the suit filed by him challenging the sanction of plan/planning permission.

5. After hearing the application in I.A.No.76 of 2017 in the said suit, the learned Additional District Munsif, Padmanabapuram, by an order dated 08.08.2017, dismissed the application and the present Civil Revision Petition has been filed challenging the same, at the instance of the petitioner, who is the 7th defendant in the said suit.

6. The first limb of argument raised by the learned counsel for the petitioner is that the petitioner does not require any permission from the Tamilnadu Pollution Control Board as the industry namely Cashew nut roasting industry is being run with less than 20 persons and the same is not deemed to be an industry and hence no permission is required to be obtained from the Pollution Control Board. The second limb of argument is that the suit, which has been filed under representative capacity, has not followed the mandatory requirements under the provisions contained under Order 1 Rule 8 of Code of Civil Procedure. The third limb of the argument is that the plan sanctioned by competent authority cannot be challenged before a Civil Court and the same can be questioned before the appellate authority. The fourth and final limb of his argument is that there is a specific bar of jurisdiction under Section 46 of the Air (Prevention and Control of Pollution) Act, 1981.

7. The learned counsel for the first respondent contended that there exists a 40 feet chimney in the suit property and the same is definitely termed to be an industry. The said counsel contended that in the affidavit filed in support of the petition to reject the plaint, the petitioner had stated that the authorities from the Pollution Control Board inspected the suit property and informed the petitioner that no permission needs to be required from the Pollution Control Board for running the cashew nut roasting



industry. But the petitioner had not submitted any documents to that effect, which disproves his plea. Further, the said issue was also a question to be inspected by the Advocate Commissioner of the Court.

8. In so far as it relates to the question as to institution of the suit under representative capacity is concerned, the learned counsel for the first respondent stated that, the first respondent/plaintiff, had strictly followed the mandatory requirement by filing an application in I.A.No.720 of 2016 before the trial Court, seeking to institute the present suit. The said application under Order 1 Rule 8 of the Code of Civil Procedure has been allowed on 10.11.2017, after following the mandatory requirements of publication in local newspaper and also by making proclamation by tom-tom in and around the village of Kunju Krumbuthottam Oor, where the suit property exists. Hence, proper permission has been obtained to institute a suit under representative capacity.

9. In answer to the question as to the Bar of jurisdiction of Civil Court under Section 46 of the Air (Prevention and Control of Pollution) Act, the said counsel replied that the said provision is only for obtaining injunction only as against the authorities of the Pollution Control Board and the same is not applicable to the present case on hand, in which, no relief has been sought for as against the Pollution Control Board.

10. With regard to one of the most important grounds raised by the learned counsel for the petitioner in the above civil revision petition questioning the maintainability of the suit challenging the sanction plan is concerned, the learned counsel for the first respondent/plaintiff stated that the said ground has not been raised by the petitioner before the trial Court in the application in I.A.No.76 of 2017, seeking to reject the plaint and the same was raised for the first time by the learned counsel for the petitioner in the above civil revision petition. Hence, the same has to be decided in a matter for trial and can be decided later.

11. Apart from the above facts, the learned counsel for the first respondent contended that the property is only a dwelling house, and the petitioner/7th defendant has converted it into an industry without proper order as to conversion of building as per the provisions of the Tamilnadu Town and Country Planning Act. Further, he contended that the application in I.A.No.722 of 2016, for appointment of Advocate Commissioner, has been filed by the first respondent / plaintiff only to bring out the hiding truth. He added that after enquiry in the said application in I.A.No.722 of 2016, an Advocate Commissioner has been appointed and at the verge of the inspection, only to overcome the inspection by the Advocate Commissioner, the petitioner, with an intention to protract the



proceedings, and to avoid the inspection, has opted to file the application in I.A.No.76 of 2017 seeking to reject the plaint. Hence, the learned counsel for the first respondent/plaintiff sought for dismissal of the present civil revision petition.

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12.I heard Mr.R.Vijayakumar, learned counsel for the petitioner, Mr.G.Aravinthan, learned counsel for the 1st respondent and Mrs.VPM.Vaishnavi, learned Government Advocate for the respondents 2 to 7 and perused the entire materials available on record. No document has been filed on behalf of the official respondents.

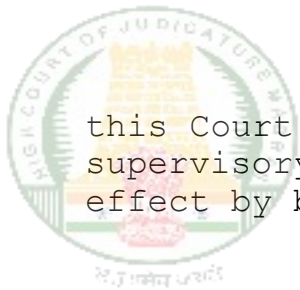
13.Since the issue pertaining to the bar of jurisdiction of civil Court is concerned, the proper recourse I hereby refer to the provision namely, Section 46 of the Air (Prevention and Control of Pollution) Act, 1981, which reads thus:

"Section 46. Bar of jurisdiction:- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Appellate Authority constituted under this Act is empowered by or under this Act to determine, and to injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

14.By reading the above provision, it would be clear that the said provision is enacted as a bar against institution of suits or any proceedings only against an order passed by the Appellate Authority. Both the learned counsels misread the above provision and gave wrong interpretation, hence, the said issue does not arise at all as an issue to be decided under Order 7 Rule 11 of the Code.

15.As far as the next limb, namely, the institution of suit under representative capacity is concerned, the first respondent/plaintiff has already filed an application in I.A.No.720 of 2016 along with the suit and mandatory requirement had been followed by the first respondent/plaintiff under Order 1 Rule 8 of the Code of Civil procedure and orders has been passed as early as on 10.11.2017, but the present application under Order VII Rule 11 seeking to reject the plaint on the ground of non-filing of proper application, pending the said application in I.A.No.720 of 2016, is premature in nature, more so when the petitioner had also filed a counter affidavit in the said application.

16.The ground raised by the petitioner as to the requirement of service from the Pollution Control Board and also the alleged inspection by the authorities of the Board are all to be dealt in detail during the trial of the suit and cannot be decided here by



this Court under Article 227 of the Constitution of India, under its supervisory jurisdiction. No documents were also placed to that effect by both the contesting parties.

17. The only question, now standing before me is whether the prayer (a) for declaration, as filed by the first respondent/plaintiff, is maintainable before a Civil Court?

The answer by the learned counsel for the petitioner is that no suit could be filed challenging the building plan issued by competent authority as per law. Hence, the suit filed by the first respondent/plaintiff, as framed, is not maintainable one. The learned counsel for the first respondent/plaintiff objected to raise such a new point as an additional ground, which was raised in the application to reject the plaint before the trial Court and after dismissal of the said application, now raising in a revision that too filed under Article 227 of the Constitution of India.

18. The further contention of the learned counsel for the first respondent/plaintiff is that the said question as to raising a new point that is raised for the first time in this revision shall not be permitted to be raised and such practise should be deprecated. He also contended that the defence of the petitioner/7th defendant is still open as he has not filed any written statement before the trial Court and he can raise any defence before it.

19. I am afraid and as mentioned herein above that it would neither be proper nor permissible to raise any ground for the first time in a revision under Article 227 of the Constitution of India before this Court. It was admitted by the learned counsel for the petitioner that he is yet to file his written statement in the suit in O.S.No.202 of 2016, pending before the trial Court.

20. Admittedly, when the petitioner/7th defendant has not filed any written statement before the trial Court, raising a new ground/defence for the first time, which in my opinion is impermissible. It would not be proper for a litigant to raise a new question in an appeal or revision, without the leave of the Court. In such circumstances, when the pleadings itself is not over by both the parties, there warrants no question of rejecting a plaint under Order VII Rule 11 of the Code of Civil Procedure. I am also not going into the question raised by the first respondent/plaintiff, with regard to the allegation that only to escape from the inspection of Advocate Commissioner, the application in I.A.No.76 of 2017 has been filed.

<https://hcservices.ecourts.gov.in/hcservices/> 21. While making the issue as to the maintainability of the suit is open and to be decided at the time of trial, with a view to grant substantial justice to both the parties, I feel that it would



be appropriate to confirm the order of the trial Judge and to keep the issue as to the maintainability of prayer as an issue to be decided during trial.

22. The petitioner is hereby directed to file written statement by raising all the grounds raised herein the present civil revision petition, within one week from the date of receipt of a copy of this order and the first respondent/plaintiff is given opportunity to file reply statement, if necessary, that too within a period of two weeks after filing of the written statement by the petitioner/7th defendant. Both the parties are directed to co-operate for the inspection of the suit property by Advocate Commissioner, appointed by the trial Court. The trial Court is also directed to give suitable directions to the Advocate Commissioner during his inspection. After completion of the pleadings, the learned Additional District Munsif, Padmanabapuram is directed to commence and proceed with the trial of the suit and dispose the same as early as possible after giving fair, unbiased, proper, appropriate and equitable chance to both the parties, in accordance with law.

23. In fine, I am of the view that the fair and decreetal order passed by the trial Court in I.A.No.76 of 2017 in O.S.No.202 of 2016 dated 08.08.2017, does not suffer from any illegality or irregularity. Hence, the same is confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar(CS-III)

To
The Additional District Munsif,
The Additional District Munsif Court,
Padmanabhapuram.

+1cc to Mr.G.Aravinthan, Advocate, SR.No. 80125

C.R.P. (MD) (PD) No.1581 of 2017
and
C.M.P. (MD) No.8875 of 2017
24.08.2018

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