

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

CRP.(PD)No.1355 of 2019
and
CMP.No.8831 of 2019

1. K. Murugan
2. Sravana Selvi

...Petitioners

Vs

Annai Therasa Educational Trust
Represented by its Trustees

1. Mr. Subbaiah
2. Mrs. Saraswathi
No.137/11, Anna Flats,
Padi Kuppam Road,
Anna Nagar West,
Chennai-600 040

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order made in I.A.No.127 of 2019 in O.S.No.162 of 2011 dated 04.03.2019 made by the learned Sub Judge, Poonamallee.

For Petitioner : Mr. Hemasampath,
Senior Counsel for
Mr.A.Kumanaraja

For Respondents : Mr. V. Lakshmi Narayanan
for R1 and R2

O R D E R

The above Civil Revision Petition is filed challenging the order passed by the Subordinate Judge, Poonamallee dismissing the application filed by the defendants in I.A.No. 127 of 2019 in O.S.No.162 of 2011 to reject the plaint on the basis that the Plaint was filed by an irrelevant party who does not have any locus standi.

2. The brief facts leading to file the above Civil Revision Petition are as follows:

The respondent/plaintiff is a Trust which has been registered in the year 2004 under document No.188 of 2004 on the file of the Sub-Registrar, Villivakkam. The trustees of the said Trust are Mr.S.Subbaiah and his wife Mrs.Saraswathi. The objects for which this Trust has been founded are "to establish, promote, set-up, run, maintain, takeover, assist, finance, support in setting up and /or maintaining and /or running schools, other educational institutions for the benefit of the poor and deserving people."

3. It appears that the Trust has taken on lease the suit schedule property under two registered lease documents dated 16.02.2007 (registered as document No.622 of 2007 on the file of the Sub Registrar, Vellore and another of the same date registered as document No. 623 of 2007) for the purpose of running their school under the name and style Annai Terasa Nursery and Primary School. The Trust also goes by the name and style of Annai Teresa Educational Trust. Subsequently, the plaintiff had come forward with the above suit. Since the defendants entered the school with unruly elements, damaged the school materials, locked the gate on the ground that the school has not paid the monthly rental and immediately, the plaintiff was forced to give the complaint to the police, who advised them to move to the civil Court which forced them to file a suit. In O.S.No.3948 of 2011, they had obtained an ad-interim injunction in I.A.No.7678 of 2011 on 11.03.2011 and the suit is still pending and the defendant in the suit filed a detailed counter. Despite orders of ad interim injunction, the defendant has forcibly taken the possession of the entire suit property on 09.04.2011 and therefore, the plaintiff was constrained to file the suit in O.S.No.162 of 2011 on the file of the Subordinate Court, Poonamallee, for the following reliefs:

"a) For recovery of the schedule mentioned property from the defendant for running the Primary and Nursery School in the schedule mentioned property (which was forcibly taken a possession on 09.04.2011 as it where condition) till the lease period of 15 years or till the lease is duly terminated as contemplated under the law and possession taken by due process of law.

b) For a Permanent Injunction restraining the defendants, their men, agents, servants, supporters or any person authorized or permitted by them from in any manner changing the character, nature of physical features in the building in the suit property.

c) For a Permanent Injunction restraining the defendants, their men, agents, servants,

supporters or any person authorized or permitted by them from in any manner encumbering, alienating or leasing out the suit property to any third parties."

4. The defendants, on entering appearance in the above suit, had filed a written statement denying the allegations and immediately thereafter, had filed an application in I.A.No.312 of 2013 for rejecting the plaint on the ground that the suit has not been properly valued. However the said Application was dismissed by order dated 16.08.2013. Thereafter, when the suit O.S.No.3575 of 2017 was posted, this order was taken up in revision to this Court in CRP. This Court however dismissed the Revision in CRP.No.3576 of 2013 and has directed the learned Subordinate Judge, Poonamallee to dispose of the suit within a period of six (6) months. Thereafter, yet another application under Order VII Rule 11 of the Civil Procedure Code was filed and the ground on which the Application was moved was that the suit has been filed by a trust which is not a registered trust with which there was no lease agreement between the defendant and the plaintiff. The reason for filing the said Application is that the spelling of plaintiff was Annai Therasa whereas the lease was with the Trust called Anna Teresa Educational Trust and this according to the defendant was a different entity with which the defendant had no lease apt? The Application has been dismissed by the Court below and challenging the same, the revision petitioner is before this Court.

5. Heard Mrs. Hemasampath, Senior Counsel for the revision petitioners. The learned Senior Counsel would draw my attention to the fact that there are two Trusts that have been registered-one in the name and style of Annai Teresa Educational Trust whose Trustees were Mr. S. Subbaiah and Mrs. Saraswathi under Trust deed dated 03.03.2004 registered on the file of the Sub-Registrar, Villivakkam in document No.188 of 2004 and the 2nd Trust called Annai Teresa Educational Trust whose trustees were Mr.S. Subbaiah and his wife Mrs. Saraswathi dated 14.02.2006 and under Trust deed dated 14.02.2006 three other trustees registered as document No. 235 of 2006. The learned Senior Counsel would also point out that the lease deeds have been entered into with the Trust called Annai Teresa Educational Trust and therefore the present plaint is filed by an entity called Annai Therasa Educational Trust totally different from the two Trusts which have been registered.

6. Mr.V.Lakshmi Narayanan, learned counsel appearing on behalf of the respondents would contend that this is nothing but a case of volley of applications for rejecting the plaint, the present petition is filed on trivial grounds. He would also point out that in the written statement also the defendant in

paragraph 2 had admitted the fact that the suit premises has been leased to the Trust which is registered in the year 2004. He would also rely on the judgment passed by Madhya Pradesh High Court in the case of Smt. Reeta Sharma & Ors. Vs. Satyasheel Sharma & Ors [reported in 2016 SCC Online MP 7963] in support of his argument that the Application is nothing but a perverse one.

7. Heard the counsel and perused the papers. As rightly pointed out by the learned counsel for the respondents, it appears the revision petitioners/defendants have been filing Applications one after the other to somehow prevent the suit from reaching its logical conclusion and that too after the orders of this Court directing the disposal of the suit within a period of six (6) months. The reading of the plaint at paragraph 3 would clearly establish that the Trust which has filed the suit is the one that has been registered in the year 2004 under Document No.188 of 2004. In paragraph 3 of the plaint, the following averment has been made:

" The Trustees who also hails from a middle class family from a village wanted to educate the slum people's children and to up bring them comparing with the city student started a school in the name and style of "Annai Theresa Nursery and Primary School" in the year 2004 with the necessary recognition from the department of education at Door No:66/A, Anna Nagar, Chennai-600 040 after duly forming a Trust and registered under the Act vide document No:188/2004 dated 03.03.2004 in the Name and Style of "Annai Therasa Educational Trust" represented by its Trustees Mr. S. Subbaiah and Mrs. Saraswathi"

8. Therefore, there is a clear and categoric averment that the plaintiff is the Trust which is formed in the year 2004 and there is absolutely no ambiguity with reference to the present suit. The only attempt on the part of the defendants appear to be to prevent the suit from proceeding further by taking advantage of a spelling error. In this regard, the Judgment reported in Smt. Reeta Sharma & Ors. Vs. Satyasheel Sharma & Ors [reported in 2016 SCC Online MP 7963] can be usefully referred to. The finding given therein which is narrated herein below would squarely apply to the facts of the instant case.

"8. In fact in the light of the law laid down in the case of Prem Lala Nahata (supra) wherein the Supreme Court has held that defect of misjoinder of parties and causes of action is not a ground for rejection of the plaint,

the trial Court did not err in dismissing the several applications filed by the defendants under the provisions of Order 7 Rule 11 CPC. In fact, there is no justification for filing volley of applications under the same provision of Order 7 Rule 11 CPC by the defendants and also there is no justification as to why all the issues which have been taken up in different applications like validity of jurisdiction of the civil Court in view of the provision of Section 32 of the Societies Registration Act, non-authorization of the plaintiff were not raised in one application and why several applications have been filed from time to time. It is true that Order 7 Rule 11 deals with rejection of the plaint on account of one of the contingencies mentioned in 5 clauses, but at the same time that does not confer exhaustive discretion in the defendants to file volley of applications one after another without giving justification for not raising the issue in one go. Apparently, these volley of applications were filed to build some kind of pressure inasmuch as while deciding the very first application, the learned trial Court has held that examination of the plaintiffs in regard to the correctness of the contents or otherwise of the plaint is not permissible under Order 7 Rule 11 CPC. It is also settled principle of law that power of rejecting the plaint has to be exercised by the Court sparingly and cautiously and benefit of doubt must go to the plaintiff. The same cannot be taken recourse to lightly and requires serious consideration of the plaint and the documents relied upon by the plaintiffs." तयमेव जयते

9. It is also noted that a new ground for rejecting the plaint has been added by the defendants to the one given under the provisions of Order VII Rule 11 of the Civil Procedure Code which contemplates rejection only in the following contingencies.

Order VII Rule 11 is extracted hereunder"

" 11. 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 returned 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."

10. Nowhere does Order VII Rule 11 prescribe mis-joinder or non-joinder of a party as a ground for rejecting the plaint. The very application is nothing but an abuse of process of Court. I do not find any infirmity in the order passed by the Court below. The Civil Revision Petition is dismissed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mrn

To

1. The Sub Judge, Poonamallee.

+1 cc to Mr.A.Kumanaraja, Advocate, S.R.No.35611

+1 cc to Mr.V.Lakshminarayanan, Advocate, S.R.No.35738

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and
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SPD (CO)
SSM(12/04/2019) .

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