

A.No.2760 of 2019
in
C.S.No.530 of 2018

SENTHILKUMAR RAMAMOORTHY,J

This application is filed under Order XIV Rule 8 of O.S. Rules r/w Order VII Rule 11 of CPC to reject the plaint in C.S.No.530 of 2018. The suit is filed for a declaration that the Plaintiff is the absolute owner of the suit schedule properties and for consequential relief.

2. I heard Mr.N.Chandra Raj, learned counsel for the Applicant/3rd Defendant and Mr.J.Nandagopal, the learned counsel for the first Respondent/Plaintiff.

3. The learned counsel for the Applicant submitted that the plaint is liable to be rejected because it does not disclose a cause of action. In order to substantiate this contention, he stated as follows. The first Respondent/Plaintiff claims to be the grand son of T.Aiyakannu Pillai. In paragraph 3 of the plaint, a partition deed dated 27.04.1890 is referred to but the said partition deed has not been filed as a suit document. In paragraph 5 of the plaint, it is stated that after the death of the late T.Aiyakannu Pillai, his wife, Smt.Roopavathi

Ammal, sold the property at Devaraj Mudali Street, Triplicane, Chennai – 600 005 to T.Rathnasabapathy Pillai under the registered sale deed bearing document No.560/1924 and also that a registered partition deed was executed as between the sons and the wife of T.Aiyakannu Pillai under document No.911/1924. After referring to the aforesaid plaint averments, he contended that once the Plaintiff admits that the property at Devaraj Mudali Street, Triplicane, Chennai – 600 005 was transferred to T.Rathnasabapathy Pillai in 1924 the Plaintiff does not have a cause of action in respect of Item No.1 of the suit schedule property.

4. The next submission of the learned counsel is that the property tax receipts of the property are admittedly in the name of T.Rathnasabapathy Pillai Home for Girls, which is a Trust. In this regard, he pointed out that the Plaintiff was informed that the property is owned by the Trust and that this is evident from paragraph 8 of the plaint. In addition, the learned counsel submitted that there is no cause of action against the Applicant/3rd Defendant, who is not even a Trustee of the Rathnasabapathy Pillai Home for Girls.

5. In support of these contentions, the learned counsel relied upon the following judgments:

(1) **T.Arivanandam vs. T.V.Satypal and Another (Arivanandam) (1997) 4 SCC 467**, wherein, at paragraph 5, the Hon'ble Supreme Court held that Order VII rule 11 CPC should be resorted to when the plaintiff through clever drafting creates the illusion of a cause of action.

(2) **ITC Limited vs. Debts Recovery Appellate Tribunal and others (ITC Limited)(1998) 2 SCC 70**, wherein, at paragraph 27, the Hon'ble Supreme Court held that a mere allegation of drawal of monies without movement of goods does not amount to cause of action based on "fraud" and therefore allowed the application to reject the plaint.

(3) **Popat and Kotecha Property vs. State Bank of India Staff Association (2005) 7 SCC 510**, wherein, at paragraphs 22 and 23, it was held that the material facts for a complete cause of action should be stated and that otherwise the court is empowered to reject the plaint at any stage.

(4) **Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniammam Educational Trust(2012) 8 SCC 706**, wherein, at paragraph 10, it was held that the power under Order VII Rule 7 CPC can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the

Defendants or at any time before the conclusion of the trial. In addition, at paragraphs 13 and 14, the Court discussed as to what constitutes cause of action by stating that it includes all facts that it is necessary for the plaintiff to prove to succeed.

(5) **Bachhaj Nahar vs. Nilima Mandal and another, Civil Appeal Nos.5798 to 5799 of 2008, dated 23.09.2008**, wherein, at paragraph 8, the Hon'ble Supreme Court set out the rules relating to pleadings in civil proceedings.

5. By relying upon the above aforesaid judgments, the learned counsel for the Applicant concluded his submissions by stating that the plaint is liable to be rejected for non-disclosure of a cause of action in the plaint.

6. On the contrary, the learned counsel for the first Respondent/ Plaintiff submitted that the Plaintiff is the grandson of the late T.Aiyakannu Pillai and that he is accordingly entitled to a share both in the property situated at New No.14, Devaraj Mudali Street, Triplicane, Chennai-5 and in the property at Door No.2/60 and 4/59, Arunachalam Street, Triplicane, Chennai – 600 005 (Items I and II of the suit schedule property) on the basis of the Partition Deed under

which one share was allotted to the late T.Aiyakannu Pillai and Rathnasabapathy Pillai. He further submitted that all the relevant documents such as the mortgage deed, sale deeds and partition deeds and also the death certificates of the legal heirs were filed as suit documents 1 to 60. In particular, he submitted that a notice was issued to the first Defendant on 07.12.2017 and, in response, the first Respondent replied that the property is in the name of the Trust but did not provide any details about the Trust in spite of the rejoinder dated 17.01.2018. For all these reasons, he submitted that a cause of action is made out and that the application is liable to be rejected.

7. I considered the oral and written submissions of the respective counsel and examined the plaint and the affidavit in support of the application.

8. The first contention of the learned counsel for the Applicant/3rd Defendant is that the partition deed dated 27.04.1890 is the document from which title is traced by the first Respondent/Plaintiff but the said document has not been produced. In effect, the contention appears to be that the first Respondent/Plaintiff has not adduced necessary evidence. Needless to say, the absence of proof is not a ground to reject a plaint. The next contention is that the first Respondent/Plaintiff admitted, in paragraph 5 of the plaint, that ½

share in the property at Devaraj Mudali Street, Triplicane, Chennai-5 was transferred to the late T.Rathnasabapathy Pillai under sale deed registered as Document No.560/1924. On the basis of the said admission, the contention of the learned counsel for the applicant is that the first Respondent/Plaintiff is admittedly not entitled to the property at Devaraj Mudali Street, Triplicane, Chennai -5 because it was transferred to the late T.Rathnasabapathy Pillai and, therefore, there is no cause of action as regards that property. Although it is admitted that ½ share of the property at Devaraj Mudali street, Triplicane, Chennai was transferred to the late T.Rathnasabapathy Pillai, it is also stated that the said Rathnasabapathy Pillai died as a bachelor. Therefore, the legal heirs of Rathnasabapathy Pillai should be ascertained and this cannot be done at this juncture. In addition, the said contention is confined to the property at Devaraj Mudali Street, Triplicane, Chennai, whereas the suit schedule comprises a 2nd item of property at Door No.2/60 and 4/59, Arunachalam street, Triplicane, Chennai and it is also the settled legal position that a plaint cannot be rejected in part as held in **State of Haryana vs. State of Punjab (2004)12 SCC 673** and **D.Ramachandran vs. R.V. Janakiraman (1999) 3 SCC 267**. In both **Arivanandam** and **ITC Limited**, it was held that a plaint that merely contains the illusion of a cause of action

is liable to be rejected. The said proposition is well established and cannot be disputed. However, in this case, the first Respondent/Plaintiff claims to be the grandson of the late T.Aiyakannu Pillai and that he is entitled to the share that was allotted jointly to the late T.Aiyakannu Pillai and the late T.Rathnasabapathy Pillai. Several documents relating to the suit schedule properties dating back from 20.03.1922 are filed in support of the suit claim and a suit for declaration is filed by paying an aggregate court fee of Rs.1,61,326. On perusal of the plaint, at this juncture, I am unable to conclude that no cause of action is disclosed therein. As regards the contention that the Trust is a necessary party, it is open to the Applicant to raise an objection with regard to the non-joinder of a necessary party and the first Respondent/Plaintiff would have to deal with the said objection and its consequences at the appropriate time. However, this application cannot be allowed on that basis.

9. In the result, the application to reject the plaint in C.S.No.530 of 2018 is dismissed.

30.01.2020

Speaking/non speaking Order

Index : Yes/No

Internet : Yes/No

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