**A.No.9348 of 2019**
**in**
**C.S.No.547 of 2019**

**SENTHILKUMAR RAMAMOORTHY, J.**

This application is filed to reject the plaint in C.S.No.547 of 2019. The suit is filed by the wife against the husband for partition of the suit schedule properties and for a permanent injunction restraining the defendant from alienating or encumbering the suit schedule properties. The basis of the suit is that the plaintiff/wife contributed money for the purchase of these properties and is, therefore, entitled to partition.

2. I heard the learned counsel for the applicant and the learned counsel for the respondent.

3. The learned counsel for the applicant submitted that the plaint is liable to be rejected both on the ground of non-disclosure of cause of action and on the ground that the suit is barred by law.



4. In order to substantiate that the plaint does not disclose a cause of action, the learned counsel submitted that all the suit

schedule properties are admittedly in the name of the applicant/husband. With regard to the schedule A property, he submitted that the property was purchased in August 1991, i.e. within three months from the date of marriage in May 1991. He also submitted that it is clear from the averments in paragraphs 4 and 5 of the plaint that the respondent was not earning at the time of marriage and that the respondent/plaintiff admitted that she joined as a lecturer in Sri Krishna Engineering College, Kanchipuram, in the year 1994, and that her monthly salary was only Rs.6,000/- per month. He also pointed out that she changed jobs on three or four occasions between 1994 and 2001, which indicates that she was paid quite poorly. In these circumstances, he submits that it cannot be said that the respondent/plaintiff contributed to the purchase of the suit schedule properties.



5. In view of the fact that the properties are in the name of the applicant/defendant, he submits that a suit for partition is not maintainable at this juncture. The respondent/plaintiff should have filed a suit for declaration that she is the joint owner of the properties or filed a suit after the death of the applicant/plaintiff. For all these

reasons, he submitted that the plaint does not disclose a cause of action.

6. The second contention is that the suit is barred by law. In order to substantiate this contention, the learned counsel referred to Sections 7 and 8 of the Family Courts Act, 1984 (the Family Courts Act). In particular, he referred to Section 7(1)(c) of the Family Courts Act which confers jurisdiction on the Family Court with regard to a suit or proceeding between the parties to a marriage in respect of the property of the parties or either of them. Section 8 thereof provides for the exclusion of jurisdiction in respect of matters over which the Family Court has jurisdiction as per the explanation to Section 7.

7. According to the learned counsel, the prohibition under Section 8 also applies to the High Court in the exercise of ordinary original civil jurisdiction. In support of these submissions, the learned counsel referred to and relied upon the following judgments:



(i) ***K.A.Abdul Jaleel v. T.A.Shahida Civil Appeal No.3322 of 2003,*** wherein the Supreme Court held that the Family Court has jurisdiction to adjudicate upon any question relating to properties of persons with matrimonial disputes, including divorced persons.

(ii) ***Leby Issac v. Leena M.Ninan, AIR 2005 Kerala 285,*** wherein, at paragraph 21, the Division Bench of the Kerala High Court held that the Family Court has jurisdiction under Section 7(1) read with explanation(d) thereto to consider and adjudicate all aspects of the dispute between spouses.

(iii) ***Balram Yadav Vs. Fulmaniya Yadav, (2016) 13 SCC 308,*** wherein, at paragraphs 6 and 8, the Supreme Court held that, under Section 7 and 8, exclusive jurisdiction is vested in the Family Court and the jurisdiction of civil courts is excluded in respect of such matters under Section 8. The Supreme Court also referred to section 20 of the Family Courts Act, which provides that the provisions of the Family Courts Act would have overriding effect over any other law. The learned counsel also referred to the Full Bench judgment of this Court in ***Mary Thomas v. K.E.Thomas (Mary Thomas), AIR 1990 Madras 100,*** and pointed out that this judgment no longer holds good in the light of the Supreme Court judgement to the contrary in ***Balram Yadav,*** which was pronounced recently on 27.04.2016. After referring to these judgments, he stated that the plaint is liable to be rejected both because it does not disclose a cause of action and because the suit is barred by law.

8. On the contrary, the learned counsel for the respondent/plaintiff submitted that the respondent/plaintiff certainly has cause of action as disclosed in the plaint. By referring to paragraphs 4, 13 and 19 of the plaint, he pointed out that it is specifically averred in the said paragraphs that each of the suit schedule properties was purchased with the contribution of the respondent/plaintiff or her parents. Therefore, it cannot be said that the plaint does not disclose a cause of action. In this connection, he emphasised that it is not necessary for the respondent/plaintiff to establish all elements of the cause of action at the rejection of plaint stage. The averments in the plaint would be proved, subsequently, by leading evidence at the time of trial and that the court would determine whether the plaintiff established the cause of action at the time of final disposal.



9. He further submitted that the suit is not barred by law. In support of these submissions, he referred to and relied upon the following judgments:

(a)***. P.V.Guru Raj Reddy v. P.Neeradha Reddy, AIR 2015 SC 2485,*** wherein, at paragraphs 5 and 6, the Supreme Court held that the power under Order VII Rule 11 of CPC is a drastic power to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of such power are stringent. At the stage of exercise of power under Order VII Rule 11, the stand of the defendant in the written statement or in the application is wholly immaterial.

(b). ***Kamala v. K.T.Eshwara Sa, AIR 2008 SCC 3174,*** wherein, at paragraphs 14 to 16, the Supreme Court held that no amount of evidence can be looked into for the purpose of deciding an application under Order VII, Rule 11(d) CPC. He also relied upon the Full Bench judgement of this Court in **Mary Thomas,** which was cited by the learned counsel for the applicant, and pointed out that the said judgment still represents the law on the subject and cannot be disregarded.



10. In addition, he referred to the judgment of the Calcutta High Court in the case of ***Pawan Properties Vs. Prohlad Rai Dhanania,*** **APOT 475 of 2014, Judgment dated 23.02.2015,** wherein the Calcutta High Court held that the phrase "cause of action" means

every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court but it does not comprise every piece of evidence which is necessary to prove each fact. He also relied upon a judgment of this Court in ***K.Thakshinamoorthy v. State Bank of India, AIR 2001 Madras 167,*** wherein it was held that if the averments in the plaint disclose a cause of action, the application under Order VII Rule 11 should be rejected and the Court cannot dissect the pleadings into several parts and consider each of the parts separately. In other words, the plaint should be examined as a whole and, if upon such reading, it discloses a cause of action, the application should be rejected.

11. By way of a brief rejoinder, the learned counsel for the applicant submitted that all these judgments represent old law and have been overruled implicitly by the judgment in ***Balram Yadav***. He also reiterated that the respondent/plaintiff did not have sufficient means at the time when the properties were purchased. In support of the submissions, he referred to the income tax returns and salary certificates and pointed out that income tax returns for the financial years 2017-2018 and 2018-2019 were filed and the salary certificate

is also for a recent period and not the period when the suit schedule properties were acquired.

12. I considered the submissions of the learned counsel for the respective parties and examined the records. The limited question that arises for consideration is whether the applicant has established that the plaint does not disclose a cause of action or that the suit is barred by law from the statements made in the plaint. The settled legal position in respect of such an application is that it should be decided and determined by referring only to the statements in the plaint. Therefore, the first and main stop in the enquiry should be the plaint. On perusal of the plaint, I find that the respondent/plaintiff has stated that the Schedule A property was purchased from and out of the contribution of the plaintiff's parents, which was to the extent of $3/4^{th}$ of the total sale consideration. Likewise, in respect of the Schedule B property, at paragraph 13 of the plaint, it is stated that the respondent/plaintiff took a loan from the LIC for a sum of Rs.25,00,000/- and that a sum of Rs.27,000/- was deducted from her monthly salary every month towards discharge of the loan. As regards Schedule C property also, it is stated in paragraph 13 of the plaint that

3/4th of the sale consideration was paid by the respondent/plaintiff. With regard to the schedule D property, it is stated, in paragraph 15 of the plaint, that the sale proceeds of the Ayyampakkam property in Santhosh Nagar (Annanoor), which was in the respondent/plaintiff's name, was sold in the year 2012 and the Schedule D property was purchased from and out of the sale proceeds thereof.

13. On examining the above mentioned averments in respect of each of the suit schedule properties, it certainly cannot be concluded that the plaint does not disclose a cause of action.

14. The contention with regard to whether the suit is barred by law remains to be examined. On this issue, the learned counsel for the applicant largely relied upon Sections 7 and 8 of the Family Courts Act. Under section 7, no doubt, the Family Court is conferred with jurisdiction to decide a suit or proceeding between the parties to a matrimonial dispute in respect of the property of the parties or either of them. However, we are not concerned with the power or authority or jurisdiction of the Family Court in this application. On the other hand, we are concerned with the jurisdiction of this Court. Therefore,

the question arises whether the exclusion of jurisdiction under Section 8 of the Family Courts Act applies to proceedings instituted before this Court. This question was considered and answered authoritatively by a Full Bench of this Court in **Mary Thomas** in paragraphs 20 and 21 of the said judgment, as under:

> "20.*On a consideration of the relevant provisions of law and the decisions which have been cited, we are clearly of the opinion that the jurisdiction of the High Court on its original side is not ousted by any of the provisions contained in the Act and the High Court shall continue to exercise the jurisdiction vested in it under the Letters Patent and all other laws, notwithstanding the provisions of Section 7 and 8 of the Act. In this view, we hold that the decision of Abdul Hadi J. in Patrick Martin and confirmed by the Division Bench in O.S.A. No. 186 of 1988 is no longer good law.*
>
> *21. We answer the Reference as follows:*
>
> *"After the constitution of the Family Court for the Madras area, the original jurisdiction of the High Court in respect of matters that may fall under the Explanation to Section 7 of the Act is not ousted and the High Court can*

*continue to exercise its jurisdiction notwithstanding the coming into force of the Family Courts Act, 1984."*

15. The learned counsel for the applicant contended that this judgment no longer constitutes good law in the light of the judgment of the Supreme Court in ***Balram Yadav***. Therefore, the said judgement is required to be examined. In ***Balram Yadav,*** the Supreme Court was concerned with the jurisdiction of the Family Court vis-a-vis civil courts in general. The contention there was that the Family Court concerned lacked jurisdiction to deal with the subject matter of the suit. In that factual context, the Supreme Court examined Sections 7, 8 and 20 of the Family Courts Act and concluded that the Family Court has jurisdiction in respect of all matters set out in the explanation to Section 7 and that the jurisdiction of civil courts is excluded with regard to such matters. The said judgment is not an authority for the proposition that the jurisdiction of the High Court in the exercise of ordinary original civil jurisdiction is excluded. In fact, the language of section 8 itself discloses, even on a plain reading, that the exclusion only applies to district courts and

subordinate civil courts. Thus, I conclude that the jurisdiction of this Court is not barred under the Family Courts Act. Although a specific contention was not raised in this regard, it is relevant to note that the Prohibition of Benami Property Transactions Act, 1998 also provides for an exclusion in respect of spouses in the definition of benami transactions and thereby takes property purchases in the names of spouses outside the scope of prohibition. Therefore, it cannot be said that the suit is barred by law on perusal of the statements made in the plaint.

16. For all these reasons, the application to reject the plaint is dismissed.

**13.02.2020**

mpa/rrg
Speaking order
Index :Yes
Internet :Yes

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