



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.03.2020
CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P. (PD) (MD)No.389 of 2020
and
C.M.P. (MD).No.2304 of 2020

Ramaiah ... Petitioner/Petitioner/Defendant

vs.

1.A.Suthiraj
2.R.Perumal ... Respondents/Respondents/Plaintiffs 1&2

PRAYER: This Civil Revision Petition is filed under Section 227 of the Constitution of India, against the fair and decreetal order dated 02.12.2019 passed in I.A.No.158 of 2019 in O.S.No.25 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Peraiyur.

For Petitioner : Mr.S.Mahalakshmi

ORDER

This civil revision petition has been filed against the order passed in I.A.No.158 of 2019 in O.S.No.25 of 2019 by the learned District Munsif-cum-Judicial Magistrate, Peraiyur.

2.The respondents/plaintiffs filed the suit in O.S.No.25 of 2019 before the District Munsif-cum-Judicial Magistrate, Peraiyur and after serving the summons, the suit was pending for disposal. The petitioner/defendant herein filed a petition in I.A.No.158 of 2019 before the District Munsif, Peraiyur, to reject the plaint on the ground that the suit is barred by limitation. The said I.A was dismissed on the ground that the petitioner has not proved his case by letting both oral and documentary evidence. Aggrieved over the same, the present Civil Revision Petition has been filed.

3.The learned counsel appearing for the petitioner submitted that though the respondents/plaintiffs have taken their stand that the construction was completed one year back, since the construction was completed one year back, the suit is not maintainable and hence, the same is barred by limitation.

4.On a careful perusal of the records would show that though the respondents/plaintiffs have not stated any specific date regarding the completion of the construction before the District



Munsif Court, Peraiyur, and the defence is that some typographical error has been made in the plaint, which is taking the advantage by the plaintiff. During the pendency of the suit, the petitioner/defendant has filed a petition in I.A.No.158 of 2019 under Order VII Rule 11(a) and 11(d) of C.P.C.

WEB COPY

5. Order VII Rule 11(a) and 11(d) of C.P.C., reads as follows:-

"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 written 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;

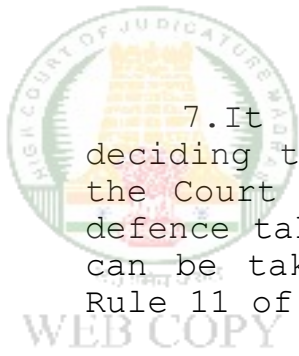
[(e) Where it is not filed in duplicate;]

[(f) Where the plaintiff fails to comply with the provisions of rule 9.]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

"(c) Where the relief claimed is property valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any, granted by the Court."

6. The respondents/plaintiffs have not stated anywhere in the plaint that the construction was completed one year back and in the plaint, the respondents/plaintiffs have mentioned the cause of action for the suit that on 10.03.2019, the petitioner/defendant made a construction in the street by preventing the respondents/plaintiffs and on 11.03.2019 the RDO issued summon to the respondents/plaintiffs and on 18.03.2019 the respondents/plaintiffs have filed a petition before the District Collector, Madurai and on 21.03.2019 the respondents/plaintiffs appeared but the petitioner/defendant has not appeared.



7.It is well settled proposition of law, at the time of deciding the application filed under Order VII Rule 11 of C.P.C., the Court has to see the averment made in the plaint and not the defence taken by the defendant. Therefore, the plaintiffs' averments can be taken only by deciding the petition filed under Order VII Rule 11 of C.P.C.

8.Under these circumstances, this Court does not find any merit in the order of rejection of the plaint by the Court below and there is no perversity in the order passed by the Court below. Hence, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ns

To

The District Munsif-cum-
Judicial Magistrate,
Peraiyur.

Copy to:

The Record Keeper,
VR Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

C.R.P. (PD) (MD)No.389 of 2020

02.03.2020

MK (18.03.2020) 3P 4C