



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD)No.601 of 2020

and

C.M.P. (MD)No.3904 of 2020

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G.Jayaraman

represented by Power of Attorney

Palani

: Petitioner/1st defendant/
Petitioner

.. Vs ..

G.Ponnambalam

: Respondent/Plaintiff/
1st Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order and decreetal order, dated 04.03.2020 in I.A.No.45 of 2020 in O.S.No.24 of 2017 on the file of the Principal District Court, Pudukottai.

For Petitioner

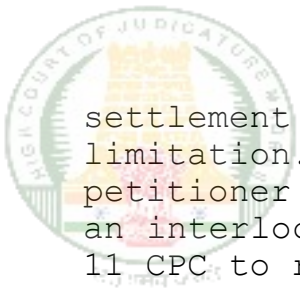
: Mrs.AL.Ganthimathi

ORDER

This Civil Revision Petition is directed against the order passed by the learned Principal District Judge, Pudukottai, in I.A.No.45 of 2020 in O.S.No.24 of 2017, dated 04.03.2020.

2.The revision petitioner is the first defendant in the suit in O.S.No.24 of 2017 on the file of the Principal District Court, Pudukottai. The first respondent herein, as plaintiff, filed the said suit for declaration of his title in respect of all the suit properties, described as A, B, C and D schedule and for consequential permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property with the help of "kattapanchayathars". The suit was filed on the basis that some of the suit properties were purchased out of the earnings of the plaintiff and that other properties were acquired by the parents of the plaintiff by way of assignment by the Government. Several allegations have also been raised against the revision petitioner by the plaintiff to disclose cause of action for the relief prayed for in the suit.

3.In the detailed written statement filed by the revision petitioner, it was pointed out that one of the suit properties was alienated by the plaintiff himself and another item was settled by plaintiff's mother in favour of the first defendant. It is further stated that the plaintiff himself is an attesting witness to the



settlement deed. It is also contended that the suit is barred by limitation. Based on the specific issues raised by the revision petitioner in the written statement, the revision petitioner filed an interlocutory application in I.A.No.45 of 2020 under Order 7 Rule 11 CPC to reject the plaint.

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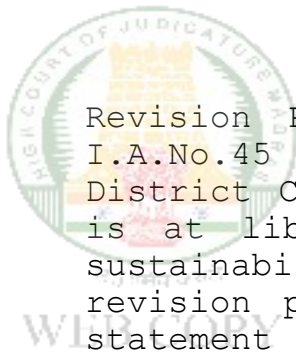
4. On the first question, whether the plaintiff discloses a cause of action, this Court is unable to accept the case of petitioner, except some defects in the cause of action paragraph, wherein, the rights based on the averments in the plaint have not been properly formulated. The trial Court, having regard to the admitted facts that the plaint was prepared by the plaintiff himself, who appeared as party-in-person, treated minor defects in the cause of action paragraph as rectifiable. As regards plea of limitation, the trial Court found that the issue involves mixed question of law and facts and that therefore, it has to be decided only after full fledged trial. Accordingly, the trial Court dismissed the application in I.A.No.45 of 2020. Aggrieved by the same, the present revision petition is filed.

5. The learned Counsel for the revision petitioner pointed out that the plaint averments are not cogent to substantiate the title of plaintiff in respect of all the suit properties. It is further stated that even assuming that the plaintiff is entitled to a share in the property, which stood in the name of plaintiff's mother, the relief of declaration of title is not appropriate. The learned Counsel further referred to some paragraphs of the plaint and submitted that the respondent has come forward with the suit with the bundle of lies, which are also contrary to the documents, which are referred to in the written statement.

6. It is well settled that plaint can be rejected based on the averments made in the plaint and a petition under Order VII Rule 11 CPC cannot be decided on the basis of the defence taken by the defendants in the written statement. As it was pointed out by the trial Court that the cause of action paragraph was not carefully framed, that cannot be the sole reason, for which the plaint can be thrown out at the threshold without giving an opportunity to the plaintiff to rectify the defect. It is true that the plaint is not carefully drafted. However, this Court is of the view that an opportunity should be given to the plaintiff to establish his title or right in respect of all the properties and there is a possibility that the trial Court can partly allow the suit, even if the plaintiff fails to establish his absolute right or title in respect of the suit properties. This Court in a petition under Order VII Rule 11 CPC need not go into the merits of the objection raised by the revision petitioner, as that will influence the trial Court while disposing of the suit on merits.

7. In view of the discussion above, this Court is not inclined to allow the revision petition. As a result, this Civil

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Revision Petition is dismissed. The order dated 04.03.2020 in I.A.No.45 of 2020 in O.S.No.24 of 2017 on the file of the Principal District Court, Pudukottai, is confirmed. The revision petitioner is at liberty to raise all his objections with regard to the sustainability of the claim on merits at the time of trial. The revision petitioner is also permitted to file additional written statement specifically touching the legal issue, that is raised by the revision petitioner in the petition under Order VII Rule 11 CPC and before this Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To

1.The Principal District Judge,
Pudukottai.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AL. GANTHIMATHI, Advocate (SR-14559[F] dated 20/08/2020)

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SPU (07.09.2020) 3P 5C