



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 10.12.2019
Delivered On : 26.02.2020
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(PD)(MD)No.892 of 2019

and

C.M.P.(MD)No.5175 of 2019

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St.Paul's Seminary,
Represented by its Procurator,
Door No.44, Madurai Road,
Cantonment,
Tiruchirappalli - 620 001

.. Petitioner/Petitioner/3rd Defendant

Vs.

1.John Prakash Ebinesan
2.T.Joseph Ezhilan
3.M.Theresnathan

.. Respondents/Respondents/Plaintiffs

Prayer: This Civil revision petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decretal order dated 27.11.2018 in I.A.No.245 of 2018 in O.S.No.54 of 2018 on the file of the I Additional District Judge, Thiruchirappalli and to set aside the same.

For Petitioner : Mr.S.Vinod Sathya Lazar
For Respondents : Mr.J.Maria Roseline

ORDER

Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.245 of 2018 in O.S.No.54 of 2018 dated 27.11.2018, on the file of the learned I Additional District Judge, Thiruchirappalli.

3.The petitioner herein is the third defendant and the respondents herein are the plaintiffs in the suit. The respondents herein have filed a suit in O.S.No.54 of 2018 for a prayer of declaration that the alleged gift deed executed by the third defendant in favour of the second defendant in respect of A schedule property is invalid and void and for a permanent injunction against the third defendant not to construct the 'Kalyana Mandapam' and for a mandatory injunction directing the third defendant to restore the pathway to a width of 30 feet from south to north to its original position. In that suit, the third defendant has filed a petition in I.A.No.245 of 2018 to reject the plaint and that petition was dismissed by the trial Court. Against which, the petitioner preferred this revision petition.

4.The brief substance of the application in I.A.No.245 of
<https://hcservices.ecourts.gov.in/hcservices/>



2018 is as follows:

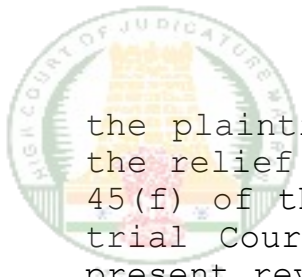
The plaintiff filed a suit on behalf of the Church of our Lady, the Healer seeking for declaration that the gift deed executed by the third defendant in favour of the second defendant is invalid and for injunction and other reliefs stating that a vast extent of land belonged to the third defendant Society and that the third defendant Society leased an extent of 20,042 square feet to the fourth defendant for the construction of Church of our Lady the Healer and that the third defendant leased out another extent of property for Catholic mission and that the third defendant leased another extent of property to the sixth defendant, Arockiamatha Matriculation Higher Secondary School, which is under the control of the fourth defendant and that access to all these institutions are through ABCD pathway shown in the schedule 'A' plan and that the half rights of the ABCD pathway is leased out to the fourth defendant and three institutions namely, Ilaya Deepam, Thiyaga Deepam and Udhaya Deepam and all this institutions have entrance facing the ABCD pathway and that the ABCD pathway is the access not only for the Church goers but also approximately 1,500 students and other people and that the pathway was already given on lease in favour of the defendants 4 and 7 and that the third respondent proposed to construct a marriage hall and gifted the land shown as PQRS to the second defendant Thiruchirappalli city Corporation and that if the proposed kalyana mandapam is constructed, it will be a hindrance for the defendants 4 to 7 and the people who are using the pathway and that the usage of marriage hall will be a hindrance for the performance of the Church during prayer time and that the plaintiff filed a suit for various prayers, which are not maintainable.

The third defendant is a registered Society. The property belongs to the third defendant. The third defendant leased out the property and retained 6068.63 square metres. Since there is no possibility for cultivation, the third defendant decided to construct a marriage hall. One of the Parishioners, A. John Peter Kennedy has filed a public interest litigation in W.P.(MD)No.12268 of 2012 and this Court has ordered to conduct an enquiry by the Commissioner, Thiruchirappalli Corporation. The Parishioners objected the third defendant using the ABCD pathway and also made a request to shift the location of the septic tank. The third defendant agreed the same and an order was passed by the second defendant on 30.01.2018.

This suit is barred by res judicata and cause of action does not survive. A tenant cannot restrain the landlord from conveying title to third parties. The petitioner filed the petition under Order 7 Rule 11 of CPC to strike off the suit on the following grounds:

(i) barred by res judicata, (ii) the suit is vexation and an abuse of process of law by suppressing the earlier litigation, (iii)

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the plaintiffs have no *locus standi* or cause of action for seeking the relief as sought for in the plaint and (iv) barred under Section 45(f) of the Specific Relief Act. The petition was dismissed by the trial Court. Against which , the petitioner herein has filed the present revision petition.

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5. On the side of the petitioner, it is stated that there is no cause of action for the suit and the suit is an abuse of law and that the plaintiff has no *locus standi* to file the plaint. It is stated that the third defendant is constructing a marriage hall in its own property and the plaintiffs have no *locus standi* to question the same. The third defendant has undertaken not to use the ABCD pathway and has undertaken to use the Thiruchirappalli - Dindigul main road as an access to the marriage hall. The tenant under the third defendant cannot question the rights of this defendant and he cannot question the gift deed executed by the third defendant. The plaintiff and the other defendants cannot claim title over the property.

6. The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **R.M.Narayana Chettiar and Another v. N.Lakshmanan Chettiar and others** reported in **CDJ 1990 SC 639**, wherein it is stated as follows:

"A plain reading of Section 92 of the Code indicates that leave of the Court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the relief's set out in the said Section: unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all."

7. The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of **M.Subramanian v. ADS Educational Trust and others** reported in **CDJ 1990 SC 639**, wherein it is stated as follows:

"it is held therein that one of the most abuse of process of Court is re-litigation may or may not be barred by *res judicata*, but when the same issue is sought to be again reagitated, it amounts to abuse of process of Court.

As decided in the case of *Arivanandam* above, since the present Trust OP is a vexatious and meritless in the sense of not disclosing a clear right to sue, it paves way for the Court to proceed with the striking off the plaint under Order 7, Rule 11 CPC.

In this case, the second petitioner in OP has not disclosed a clear right to sue and hence, there is no impediment for this Court to invoke Order 7 Rule 11



CPC . Further, the point of res judicata is a legal one, it could also be considered by this Court to reject Trust OP."

8.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Rajasthan High Court v. Union of India** reported in **CDJ 2000 SC 655**, wherein it is stated as follows:

"The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression 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."

9.It is stated that the ownership of the property of the third defendant is admitted. The right of the plaintiffs and that of the defendants 4 to 7 is equivalent to the right of a tenant. No leave of the Court is obtained to file the suit on behalf of the trust.

10.On the side of the respondents, it is stated that there is mismanagement in the trust. The writ petition was filed by one of the Parishioners, not by the plaintiffs. There is no question of res judicata. The petitioner tried to construct a septic tank near the church and gifted the pathway that was leased out to the defendants 4 to 7 as a private pathway for them to the Municipality. That 30 feet pathway is not yet restored and the ground is not raised. As per Order 7 Rule 9 of CPC, a plaint cannot be rejected in part.

11.The learned counsel for the respondents would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Sopan Sukhdeo Sable and Others v. Assistant Charity Commissioner and Others** reported in **(2004) 3 Supreme Court Cases 137**, wherein it is stated as follows:

"Bar to jurisdiction of civil Court under the Act of 1950 to try issues regarding enquiries into affairs of a trust - Whether Sections 50 and 51 applicable to questions relating to continuance and period of tenancy wherein trust is a lessor so as to oust jurisdiction of civil court with regard thereto under Section 80 - Civil Procedure Code, 1908 - Section 9, Order 7 R. 11(d), Or. 23 R. 1 and Or. 2



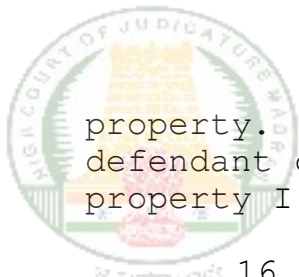
12.The learned counsel for the respondents would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Popat and Kotecha Property v. State Bank of India Staff Association** reported in **(2005) 7 Supreme Court Cases 510**, wherein it is stated as follows:

"If such a course is adopted it would run counter to the cardinal cannot of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleadings has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."

13.On the side of the petitioner, it is stated that the defendants 4 to 7 were already set as exparte. No adverse right is claimed by the plaintiffs. The petitioner is using the pathway only from the highways. The plaintiffs cannot step into the shoes of the lessee. The petition under Sections 92 and 93 of CPC is not filed and the proceedings is to be struck off.

14.It is seen that the property belongs to the third defendant Society. The third defendant leased a portion of the property to the defendants 4 to 7 by showing the pathway said to have been mentioned as ABCD in the plaint. There is no dispute regarding these aspects and the claim of the third defendant is that the third defendant proposed to construct a marriage hall and gifted the vacant pathway to the Trichy Corporation. The plaint is filed on assumptions that the vacant site might have been used by the Corporation for segregation of bio degradable waste from plastic waste or to construct a public toilet, which may cause hindrance to the Parishioners of the Church of our Lady the Healer. The claim of the third defendant is that already a writ petition was filed by one of the Parishioners and an order was passed and an enquiry was conducted by the Commissioner of the Corporation and the third defendant agreed to use the highways, as the access to the marriage hall to be constructed and agreed to shift the proposed septic tank and hence, nothing survives for adjudication.

15.The plaintiff is one of the Parishioners of Church and the Church itself is a tenant under the third defendant and the church remained exparte. Admittedly the third defendant is the owner of the



property. The plaintiffs, who are the worshippers in the fourth defendant church, cannot question the activities of the owner of the property I.e., third defendant.

16.It is seen that the third defendant has shifted the access to the marriage hall from ABCD pathway and accepted the access through the highways. A tenant cannot question the activities of the owner. When such is the condition, the plaintiffs who are just the work shippers of the church, cannot question the activities of the third defendant. There is no cause of action for the suit.

17.In the above circumstances, the plaint filed by the plaintiff is not maintainable, since the plaint does not disclose any cause of action to file this suit. Hence, this civil revision petition is allowed and the order passed in I.A.No.245 of 2018 in O.S.No.54 of 2018 dated 27.11.2018, on the file of the learned I Additional District Judge, Thiruchirappalli is set aside and the suit is strike off under Order 7 Rule 9 of CPC. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

The I Additional District Judge,
Thiruchirappalli.

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-8495[F]

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