



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 05.02.2020  
CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.R.P. (PD) (MD) No. 2463 of 2018  
and  
CMP (MD) No. 10921 of 2018

S.M.Abdul Hameed ... Petitioner/Petitioner/2<sup>nd</sup> Defendant

Vs.

1.Balasubramanian ... 1<sup>st</sup> Respondent/1<sup>st</sup> Respondent/Plaintiff

2.Rani Bharathi ... 2<sup>nd</sup> Respondent/ 2<sup>nd</sup> Respondent/1<sup>st</sup> Defendant

3.S.M.Anvar Batcha ... 3<sup>rd</sup> Respondent/2<sup>nd</sup> Petitioner/3<sup>rd</sup> Defendant  
(Since Deceased)

**Prayer :** This Civil revision petition is filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and to set aside the fair and decretal order dated 02.08.2018 made in I.A.No.922 of 2017 in O.S.No.735 of 2005 on the file of II Additional District Munsif Court, Tiruchirapalli.

For Petitioner: Mr.M.Ajmal Khan  
Senior Counsel

For R1 : Mr.R.Sundar  
For R2 : No Appearance  
For R3 : Dispensed with

**ORDER**

This petition has been filed against the order dated 02.08.2018 passed in I.A.No.922 of 2017 in O.S.No.735 of 2005 on the file of II Additional District Munsif Court, Tiruchirapalli.

2.The petitioner herein is the 2<sup>nd</sup> defendant. The first respondent herein is the plaintiff. The respondents 2 and 3 are the defendants 1 and 3 in the suit.

3.The first respondent has filed a suit in O.S.No.735 of 2005 for a prayer of permanent injunction. In that suit, the defendant 2 & 3 filed a petition in I.A.No.922 of 2017 for a prayer of rejecting the plaint under Order 7 Rule 11 of CPC. That petition was dismissed



by the Trial Court. Against which, the petitioner preferred this revision petition.

4. Brief substance of the petition in I.A.No.922 of 2017 is as follows:-

There is non-joinder of necessary parties. Court fee is not proper, valuation of the suit property is not proper. There is no cause of action. Already, suits in O.S.No.274 of 2000 and O.S.No.330 of 2004 were pending before the learned II Additional Sub Court-Trichirappalli, and the same was suppressed in the plaint. The suit property was already sold out by the plaintiff's father to the vendor of the petitioners.

5. Brief substance of the counter filed by the respondent in I.A.No.922 of 2017 is as follows:-

The prayer sought for by the plaintiff in the suit is permanent injunction. But the claim of the petitioner in this petition is that the plaintiff sought for a portion of the property and that co-sharers have to be impleaded. There is no such averments in the written statement. The points regarding non-joinder of necessary parties, lack of proper valuation are all question of facts to be decided at the time of trial and those points cannot be decided in an application filed under Order 7 Rule 11 of CPC.

6. After hearing both sides, the Trial Court has dismissed the petition. Against which, the petitioner preferred this revision petition on the following grounds:-

The sale deed is of the year 1997. The suit was filed in the year 2005 and the suit was barred by limitation. Paragraph 3 of the plaint proceeds on the footing that the suit is one for partition and however, the prayer is only for injunction against the alienation of the suit property. The alienation took place in the year 1997. Possession was handed over to the alienee and the possession is adverse from the date of sale. The plaintiff has admitted that in an earlier suit for partition in O.S.No.330 of 2004 wherein it was claimed that the suit property was only the self acquired property of Nagupillai. In the present suit, the contention of the plaintiff is that the suit properties are the joint family properties of Nagupillai and his sons. Admittedly, two partition suits are pending and hence, subsequent suit for injunction against alienation is not maintainable. The plaintiff cannot claim exclusive right over the property. The plaintiff is not the owner of the property. No suit was filed for declaration. Suit was filed only for injunction. When the title of the plaintiff is questioned by the defendants, the plaintiff cannot continue a suit for bare injunction. No cause of action is disclosed in the plaint. The plaintiff failed to describe how the suit property is a joint family property of Nagupillai and his sons. Repeated suits by the plaintiff in respect of the very same property is a clear abuse of process of law.



7.On the side of the petitioner, it is stated that the suit was filed by the first respondent for a prayer restraining the defendants from further alienating the suit properties.

8.There cannot be a decree for injunction restraining the defendants from alienating the properties. The said Nagupillai was healthy at the time of execution of sale deed i.e., 8 years prior to the institution of the suit. The suit was dismissed for default in the year 2010 and then it was restored in the year 2014. The present petitioner is a senior citizen, aged about 80 years. Without a relief of declaration, the suit is not maintainable. The plaintiff has no title, since, his father has already sold out the properties. The plaintiff filed a suit in O.S.No.330 of 2004 for a relief of partition wherein, the claim of the plaintiff is that the properties are the self acquired properties of Nagupillai. No, cause of action was revealed in the plaint. The date of interference of the possession was not stated in the plaint. A prohibitory injunction is sought for as an independent relief.

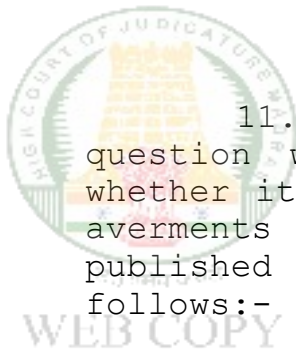
9.On the side of the petitioner, it is stated that the averments in the plaint should be specific and the cause of action for filing the suit would arise only on a specific date. In the absence of any date mentioned in the Plaint, the relief cannot be granted. A judgment of this Court published in **2016 (6) CTC 186** is cited wherein it was decided as follows:-

*"41.On reading of the plaint, including the cause of action paragraph, it is clear that the Plaintiff has not specifically stated as to the date on which, the First Defendant tried to interfere with his possession. The Plaintiff has baldly stated that the First Defendant tried to interfere with his possession. It is a settled position that the averments in the Plaint should be specific and the cause of action for the filing of the Suit would arise only on that specific date. In the absence of any date mentioned in the Plaint, the relief cannot be granted.*

*43.The Lower Appellate Court erroneously found that the Decree for Prohibitory injunction is sought for as an independent relief and therefore, the Plaint cannot be rejected."*

10.On the side of the petitioner, it is stated that it is the duty of the trial Court to ascertain the materials for a cause of action. Every fact which is necessary for the plaintiff to enable him to get a decree should be set out in clear terms. A judgment of the Hon'ble Supreme Court published in **2012 (8) SCC 706** is cited wherein it was decided as follows:-

*" It is the bounden duty of the trial Court to ascertain the materials for cause of action. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms."*



11.On the side of the petitioner, it is stated that the question whether the plaint discloses any cause of action and whether it is barred by any law is to be decided by looking at the averments contained in the plaint itself. A judgment of this Court published in **2011 (3) CTC 153** is cited wherein it was decided as follows:-

*" The question whether plaint discloses any cause of action and whether it is barred by any law is to be decided by looking at the averments contained in the plaint itself."*

12.On the side of the petitioner, it is stated that a right cannot exist without an enforceable duty and the pleadings fail to establish violation of a statutory right or breach of a contractual obligation. In the absence of any such right or even a claim, the plaint would not disclose any cause of action. A judgment of Hon'ble Supreme Court dated **02.09.2019** in **Civil Appeal No.6760 of 2019** is cited wherein it was decided as follows:-

*" A right cannot exist without an enforceable duty and the pleadings fail to establish violation of a statutory right or breach of a contractual obligation. In the absence of any such right or even a claim, the plaint would not disclose cause of action."*

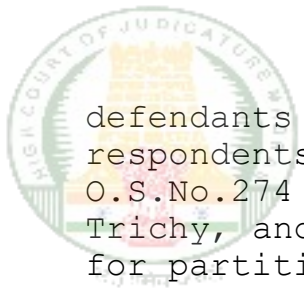
13.On the side of the petitioner, it is stated that when the plaintiff had knowledge about the purchase made by the defendants, they should have filed a suit for declaration and that from the plaint averments, it is clear that the defendants are claiming title over the entire suit property. The plaintiff should have filed the suit for declaration to establish their right over the suit property. A judgment of this Court reported in **2017 4 LW 377** is cited wherein it was decided as follows:-

*"When the plaintiffs had knowledge about the purchase made by the defendants, they should have filed the suit for declaration. From the plaint averments, it is clear that the defendants are claiming title over the entire suit property. The plaintiffs should have filed the suit for declaration and established their right over the suit property."*

14.It is further stated that an injunction suit will not lie when the defendants raised a genuine dispute regarding title. A judgment of the Hon'ble Supreme Court published in **2018 SCC Online SC 2170** is cited wherein it was decided as follows:-

*".... injunction does not lie when defendants raised a genuine dispute with regard to title."*

15.On the side of the respondents, it is stated that the suit was filed for a relief of permanent injunction restraining the



defendants from alienating the suit properties to third persons. The respondents has further stated that there was a partition suit in O.S.No.274 of 2000 on the file of the learned Principal Sub-Judge, Trichy, and the first respondent has not suppressed the earlier suit for partition.

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16.Though, the first defendant filed the written statement in the month of August 2005, he did not take immediate steps under Order 7 Rule 11 of CPC. The plaintiff filed an Interlocutory Application in I.A.No.386 of 2005 under Order 39 Rules 1 & 2 of CPC and he sought for a temporary injunction as against the defendants restraining them from alienating the properties. That petition was allowed by the Trial Court on 28.11.2005. Till the disposal of the suit, earlier interim order was extended and the same is still in force. While the injunction order was in force, the defendants sold the suit properties to nearly 27 persons thereby they violated the order of the Trial Court. The plaintiff filed a contempt petition in I.A.No.730 of 2014 and the same is still pending.

17.On the side of the respondent, it is stated that the pendency of the suit in O.S.No.274 of 2000 was mentioned in the plaint filed by the first respondent in O.S.No.735 of 2005 and that the suit for partition was not filed by the first respondent and that the suit was filed by the sister of the first respondent.

18.The claim of the revision petitioner is that there is no cause of action for the suit as no specific date of occurrence was mentioned and that the suit is under valued and the Court fee has not been paid properly.

19.On the side of the first respondent, it is stated that the valuation of the property and the Court fee can be taken as a preliminary issue and if the Court come to a conclusion that the suit is under valued, the Court may direct the plaintiff, to pay the deficit court fees and to correct the valuation of the suit property within a time frame to be fixed by the Court.

20.On the side of the petitioner, it is stated that when there was a dispute regarding title, a suit for injunction is not maintainable. A judgment published in **2017 4 LW 377 is cited by the revision petitioner**. This suit was filed for injunction not to alienate and the cited case was filed for injunction not to disturb possession. The facts of this case is different from the cases cited by the petitioner in **2016 (6) CTC 186, 2012 (8) SCC 706 and 2011 (3) CTC 153**. Hence, the facts of the present case and the facts of the above cited case are not similar and hence, this citations are not applicable to the present facts of the case.

21.It is true that the petition under Order 7 Rule 11 of CPC can be filed any time before the conclusion of trial. But at the



same time, it is the duty of the petitioner to prove that the suit is liable to be rejected. Though, the suit was filed in the year 2005, the petitioner has come forward with this petition only in the year 2017. No grounds contemplated under Order 7 Rule 11 of CPC is made out in this petition. A question of valuation of a suit can be decided as a preliminary issue.

22. In view of the above circumstance, there is nothing sufficient enough to interfere in the order passed by the Trial Court. Hence, the order of the Trial Court passed in I.A.No.922 of 2017 in O.S.No.735 of 2005 on the file of II Additional District Munsif Court, Tiruchirapalli, is hereby, confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

**To**

1. The II Additional District Munsif Court,  
Tiruchirapalli.

**Copy to:**

The Record Keeper, ( 2 - Copies )  
Vernacular Section,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate ( SR-5006[F] dated  
06/02/2020 )

**C.R.P. (PD) (MD)No.2463 of 2018**

**and**

**CMP (MD)No.10921 of 2018**

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