



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 06TH DAY OF DECEMBER 2021

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

A.No. 478 of 2021
in
C.S.No. 390 of 2020
and
O.A.Nos. 737 & 738 of 2020

C.S.No. 390 of 2020 and
O.A.Nos. 737 & 738 of 2020 :-

Mr. Singu R Mangaleshkar,
Residing at 39b Spilsby Road,
Boston PE21 9NX,
United Kingdom
and permanent Indian address
at No.3 Flat B, 5th Cross Street,
Andal Nagar, Velachery,
Chennai – 42, India.

... Applicant/Plaintiff
(C.S.No. 390 of 2020 and
O.A.Nos. 737 & 738 of 2020)

-Vs-

1. Mr. S.V. Ramamurthy,
No. 38/82, C.N.Krishnaswamy Road,
Triplicane,
Chennai – 600 005.
2. Mr Bhupeshkar,
10245, Little Brick House,
Ellicott City,
Maryland, USA.
Permanent address,
No. 3, Flat B, 5th Street, Andal Naga,
Velacherry, Chennai – 42.



3. The Sub Registrar,
Office of S.R.O.

Velacherry,
Chennai 600 042.

4. The Sub Registrar,
Office of S.R.O.,
Anna Nagar,
Chennai 600 107.

5. The Sub Registrar,
Office of S.R.O.,
Purasaiwakkam,
Chennai 600 007.

6. The Sub Registrar,
Office of S.R.O.
Madhavaram,
Chennai.

... Respondents/Defendants
(C.S.No. 390 of 2020 and
O.A.Nos. 737 & 738 of 2020)

A.No. 478 of 2021 :-

Mr. S.V. Ramamurthy,
No. 38/82, C.N.Krishnaswamy Road,
Triplicane, Chennai – 600 005.

... Applicant

-Vs-

1. Mr. Singu R Mangaleshkar,
Residing at 39b Spilsby Road,
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and permanent Indian address
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Chennai 600 007.
6. The Sub Registrar,
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Madhavaram,
Chennai.

... Respondents

Application praying that this Hon'ble Court be pleased to reject the
plaint filed by the plaintiff.

This application having been heard on 30.11.2021 in the presence of
Mr.S.V.Ramamurthy, the applicant / party appearing in person and
Mr.R.Ramesh, For M/s. Guru Brahma Law Associates, Advocates for the 1st
respondent and Mr.V.K.Elango, Advocate for the 2nd respondent and
Mr.Edwin Prabakar, Special Government Pleader appearing for respondents
3 to 6 herein and upon reading the order dated 16.11.2021 made in
A.No.478 of 2021 and O.A.Nos. 737 & 738 of 2020 in C.S.No. 390 of 2020
and having stood over for consideration till this date and coming on this day



hereto and this Court having observed that the issue raised by the applicant / first defendant viz., whether the first respondent / plaintiff is entitled to $\frac{1}{2}$ share or $\frac{1}{3}$ rd share in suit B, C, D properties are concerned are traibles issues, which can be decided after only trial and not in an application filed under order 7 Rule 11 CPC seeking for rejection of plaint, and since the application filed by the applicant / first defendant for rejection of plaint even before trial is not maintainable for the reason stated supra, the agony of the applicant / first defendant due to the alleged conduct / behaviour of the first respondent / plaintiff cannot be redressed by this Court at this stage and can be redressed of at all only after trial, and there is no merit in the application filed by the applicant / first respondent seeking for rejection of plaint, **it is ordered as follows:-**

That the A.No. 478 of 2021, be and is hereby dismissed.

2. That these O.A.Nos. 737 & 738 of 2020 be posed on 05.01.2022.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 06TH DAY OF DECEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.-II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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ED
24.01.2022

A.No. 478 of 2021
in
C.S.No. 390 of 2020
and
O.A.Nos. 737 & 738 of 2020

ORDER

DATED : 06.12.2021

THE HON'BLE MR. JUSTICE
ABDUL QUDDHOSE

FOR APPROVAL: 24/01/2022

APPROVED ON : 25/01/2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2021

PRONOUNCED ON : 06.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

A. No.478 of 2021

in

C.S. No.390 of 2020

and

O.A. Nos.737 & 738 of 2020

A. No.478 of 2021

S.V.Ramamurthy

... Applicant

vs

1. Singu R. Mangaleshkar
Residing at 39b Spils by Road,
Boston PE 21 9 NX,
United Kingdom,
And permanent Indian address
At No.3, Flat B, 5th Cross Street,
Andal Nagar,
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Office of S.R.O.
Purasaiwakkam,
Chennai – 600 007.

6. The Sub Registrar,
Office of S.R.O.,
Madhavaram,
Chennai.

... Respondents

Prayer in A.No.478 of 2021: Petition filed Under Order XIV Rule 8 of High Court Original Side Rules read with Section 151 of Civil Procedure Code to reject the plaint as provided for under the provision of order 7 rule 11 of CPC.

For Applicant : Mr.R.Ramesh
for M/s.Guru Brahma Law Associates

For Respondents : Mr.V.K.Elango for D2
Mr.Edwin Prabakar,
Spl. Govt. Pleader for D3 to D6

ORDER

This application has been filed by the first defendant seeking for rejection of the plaint filed by the plaintiff in CS.No.390 of 2020. The applicant/first defendant is the father and the first respondent/plaintiff and



2. The suit was filed by the first respondent/plaintiff seeking for partition of the properties owned by his late mother Padmavathy. According to the first respondent/plaintiff, the suit A schedule property was purchased by his mother, out of her self acquired funds and suit B, C & D schedule properties were inherited from her ancestors and therefore, they are ancestral properties. The first respondent/plaintiff has claimed $\frac{1}{3}^{\text{rd}}$ share in the suit A schedule property and $\frac{1}{2}$ share in the suit B, C & D schedule properties. According to the first respondent/plaintiff, being a self acquired property of his mother, the plaintiff and the defendants 1 and 2 are having equal shares and each entitled for $\frac{1}{3}^{\text{rd}}$ share. However, according to the first respondent/plaintiff, insofar as the suit B, C and D schedule properties are concerned, having inherited the same by his late mother Padmavathy from her ancestors, the applicant/first defendant being the husband of his late mother Padmavathy is not entitled for any share in those properties as per the provisions of section 15(2) of the Hindu Succession Act 1956.

3. However, it is the contention of the applicant/first defendant that section 15(2) of the Hindu Succession Act gets attracted only when his wife late Padmavathy died without any issues. But since the plaintiff and the second defendant are her issues born out of the wedlock with the applicant/first defendant, the applicant/first defendant is also entitled for



1/3rd share in the suit B, C & D schedule properties also, as in the case of suit A schedule property. The applicant/first defendant has made several allegations against the first respondent/plaintiff and submitted that the first respondent/plaintiff never took care of the applicant/first defendant and his wife the deceased Padmavathy who is the mother of the plaintiff.

4. Further it is the contention of the applicant/first defendant that the suit has been under valued and instead of valuing the suit under section 37 (1) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, the first respondent/plaintiff has valued the suit for the purpose of court fee under section 37(1) of the said act, even though the first respondent/plaintiff is not in possession of the suit properties.

5. The applicant/plaintiff has filed this application seeking for rejection of plaint on the ground that the signatures of the first respondent/plaintiff in the plaint is questionable. According to him, though the first respondent/plaintiff was born in India, he is a Citizen of UK and for about 20 years, he has stayed in UK. According to him, it is highly unlikely that the first respondent/plaintiff would have come to India in January 2020 and signed the plaint as during that time, country was facing Covid-19



6. It is also the case of the Applicant/first defendant that the suit B, C & D schedule Properties were purchased by the applicant's father-in-law and mother-in-law. According to him, after their death, one of their sons, L.H.Vidyapoornan fabricated a Will which ignored any share to the daughters. According to the applicant/first defendant, one of the daughters, Premavathy filed a suit for partition in CS.No.522 of 1992 and at the same time, the son who was having the Will in his favour filed an application for probate of the Will. According to the applicant/first defendant, the suit filed by Pramavathy for partition was decreed and the application for probate filed by one of the sons of his father-in-law was dismissed by a learned Single Judge of this Court and therefore, O.S.A.Nos.147 & 148 of 2002 were filed and in the said OSAs, the earlier preliminary decree granted by the learned Single Judge in favour of Premavathy was modified by the Division Bench of this Court. According to the applicant/first defendant, the son of his father-in-law preferred a Special Leave Petition as against the Judgment passed in OSA.Nos.147 & 148 of 2002 and the same was admitted and was converted into civil appeal. According to the applicant/first defendant, the parties having become old, decided to settle the dispute amongst themselves amicably and several appeals pending on the file of the Hon'ble Supreme Court was withdrawn and final decree was passed. According to the applicant/first defendant, during the pendency of



the suit CS.No.522 of 1992, OSA Nos.147 & 148 of 2002 and the appeals on the file of the Hon'ble Supreme Court, the plaintiff was silent and did not show any interest in the properties sought to be partitioned.

7. It is the case of the first respondent/plaintiff that being a son of the deceased Padmavathy, the first respondent/plaintiff is entitled for partition as prayed for in this suit. According to him, the suit A schedule property was purchased by his late mother Padmavathy out of her own funds and therefore, he being her son is entitled for 1/3rd share in the suit A schedule property and the defendants 1 & 2 who are his father and brother respectively are also equally entitled for 1/3rd share. It is also the contention of the plaintiff that the suit B, C & D schedule properties were inherited by his late mother Padmavathy as ancestral properties and therefore, as per section 15(2) of Hindu Succession Act his father namely the applicant/first defendant is not entitled for any share in those properties.

8. The second respondent/second defendant who is the son of the applicant/defendant and the brother of the first respondent/plaintiff has also filed counter affidavit supporting the case of his father namely the applicant/first defendant. He would also submit in his counter affidavit that his mother if she was alive, would not have wished to delay the sale and



division of joint undivided properties that she inherited from her mother.

Hence, he has no other go excepting to adopt the substantial portion of the affidavit filed by his father, the applicant/first defendant.

Discussion:

9. Admittedly, the first respondent/plaintiff and the second respondent/second defendant are the sons of the applicant/first defendant as well as the deceased Padmavathy in respect of whose property, the partition suit has been filed.

10. The case of the plaintiff is that the suit A schedule property was self-acquired property of his late mother Padmavathy and therefore, the plaintiff and the defendants 1 and 2 are each entitled to get 1/3rd share after the demise of his mother namely Padmavathy. However, according to the Plaintiff, insofar as suit B, C & D schedule properties are concerned, being properties inherited by his late mother Padmavathy from her ancestors, the applicant/first defendant being the husband of the deceased Padmavathy and being ancestral properties, is not entitled for any share as per section 15 (2) of the Hindu Succession Act and therefore, the properties will have to be divided only between the petitioner and the second defendant who is his brother in equal shares.



11. However, it is the contention of the applicant / first defendant that he is entitled for 1/3rd share in each of the properties as his wife namely Padmavathy did not die issueless, but died leaving behind the plaintiff and the second defendant as her children. According to him, as per section 15(1) of the Hindu Succession Act, the applicant/first defendant is also entitled for 1/3rd share in suit B, C & D schedule properties also, apart from getting 1/3rd share in the suit A schedule property which is admitted by the plaintiff.

12. The applicant/first defendant has also filed this application for rejection of plaint on the ground of under valuation of the suit as according to him, the suit has to be valued under section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act. But the plaintiff has valued the suit under section 37(2) of the Court Fees as if he is in possession of the properties. According to the applicant/first defendant, the plaintiff is not in possession of the suit properties and therefore, only section 37(1) of the Tamil Nadu Court Fees and suit Valuation Act gets attracted and only in accordance with the said section court fees will have to be paid which is much higher than under section 37(2) which is a fixed Court Fee.

13. The second defendant has also supported the stand taken by the applicant/first defendant in the rejection of the plaint application, but at the



same time, he has also stated that only due to the fact that his mother late Padmavathy would not have wished the delay in the sale and division of joint undivided properties has agreed to the stand taken by the applicant /first defendant in this application filed to reject the plaint.

14. The issue raised by the applicant/first defendant though may be correct in some aspects but when the plaintiff is admittedly his own son but is also having a legal right to sue for partition in respect of properties left behind by his late mother Padmavathy, rejection of the plaint application is not maintainable that too, when the applicant/first defendant admits that the first respondent/plaintiff is his son and is entitled for 1/3rd share in all the suit schedule properties.

15. The first respondent/plaintiff has also averred in the plaint that whenever he is in India, he used to stay at Velacherry where the flats have been constructed during life time of his mother and properties are in the joint possession of the plaintiff and the defendants 1 and 2. While that be so, that too, when the suit has been filed for partition by a son against his father and his brother in respect of properties owned by his late mother Padmavathy, this Court cannot decide without any undisputed evidence to



reject the plaint. It is settled law that while deciding an application for rejection of plaint, a Court will have to see only the plaint averments alone.

16. The plaintiff has paid the fixed court fee under section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act claiming to be in joint possession of the suit schedule properties along with the defendants 1 & 2. The plaint also cannot be rejected in part though some of the contentions raised by the applicant/first defendant may be found to be true but on the face of the plaint, it is clear that the plaintiff being a son of the deceased Padmavathy is having a share in all the suit schedule properties. This Court while deciding an application under Order 7 Rule 11 CPC seeking for rejection of plaint has to see only the plaint averments alone. In the case on hand, the plaint averments disclose that there is cause of action against the 1st defendant and the Court fee valuation has been done only based on the plaint averments.

17. The other contention raised by the applicant / first defendant viz., doubting as to whether the first respondent / plaintiff has signed the plaint in January 2020, due to Covid-19 lock down banning foreign visitors to India is concerned, the same cannot be decided under Order 7 Rule 11 application



contention is also rejected by this Court.

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18. The Hon'ble Supreme Court in the case of **Sejal Glass Ltd. vs Navilan Merchants Pvt. Ltd** reported in **(2018) 11 SCC 780** has also held that the plaint cannot be rejected in part under Order 7 Rule 11 CPC, but can be rejected only as a whole. In the case on hand, the applicant / first defendant admits that the plaintiff is entitled for 1/3rd share in the suit schedule properties left behind by Padmavathy but only claims that the suit framed by the plaintiff is not in accordance with law as under Section 15(2) of the Hindu Succession Act applies only to cases where the deceased family has not left behind any issues which is not applicable to the facts of the instant case where the deceased female has left behind issues namely the plaintiff and the second defendant. As held by the Hon'ble Supreme Court, the said contention cannot be raised in the rejection of plaint application as plaint cannot be rejected in part, but can be rejected only in its entirety if at all.

19. The relevant paragraph of the aforesaid decision of the Hon'ble Supreme Court 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 for 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."

What is important to remember is that the provision refers to the "plaint" which necessarily means the plaint as a whole. It is only where the plaint as a whole does not disclose a cause of action that Order 7 Rule 11 springs into being and interdicts a suit from proceeding.

20. In the case on hand, the applicant / first respondent admits that the first respondent / plaintiff has got cause of action to file the suit for partition in respect of his late mother's property but his only contention is that he cannot exclude the applicant / first defendant from getting 1/3rd share in the Schedule B, C, D properties also on the ground that the said properties were ancestral properties inherited by the first respondent / plaintiff's late Mother who is also the wife of the applicant / first defendant. Insofar as the suit schedule-A property is concerned, the applicant / first respondent has not questioned the legal right of the first respondent / plaintiff to claim partition of 1/3rd undivided share in the said property. It is clear that the applicant /



first defendant is only aggrieved by certain portions of the pleadings and some of the prayers made by the first respondent in the plaint. As held by the Hon'ble Supreme Court in such cases, Order 7 Rule 11 CPC does not get attracted as it will amount to rejection of part of a plaint, which is not permissible under law as only the whole plaint can be rejected as per Order 7 Rule 11 CPC.

21. The contentions raised by the applicant / first defendant if at all can be decided only in an application filed under Order 6 Rule 16 CPC meant for striking down the pleadings. Therefore, this Court is of the considered view that the application for rejection of plaint filed by the applicant / first defendant seeking for rejection of the entire plaint on the ground that part of the pleadings and some of the prayers sought for in the plaint are not in accordance with law viz., Section 15 of the Hindu Succession Act is not maintainable in law.

22. Even according to the applicant/first defendant, the plaintiff is having a share in all the suit schedule properties. The issue raised by the applicant/first defendant viz., whether the first respondent/defendant is entitled to $\frac{1}{2}$ share or $\frac{1}{3}$ rd share in suit B, C, D properties are concerned are triable issues, which can be decided after only trial and not in an application



filed under Order 7 Rule 11 CPC seeking for rejection of plaint.

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23. This Court understands the agony of the applicant / first defendant who is the father of the first respondent / plaintiff but at the same time, any application or any other litigation for that matter will have to be decided only in accordance with law. Since the application filed by the applicant / first defendant for rejection of plaint even before trial is not maintainable for the reasons stated supra, the agony of the applicant / first defendant due to the alleged conduct / behaviour of the first respondent / plaintiff cannot be redressed by this Court at this stage and can be redressed if at all only after trial.

24. For the foregoing reasons, there is no merit in the application filed by the applicant / first respondent seeking for rejection of plaint. Accordingly, A. No.478 of 2021 is dismissed.

Post the connected interlocutory applications for hearing on 05.01.2022.

Sd./- A.Q.J.,

06/12/2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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