



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. (PD) No.229 of 2021

and

C.M.P.No.2143 of 2021

1.S.Suganya
2.S.Ramgopal
3.Umamaheswari
4.S.Vaishnavi

...Petitioners

Vs

S.Premnarayan

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.1 of 2020 in O.S.No.148 of 2018 on the file of the learned II Additional District and Sessions Judge, Erode dated 28.10.2020.

For Petitioners : Mr.V.S.Kesavan
For Respondent : R.Bharanidharan

O R D E R

The present revision petition has been filed to set aside the order dated 28.10.2020, passed by the learned II Additional District and Sessions Judge, Erode, in I.A.No.1 of 2020 in O.S.No.148 of 2018, in and by which the interim application filed by the revision petitioner for the rejection of plaint was dismissed.

2. The suit was filed by the respondent/plaintiff for possession, damages for use and occupation on the basis of a Gift settlement deed dated 07.08.2013 said to have been executed by her grand mother. The suit was filed in the year 2019 for the above said relief, the executant of settlement deed K.Rajammal died on 27.09.2019. The interim application has been preferred in the year 2020 on the ground that on the date when the suit was filed, the plaintiff did not have any cause of action to file the suit and therefore, the plaint is hit by Order VII Rule 11 of the CPC and therefore the plaint has to be rejected.

3. The said contention of the petitioners herein was opposed by the plaintiff stating that the plaint discloses a cause of action and validity of cause of action has to be adjudicated only at the time of trial and mere pressing of the cause of action is invalid one without trial is impermissible and further when the suit is ripe for trial after written statement having



been filed the interim application hit by delay and latches. The trial Court had considered the materials placed before it more especially Ex.R1, copy of the settlement deed and also the various contention and the specific relief under Order VII Rule 11(A) CPC has dismissed the same. The interim application filed by the revision petitioners on the ground that the defendant had already filed the written statement as early as on 12.10.2018 and issues were also framed in the year 2018 itself and the suit is at the stage of trial. Further, after a span of two years the present petition for rejection of plaint has been filed with the above said prayer, which is impermissible and accordingly the interim application was set aside. Challenging which, the present civil revision petition has been filed.

4. Similar contention advanced before the trial Court has been advanced before this Court as well by the learned counsel appearing for the petitioners and it is submitted that the trial Court has not appreciated Order VII Rule 11 CPC., in a proper perspective and as held that the validity of the cause of action would be gone into only at the time of trial and further the written statement having been filed and issues having been framed as early as in the year 2018, the rejection of plaint sought for by the petitioners cannot be sustainable. The said finding recorded by the trial Court is perverse and accordingly the same deserves to be set aside and the revision petition is liable to be allowed.

5. Heard and perused the materials available on record.

6. A perusal of the materials available on record reveals that the suit has been laid as early as in the year 2018 and written statement has been filed and issues are also framed in the year 2018, the petitioners having filed the written statement and allowed to frame the issues and making the suit ripe for trial cannot turn back on a later point of time, more especially after two years and seek for rejection of the plaint. Further, the executant had died as early as on 27.09.2019 and though the suit has been laid even in the year 2018, the petitioner having allowed the suit to proceed, without presenting the application for rejection of plaint at the appropriate stage and participating in the process till the year 2020 cannot turn back now and contend that the plaint is liable to be rejected. Further, the validity of the cause of action is an issue which has to be adjudicated. At the time of trial the trial Court had gone into the rights and passed the order at this point of time, unnecessarily the parties have been placed evidence either proving or disproving is extended. The trial Court has further found that the cause of action, which is based on the settlement deed cannot be dismissed on the ground that the cause of action is premature. The findings recorded by the



trial Court in the considered view of this Court are on the basis of the materials available on record and are only sustainable and the same does not call for any interference.

7. Accordingly, the present civil revision petition stands dismissed. No costs. Consequently, connected Miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The II Additional District and Sessions Judge,
Erode

AKM/30.04.21/3P-2C/

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