

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 01.04.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. (PD) No.753 of 2021

and

C.M.P.No.6179 of 2021

N.Meenakshi

...Petitioner

Vs

U.Rajkumar

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order 12.12.2018 passed in I.A.No.590 of 2018 in O.S.No.1551 of 2012 on the file of the IV Additional District Munsif Judge, Coimbatore.

For Petitioner : Mr.K.Myl Samy

For Respondent : Mr.S.Saravanakumar

ORDER

The prayer sought for in the revision petition is to set aside the order dated 12.12.2018 passed in I.A.No.590 of 2018 in O.S.No.1551 of 2012 on the file of the IV Additional District Munsif Judge, Coimbatore.

2. The suit was filed by the petitioner for restraining the defendants, their men and agents from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property in any manner either by removing the fence or encroaching the plaintiff's property by a decree of permanent injunction. The interim application has been preferred in the year 2018 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 learned counsel for the petitioner submitted that the order of the trial Court in dismissing the petition filed by the petitioner under Order VII Rule 11 of CPC seeking for rejection of plaint is highly erroneous, illegal, perverse, total non- application of mind and hence, the same is liable to be set aside. The learned Judge ought to have seen that the respondent being plaintiff does not disclose his clear right to sue against the petitioner. Therefore, the suit filed by the respondent as against the petitioner is vexatious and the same has to be rejected at the outset. Further, the learned counsel submits that the learned judge ought

to have seen that the respondent is deriving title based upon a compromise decree passed in O.S.No.2182 of 1990. He would submit that the learned Judge ought to have seen that as per the averments made in the plaint, the suit pathway was sold to the petitioner by the first defendant. Aggrieved against the order of the trial Court, the present civil revision petition has been filed.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. When the interlocutory application was taken up for hearing, the petitioner had stated therein that without seeking declaration of ownership over the pathway and the petitioner's properties, the respondent cannot claim injunction against the petitioner or against the other defendant as an absolute owner. It was further stated that the respondent was also a party to the compromise final decree passed by the Court and hence, the suit to set aside the final decree must have been filed within a period of three years from the date of final decree, but the same was filed the suit after a lapse of almost 23 years, which is barred

by limitation and hence, the petitioner submitted that there is no cause of action and the plaint is liable to be rejected.

6. Per contra, the respondent had filed a counter affidavit contending that the petition to reject the plaint on the ground that there is no cause of action against the petitioner is illegal, since the petitioner herself had admitted that the alleged sale deed stands in the name of the petitioner and her deceased husband. It was further contended that the petitioner is liable to prove that she is a bonafide purchaser and also to prove that the alleged sale deed executed by the first defendant is legally void and enforceable, failing which, the application is not maintainable, since there is no ingredients to entertain the same as contemplated under Order VII Rule 11 of CPC.

7. The learned IV Additional District Munsif, Coimbatore, after carefully perusing the submissions made on either side, held that in view of Order VII Rule 11(1) of CPC, the plaint is liable to be rejected, if it does not disclose a cause of action. The learned Judge further held that the whether the plaintiff's entitlement for permanent injunction without

seeking the relief of declaration cannot be decided under Order VII Rule 11 of CPC and the petitioner had not made any good grounds for rejecting the plaint, which ultimately resulted in dismissal of the application.

8. A perusal of the materials available on record reveals that the suit has been laid as early as in the year 2012 and the interlocutory application has been filed after a period of six years for rejection of the plaint. Further, the validity of the cause of action is an issue which has to be adjudicated. The trial Court relied on the provisions of Order VII Rule 11(1) of the Civil Procedure Code to reject the plaint. 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.

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

01.04.2021

Index: Yes/No
Speaking order/Non-Speaking Order
sbn

To

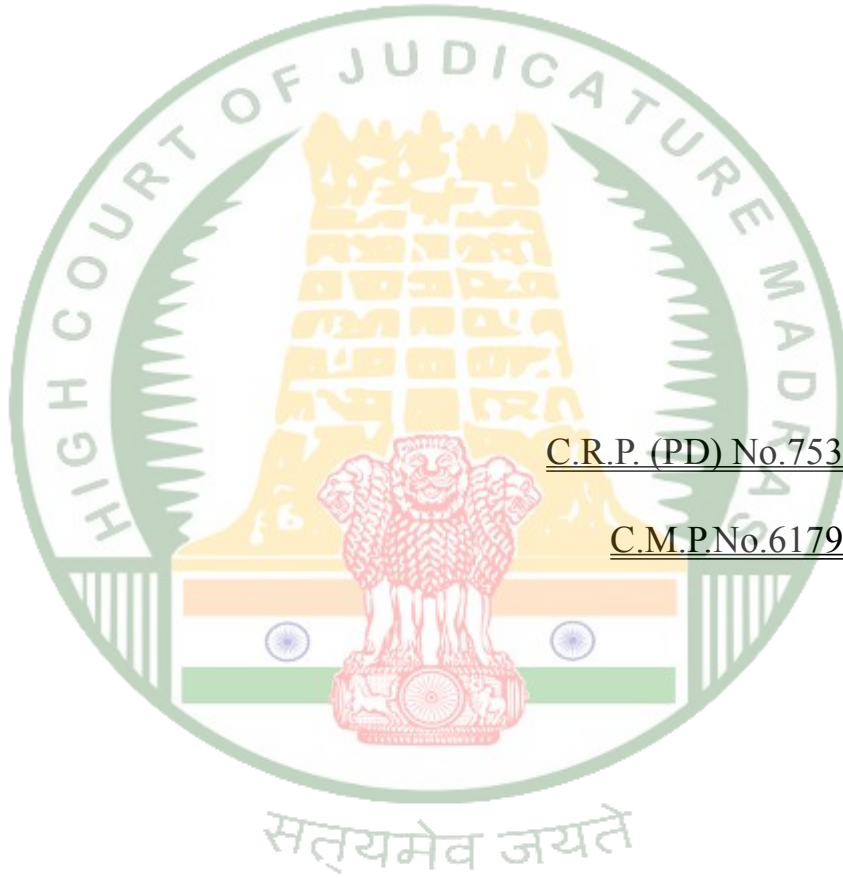
The IV Additional District Munsif Court,
Coimbatore.



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V.BHAVANI SUBBAROYAN, J.

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