

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2021

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.1300 of 2016  
and C.M.P.No.7268 of 2016

Mamtha A.Muthaa

.. Petitioner

Vs.

M.Krishnaveni

.. Respondent

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.03.2016, made in I.A.No.14016 of 2015 in O.S.No.833 of 2015, on the file of the XV Assistant City Civil Court, Chennai.

For Petitioner : Mr.V.Ravi

For Respondent : No appearance

**ORDER**

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the fair and decreetal

order dated 16.03.2016, made in I.A.No.14016 of 2015 in O.S.No.833 of 2015, on the file of the XV Assistant City Civil Court, Chennai.

2.The petitioner is defendant and respondent is plaintiff in O.S.No.833 of 2015, on the file of the XV Assistant City Civil Court, Chennai. The respondent filed the said suit for permanent injunction, restraining the petitioner, her men and agents, from interfering and dispossessing the respondent from peaceful possession and enjoyment of the suit property. The petitioner filed written statement in July, 2015, denying the averments in the plaint. The petitioner also filed I.A.No.14016 of 2015 on 16.09.2015, under Order VII Rule 11 of C.P.C., to reject the plaint on the ground that the plaint does not disclose the cause of action, suit is barred by limitation and respondent did not seek relief for declaration of title and mere injunction against true owner is not maintainable. According to the petitioner, the respondent received sale consideration and executed sale deed and handed over the possession of the suit property. The agreement of sale is dated 21.11.2011 and the sale

deed is executed on 08.12.2011. The alleged sale letter dated 03.06.2013 is a fabricated one. The suit filed on 09.02.2015 is barred by limitation and prayed for rejection of plaint.

3.The respondent filed counter affidavit and contended that she is seeking permanent injunction and she is not seeking any relief to set aside the sale deed. The petitioner agreed to purchase the suit property for a sum of Rs.1,21,21,541/- and on believing the assurance given by the petitioner to pay the remaining amount after execution of sale deed, the respondent executed the sale deed without knowing the consequences of the same, in which the sale consideration was shown only as Rs.75,00,000/-. The respondent did not hand over the possession of the suit property. The petitioner, taking advantage of the litigation between the respondent and third party viz., Sankaran, agreed to pay another sum of Rs.30,00,000/-, paid a sum of Rs.5,00,000/- on 03.06.2013 and promised to pay the remaining sum of Rs.25,00,000/- towards additional sale consideration of Rs.30,00,000/- over and above the sale

consideration of Rs.75,00,000/-, mentioned in the sale deed. In view of the said payment, question of limitation does not arise. Without paying the said amount, the petitioner is trying to dispossess the respondent by unlawful means. Hence, the respondent filed suit for injunction. The suit filed by the respondent discloses cause of action and suit is not barred by limitation and prayed for dismissal of I.A.No.14016 of 2015. The learned Judge, considering the averments in the plaint, affidavit, counter affidavit and judgments relied on by the counsel for the petitioner, dismissed I.A.No.14016 of 2015, holding that the plaint discloses a cause of action and relief sought for in the plaint is not barred by limitation and as such, the plaint does not attract any of the provisions of the Order VII Rule 11 of C.P.C., to reject the same.

4. Against the said order dated 16.03.2016, made in I.A.No.14016 of 2015 in O.S.No.833 of 2015, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel appearing for the petitioner submitted that without seeking declaration of title, the suit filed by the respondent is not maintainable. The respondent executed and registered a sale deed on 08.12.2011 and handed over the possession to the petitioner. The petitioner is in possession of the suit property. The learned Judge failed to properly consider the principles laid down in Order VII Rule 11 of C.P.C. The learned Judge failed to consider the contradictory statement of respondent in paragraph no.3 of the plaint, with regard to sale consideration. The counsel for the petitioner further submitted that the plaint does not contain any valid points for conducting trial. The learned counsel appearing for the petitioner, in support of his contentions, relied on the order of this Court dated 01.04.2016, made in **C.R.P.(PD).No.389 of 2016 & C.M.P.No.2096 of 2016** and the relevant paragraph is extracted as follows:

*“11.The learned trial Judge, without properly appreciating the facts and without properly applying the principles of law regarding the rejection of plaint, chose to arrive at an erroneous conclusion that the revision petitioners*

*failed to substantiate their case that the plaint was liable to be rejected on the ground of absence of cause of action against the revision petitioners as found from the plaint averments. The suit has been filed for mere injunction to restrain the persons holding title from developing the property and alienating or encumbering the property. The suit has been filed by a person, who has no privity of contract with the revision petitioners after obtaining a sale agreement from persons, who had already barred with title in favour of the revision petitioners. There cannot be a better case than the present suit to be an abuse of process of court, which can be checked by this court under its power of superintendence under Article 227 of the Constitution of India for even striking off the plaint.”*

6. Though the respondent entered appearance through counsel, when the matter is taken up for hearing, there is no representation for her.

7. Heard the learned counsel appearing for the petitioner and perused the entire materials available on record.

8. From the materials on record, it is seen that the respondent filed suit against the petitioner for permanent injunction, restraining the

petitioner, her men and agents, from interfering and dispossessing the respondent from peaceful possession and enjoyment of the suit property. According to the respondent, she is the owner of the suit property and she and petitioner entered into an agreement of sale to sell the suit property for total sale consideration of Rs.1,21,21,541/-. The petitioner paid Rs.75,00,000/- and agreed to pay the balance sale consideration after the conclusion of the litigation pending between the respondent and one Sankaran. Believing the said representation, the respondent executed the sale deed, mentioning the sale consideration as Rs.75,00,000/-, but did not hand over the possession to the petitioner. On these averments, the respondent filed suit for permanent injunction. The petitioner is seeking rejection of plaint on the ground that the plaint does not disclose the cause of action, barred by limitation and for bare injunction, without declaration of title against the true owner is not maintainable. In the application filed under Order VII Rule 11 of C.P.C. for rejection of plaint, the Court has to consider the provisions of Order VII Rule 11 of C.P.C., averments in the plaint and documents filed along with the plaint by the

plaintiff and only when the defendant substantiates any one of the provisions under Order VII Rule 11 of C.P.C., a suit can be rejected. The contention of the defendant in the written statement or in the affidavit filed in support of the application under Order VII Rule 11 of C.P.C. and documents relied on by the defendant cannot be taken into consideration while deciding the application filed under Order VII Rule 11 of C.P.C. The averments in the plaint has to be taken into consideration while deciding the application filed under Order VII Rule 11 of C.P.C. The Order VII Rule 11 of C.P.C. 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 returned 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 :*

*[Provided that the time fixed by the Court for the correction of  
the valuation or supplying of the requisite stamp-paper 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 from correcting the valuation or supplying  
the requisite stamp-paper , 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.]”*

9.The respondent filed suit for permanent injunction. A reading of the plaint as a whole discloses cause of action, as respondent has stated that believing the words of the petitioner, she executed and registered sale deed due to pendency of litigation between herself and Sankaran, without receiving the entire sale consideration and did not hand over the possession of the suit property. The respondent has also stated that she is in possession of the suit property and petitioner is trying to dispossess the respondent from the suit property by unlawful means. By these averments, it cannot be said that the suit does not disclose cause of action

and barred by limitation. It is for the respondent to prove that she is still in possession of suit property and petitioner is trying to dispossess the respondent by unlawful means, without paying balance sale consideration. Whether the suit is maintainable for not seeking relief of declaration has to be decided only based on the evidence let in by the parties during the trial. The same is not a criteria for rejecting the plaint in the application filed under Order VII Rule 11 of C.P.C. The facts of the order dated 01.04.2016 made in ***C.R.P.(PD).No.389 of 2016 & C.M.P.No.2096 of 2016***, relied on by the learned counsel for the petitioner is not applicable to the facts of the present case. The learned Judge has considered the averments in the plaint, documents filed along with the plaint and averments in the affidavit, counter affidavit and judgments relied on by the petitioner and dismissed I.A., by giving cogent and valid reasons. There is no error or irregularity in the order of the learned Judge, warranting interference by this Court.

For the above reasons, this Civil Revision Petition is dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes/No  
gsa

To

The XV Assistant Judge,  
City Civil Court, Chennai.

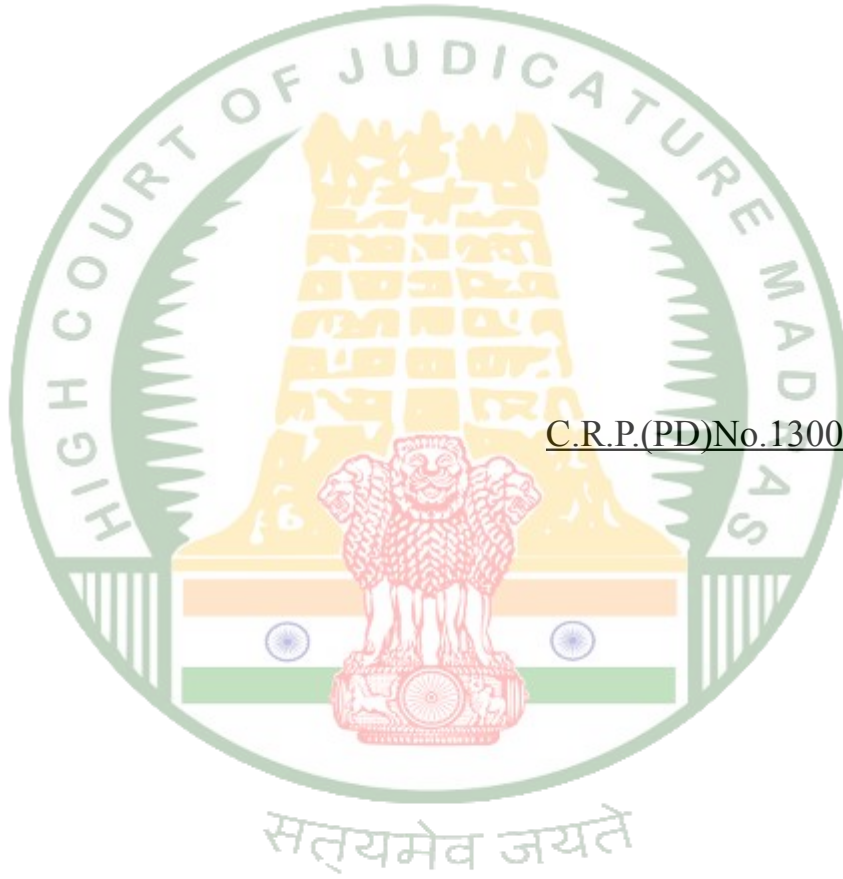


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**V.M.VELUMANI, J.**

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C.R.P.(PD)No.1300 of 2016

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