

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1473 of 2016
and C.M.P.No.8099 of 2016

1.K.M.Khader Mohideen

2.Indian Union Muslim League,
Tamil Nadu State Unit,
rep. By its General Secretary,
K.A.M. Muhammed Abubacker,
'Quaide Mileth Manzil',
36, Maraikair Labbai Street,
Mannady, Chennai 600 001.

.. Petitioners

Vs.

M.G.Dawood Miakhan

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 30.01.2015 made in I.A.No.21297 of 2010 in O.S.No.10304 of 2010 on the file of the VI Additional City Civil Court, Chennai.

For Petitioners : Mr.K.Ashok Kumar

For Respondent : Mr.A.Palaniappan

ORDER

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

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 30.01.2015 made in I.A.No.21297 of 2010 in O.S.No.10304 of 2010 on the file of the VI Additional City Civil Court, Chennai.

2.The petitioners are defendants in O.S.No.10304 of 2010 on the file of the VI Additional City Civil Court, Chennai (originally filed before the Original jurisdiction of this Court and numbered as C.S.No.284 of 2006). The respondent filed the said suit for a declaration, to declare the act of removing the respondent from primary membership of the 2nd petitioner by the 1st petitioner, on 11.12.2004, as illegal and unlawful and for a permanent injunction, restraining the 1st petitioner or his men from using the name of the Indian Union Muslim League (hereinafter referred to as IUML, for the sake of brevity) Party in the prefix or suffix or their

flag or use its symbol Ladder in any meeting or rally or for any canvassing for votes in the forthcoming Assembly Elections in the month of May, 2006. The petitioners filed I.A.No.21297 of 2010 (Formerly, Application No.1924 of 2006, filed before this Court, under Order VII Rule 11 of C.P.C.), to reject the plaint in O.S.No.10304 of 2010. According to the petitioners, the 1st petitioner is the President of the 2nd petitioner. On 18.02.2004, the functionaries of the 2nd petitioner, including four former Vice-Presidents and respondent met in Chennai and unanimously resolved that the 1st petitioner will be the 2nd petitioner's candidate for Vellore Parliamentary Constituency and that the 1st petitioner will contest in "Rising Sun" symbol of the D.M.K. Party. On the basis of said resolution, the 1st petitioner became member of the D.M.K. Party and filed his nomination paper and was elected as a Member of the Parliament. While so, within six months of resolution dated 18.02.2004, the four former Vice-Presidents filed C.S.No.615 of 2004 before this Court, for a declaration that the 1st petitioner ceased to be the member of the 2nd petitioner; consequential injunction restraining

the 1st petitioner from holding the post of the President of the 2nd petitioner and for a permanent injunction restraining the petitioners or their men from holding or convening the Governing Body Meeting of the Tamil Nadu State Indian Union Muslim League on 07.08.2004 at 10.30 a.m, in the Quaide Milleth Manzil, at No.36, Markayar Labbi Street, Mannadi, Chennai -1, as stated in the notice dated 29.07.2004 or at any other place or date or at places or future dates subsequently. The said plaintiffs also filed 5 applications viz., Original Application Nos.624, 625, 761 and 762 of 2004 and Application No.3540 of 2004, for interim orders in C.S.No.615 of 2004. All the applications were dismissed by a common order dated 29.10.2004 and they filed four appeals viz., O.S.A.Nos.279 to 282 of 2004 as against O.A.Nos.761, 624, 762 and 625 of 2004 respectively. Pending O.S.A.s, they filed another suit in C.S.No.977 of 2004. Both the suits are pending. O.S.As. were dismissed vide common order dated 17.08.2005. S.L.P. (Civil) No.12566 of 2006 filed by the said plaintiffs was also dismissed with a direction for speedy disposal of the said suit.

3.The respondent is acting against the interest of the 2nd petitioner.

The respondent filed nomination to contest in Chepauk Constituency in the Assembly Election, 2006, against the candidate of pre-poll alliance Democratic Progressive Alliance (hereinafter referred to as “DPA”, for the sake of brevity), in which the 2nd petitioner is a constituent and indulged in blatant anti-institutional activities. The membership of the respondent in IUML itself is to be decided and he has to prove the same. That being so, he cannot seek second prayer of injunction, restraining the 2nd petitioner from using the flag, symbol, etc. of IUML.

3(i) The question of twin membership of the 1st petitioner was already decided by this Court in Election Petition No.7 of 2004. The respondent, being the signatory of resolution dated 18.02.2004, cannot question the twin membership of the 1st petitioner. In any event, the issue raised by the respondent in the present suit is pending in this Court in C.S.Nos.615 and 977 of 2004. The present suit is bereft of material

particulars and there is no cause of action. The suit is barred by Section 9 and Order I Rule 8 of C.P.C. The suit is hit by provisions of *res judicata* and petitioners are estopped from filing the suit.

4.The respondent filed counter affidavit and denied all the averments and allegations made in the affidavit. The respondent stated that pendency of suits in C.S.Nos.615 and 977 of 2004, filed by the four former Vice-Presidents will not amount to *res judicata* against this respondent. This respondent contested in the election, he has not become member of other political party and he did not borrow the symbol of other political party. The allegation that there is no cause of action with regard to second limb of prayer seeking permanent injunction with regard to using the flag and symbol of IUML and the plaint is bereft of material facts and particulars is unfound, is without any basis. The respondent, in the plaint, has stated the cause of action for filing the suit and the relief sought. The respondent also denied that he is acting in collusion with the plaintiffs in two suits in C.S.Nos.615 and 977 of 2004 and the petitioner

in Election Petition No.7 of 2004 and the said contention cannot be a ground for rejection of plaint filed by the respondent. The respondent has made averments to substantiate the relief sought for in the suit. There is no reason to reject the plaint and prayed for dismissal of I.A.No.21297 of 2010 in O.S.No.10304 of 2010.

5.The learned Judge, considering the averments in the plaint, affidavit and counter affidavit, dismissed the I.A., holding that there is no sufficient ground for rejection of plaint as contemplated under Order VII Rule 11 of C.P.C and question of *res judicata* and *estoppel* can be decided only at the time of trial by letting in evidence and the respondent has made averments in paragraph no.21 of the plaint with regard to the cause of action.

6.Against the said order of dismissal dated 30.01.2015, made in I.A.No.21297 of 2010 in O.S.No.10304 of 2010, the present Civil Revision Petition has been filed.

7.The learned counsel appearing for the petitioners submitted that the learned Judge failed to see that an application for rejection of plaint can be filed at any stage of the suit. The learned Judge failed to see that even as per the averments in the plaint, the suit is barred as per Section 9, Order I Rule 8 of C.P.C. and barred by principles of *estoppel* and *res judicata*. The learned Judge failed to see that plaint does not disclose any cause of action, as 'disclosing a cause of action', necessarily means disclosing a 'live cause of action'. The learned Judge has not assigned any reasons for dismissing the application for rejection of plaint. The learned Judge has merely extracted the rival pleadings, provisions of Order VII Rule 11 of C.P.C. and without traversing the application on merits, has dismissed the application in a casual manner. The learned Judge failed to see that there is no disputed question arise in the suit and hence, there is no necessity to contest the trial. The learned counsel appearing for the petitioners further submitted that the respondent being the signatory to the resolution passed on 18.02.2004 wherein it was unanimously decided

that the 1st petitioner would contest under the “Rising Sun” symbol, is estopped from now alleging illegality and irregularity in the action of the 1st petitioner. There is no cause of action with regard to the second limb of the prayer seeking permanent injunction from using the flag or symbol of IUML and the plaint is bereft of material facts and particulars in this regard. The respondent having not agitated the matter earlier on the sole presumption that the resolution passed on 11.12.2004 was void *ab-initio*, now cannot seek the relief, after a lapse of more than one year and four months. The respondent is re-agitating the issue. The respondent is in the habit of taking dissent views against the petitioners. After O.S.No.12832 of 1996 filed by the petitioners ended in 2nd petitioner's favour, the respondent expressed regret for his conduct and he was re-admitted in the 2nd petitioner. The judgment and decree in O.S.No.12832 of 1996 is binding on the respondent. The respondent filed O.S.No.3104 of 2010 to declare the judgment and decree in O.S.No.12832 of 1996 as null and void.

7(i) The learned counsel appearing for the petitioners in support of his case, relied on the following judgments:

(i) (2020) 7 SCC 366 [*Dahiben Vs. Arvinbhai Kalyanji*

Bhanusali (Gajra) dead, through legal representatives and others]:

“23.1. We will first briefly touch upon the law applicable for deciding an application under Order VII Rule 11 CPC, which reads as under:

“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-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of exceptional nature for correction 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.”

23.2. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In *Azhar Hussain v. Rajiv Gandhi*¹ this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6. Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint², read in conjunction with

the documents relied upon, or whether the suit is barred by any law.

23.7. Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under :

“Order 7 Rule 14: Production of document on which plaintiff sues or relies.–

(1)Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2)Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3)A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4)Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

23.8. Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to

statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in [Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I & Anr.](#),⁴ which reads as :

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In [Hardesh Ores \(P.\) Ltd. v. Hede & Co.](#)⁵ the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact.

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

23.14. The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of [Saleem Bhai v. State of Maharashtra](#). The plea that

once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint 'shall' be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint."

(ii) **2021 SCC Online 238 [K.Akbar Ali Vs. K.Umar Khan and**

others]:

"7. In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in *ITC v. Debts Recovery Appellate Tribunal* reported in AIR 1998 SC 634, clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order VII Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court."

(iii) **2021 SCC Online SC 565 [Srihari Hanumandas Totala Vs.**

Hemant Vithal Kamat and others]:

"11. The application under Order 7 Rule 11 was dismissed by the Trial Judge on 1 July 2019 for the following reasons:

- (i) With respect to non-payment of the court fee, according to Order 7 Rule 11(c), a plaint would only be rejected if the plaint is written on a paper that is insufficiently stamped, and the court requires the plaintiff to supply the requisite stamp paper within a time fixed and despite such an order, the plaintiff fails to do so. In this case, no such order was passed by the court;
- (ii) The cause of action had been specifically pleaded by the first respondent in paragraph 5 of the plaint; and IA No. VII dated 25

March 2019 in OS No. 138/2008.

(iii) In order to reject a plaint for the suit being barred by any law under Order 7 Rule 11(d), the court needs to be guided by the averments in the plaint and not the defence taken. The grounds taken by the appellant – that the issues raised had been decided by the decree of the Trial Court in OS No. 103/2007 and affirmed on appeal by the High Court – were the defence of the appellant. Thus, these cannot be taken into account while rejecting a plaint under Order 7 Rule 11 of the CPC. Moreover, the issue as to whether the suit is barred by res judicata cannot be decided in an Order 7 Rule 11 application but has to be decided in the suit.

.....

17. Order 7 Rule 11(d) of CPC provides that the plaint shall be rejected “where the suit appears from the statement in the plaint to be barred by any law”. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case. Before proceeding to refer to precedents on the interpretation of Order 7 Rule 11(d) CPC, we find it imperative to refer to Section 11 of CPC which defines res judicata:

“11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

.....

19.At this stage, it would be necessary to refer to the decisions that particularly deal with the question whether res judicata can be the basis or ground for rejection of the plaint. In *Kamala & others v. KT Eshwara Sa*, the Trial Judge had allowed an application for rejection of the plaint in a suit for partition and this was affirmed by the High Court. Justice S B Sinha speaking for the two judge bench examined the ambit of Order 7 Rule 11(d) of the CPC and observed:

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.”

20.The Court further held:

“23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question

involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained.”

.....
22. Similarly, in Soumitra Kumar Sen (supra), an application was moved under Order 7 Rule 11 of the CPC claiming rejection of the plaint on the ground that the suit was barred by res judicata. The Trial Judge dismissed the application and the judgement of the Trial Court was affirmed in revision by the High Court. Justice AK Sikri, while affirming the judgment of the High Court held:

“9. In the first instance, it can be seen that insofar as relief of permanent and mandatory injunction is concerned that is based on a different cause of action. At the same time that kind of relief can be considered by the trial court only if the plaintiff is able to establish his locus standi to bring such a suit. If the averments made by the appellant in their written statement are correct, such a suit may not be maintainable inasmuch as, as per the appellant it has already been decided in the previous two suits that Respondent 1-plaintiff retired from the partnership firm much earlier, after taking his share and it is the appellant (or appellant and Respondent 2) who are entitled to manage the affairs of M/s Sen Industries. However, at this stage, as rightly pointed out by the High Court, the defense in the written statement cannot be

gone into. One has to only look into the plaint for the purpose of deciding application under Order 7 Rule 11 CPC. It is possible that in a cleverly drafted plaint, the plaintiff has not given the details about Suit No. 268 of 2008 which has been decided against him. He has totally omitted to mention about Suit No. 103 of 1995, the judgment wherein has attained finality. In that sense, the plaintiff-Respondent 1 may be guilty of suppression and concealment, if the averments made by the appellant are ultimately found to be correct. However, as per the established principles of law, such a defense projected in the written statement cannot be looked into while deciding application under Order 7 Rule 11 CPC.

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26. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

- (i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;
- (ii) The defense made by the defendant in the suit must not be considered while deciding the merits of the application;
- (iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and
- (iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused.

27. In the present case, a meaningful reading of the plaint makes it abundantly clear that when the first respondent instituted the subsequent suit, he had been impleaded as the second defendant to the earlier suit (OS No. 103/2007) that was instituted on 13 March 2007. The first respondent instituted the subsequent suit, OS 138/2008 though he had knowledge of the earlier suit.

The plaint in the subsequent suit which was instituted by the first respondent indicates that the he was aware of the mortgage executed in favour of KSFC, that KSFC had executed its charge by selling the property for the recovery of its dues and that the property had been sold on 8 August 2006 in favour of the predecessor of the appellant. As a matter of fact, the plaint contains an averment that there was every possibility that the first respondent may suffer a decree for possession in OS 103/2007 which “has forced” the first respondent to institute the suit for challenging the legality of the sale deed. Given the fact that an argument was raised in the previous suit regarding no challenge having been made to the auction and the subsequent sale deed executed by the KFSC, it is possible that the first respondent then decided to exercise his rights and filed the subsequent suit. Be that as it may, on a reading of the plaint, it is evident that the first respondent has not made an attempt to conceal the fact that a suit regarding the property was pending before the civil court at the time. It is also relevant to note that at the time of institution of the suit (OS No. 138/2008) by the first respondent, no decree had been passed by the civil court in OS No. 103/2007. Thus, the issues raised in OS No. 103/2007, at the time, had not been adjudicated upon. Therefore, the plaint, on the face of it, does not disclose any fact that may lead us to the conclusion that it deserves to be rejected on the ground that it is barred by principles of res judicata. The High Court and the Trial Court were correct in their approach in holding, that to decide on the arguments raised by the appellant, the court would have to go beyond the averments in the plaint, and peruse the pleadings, and judgment and decree in OS No. 103/2007. An application under Order 7 Rule 11 must be decided within the four corners of the plaint. The Trial court and High Court were correct in rejecting the application under order 7 Rule 11(d).”

The learned counsel appearing for the petitioners prayed for setting aside the order of the learned Judge and allowing the Civil Revision Petition.

8.Per contra, the learned counsel appearing for the respondent reiterated the averments in the counter affidavit filed in the I.A. and submitted that the respondent has made averments in the plaint and has disclosed cause of action for the relief which he is seeking in the plaint. The respondent is not a party to the other suits and Election Petition referred to by the petitioners and relief sought for in these two suits C.S.No.615 and 977 of 2004 are entirely different from the relief sought for in the present suit. Further, these suits are still pending and no final judgment is delivered. In view of the same, the question of *estoppel* or *res judicata* does not arise. The respondent is not a party to the said suit and matter is not substantially dealt with in the earlier suits and hence, prayed for dismissal of the Civil Revision Petition.

8(i) In support of his case, the learned counsel relied on the following judgments:

(i) **2021 SCC Online SC 565 [Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and others]**, which was also relied on by the

learned counsel appearing for the petitioners:

“17. Order 7 Rule 11(d) of CPC provides that the plaint shall be rejected “where the suit appears from the statement in the plaint to be barred by any law”. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case. Before proceeding to refer to precedents on the interpretation of Order 7 Rule 11(d) CPC, we find it imperative to refer to Section 11 of CPC which defines res judicata:

“11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

18. Section 11 of the CPC enunciates the rule of res judicata : a court shall not try any suit or issue in which the matter that is directly in issue has been directly or indirectly heard and decided in a ‘former suit’. Therefore, for the purpose of adjudicating on the issue of res judicata it is necessary that the same issue (that is raised in the suit) has been adjudicated in the former suit. It is necessary that we refer to the exercise taken up by this Court while adjudicating on res judicata, before referring to res judicata as a ground for rejection of the plaint under Order 7 Rule 11. Justice R C Lahoti (as the learned Chief Justice then was), speaking for a two Judge bench in [V. Rajeshwari v. T.C. Saravanabava](#)⁵ discussed the plea of res judicata and the particulars that would be required to prove the plea. The court held that it is necessary to refer to the copies of the pleadings,

issues and the judgment of the 'former suit' while adjudicating on the plea of res judicata:

"11. The rule of res judicata does not strike at the root of the jurisdiction of the court trying the subsequent suit. It is a rule of estoppel by judgment based on the public policy that there should be a finality to litigation and no one should be vexed twice for the same cause.

13. Not only the plea has to be taken, it has to be substantiated by producing the copies of the pleadings, issues and judgment in the previous case. Maybe, in a given case only copy of judgment in previous suit is filed in proof of plea of res judicata and the judgment contains exhaustive or in requisite details the statement of pleadings and the issues which may be taken as enough proof. But as pointed out in [Syed Mohd. Salie Labbai v. Mohd. Hanifa](#) [(1976) 4 SCC 780] the basic method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as res judicata. It is risky to speculate about the pleadings merely by a summary of recitals of the allegations made in the pleadings mentioned in the judgment. The Constitution Bench in [Gurbux Singh v. Bhooralal](#) [AIR 1964 SC 1810 : (1964) 7 SCR 831] placing on a par the plea of res judicata and the plea of estoppel under Order 2 Rule 2 of the Code of Civil Procedure, held that proof of the plaint in the previous suit which is set to create the bar, ought to be brought on record. The plea is basically founded on the identity of the cause of action in the two suits and, therefore, it is necessary for the defence which raises the bar to establish the cause of action in the previous suit. Such pleas cannot be left to be determined by mere speculation

or inferring by a process of deduction what were the facts stated in the previous pleadings. Their Lordships of the Privy Council in *Kali Krishna Tagore v. Secy. of State* for India in Council [(1887-88) 15 IA 186 : ILR 16 Cal 173] pointed out that the plea of res judicata cannot be determined without ascertaining what were the matters in issue in the previous suit and what was heard and decided. Needless to say, these can be found out only by looking into the pleadings, the issues and the judgment in the previous suit.

.....
20. The Court further held:

“23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face disclose no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained.”

(ii) (2008) 12 SCC 661 [Kamala and others Vs. K.T.Eshwara SA

and others];

“21. Order VII, Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order VII, Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order VII, Rule 11 of the Code is the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order VII, Rule 11 of the Code is one, Order XIV, Rule 2 is another.”

9. Heard the learned counsel appearing for the petitioners as well as the respondent and perused the entire materials available on record.

10. The petitioners have filed I.A.No.21297 of 2010, under Order VII Rule 11 of C.P.C., to reject the plaint in O.S.No.10304 of 2010. The petitioners are seeking for rejection of plaint on the following grounds:

- (i) the suit is barred by law;
- (ii) the suit is hit by principles of *res judicata* and respondent is *estopped* from filing the present suit for relief sought for; and
- (iii) the plaint is bereft of material particulars and does not disclose

any cause of action.

11.It is well settled that a plaint can be rejected if the defendant satisfies any one of the ingredients contemplated under Order VII Rule 11 of C.P.C. The said provision 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.]”

12.The application for rejection of plaint can be considered and decided only based on the averments made in the plaint and documents relied on by the plaintiff. The averments in the written statement, documents enclosed and averments in the affidavit filed in support of application for rejection of plaint are not relevant to decide the application praying for rejection of plaint. This principle has been decided in number of cases, by this Court as well as by the Hon'ble Apex Court. In the judgment of the Hon'ble Supreme Court reported in **(2020) 7 SCC 366** (*cited supra*), relied on by the learned counsel for the petitioners, in paragraph nos.23.8, 23.9 and 23.10, extracted above, the Hon'ble Apex Court has held that to decide the application filed under Order VII Rule 11 of C.P.C., the averments made in the plaint and documents relied on by the plaintiff have to be considered. In paragraph no.23.10, it has been held that pleas taken by the defendant in the written statement and application for rejection of plaint on merits would be irrelevant and

cannot be adverted to and taken into consideration. In view of the same, the averments in the plaint and documents filed along with the plaint alone are the criteria to decide the issue of rejection of plaint.

13. Res judicata and estoppel -

Section 11 of C.P.C. deals with the issue of *res judicata*. The said Section reads as follows:

“11. Res judicata— No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied

or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.—An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

As per this Section, a subsequent suit will be hit by principles of *res*

judicata only when earlier suit is between the same party as in the subsequent suit or subsequent suit is by parties claiming through parties of earlier suit. Secondly, the issue in earlier suit and subsequent suit must be the same or substantially the same. Thirdly, the earlier suit must have been substantially dealt with and finally decided.

13(i) Though the petitioners raised grounds with regard to pendency of earlier suit and the present suit is barred by *res judicata*, at the time of dictating the order, the learned counsel for the petitioners submitted that the petitioners are not pressing the said point and submitted that only due to the judgments in O.S.No.12832 of 1996 and Election Petition No.7 of 2004, the present suit is hit by principles of *res judicata*. Further, the suit is barred by Section 9 of C.P.C. The Election Petition No.7 of 2004 was not filed by the respondent and he is not a party to the Election Petition. The contention of the learned counsel appearing for the petitioners is that the respondent has colluded with the plaintiffs in two suits referred to above and the petition in E.P., cannot be

considered in the I.A. filed for rejection of plaint. Even if the said contention is correct, it will not amount to *res judicata* or *estoppel* for the present suit. As far as the suit in O.S.No.12832 of 1996 is concerned, the same was filed by the petitioners against the respondent to remove the respondent from the membership of the party. After the judgment in the said suit, it is admitted by the petitioners that respondent apologised and he was admitted into party. Therefore, the judgment in the said suit does not amount to *res judicata*.

14. Section 9 and Order I Rule 8 of C.P.C.-

As far as Section 9 of C.P.C. is concerned, the Courts have jurisdiction to try all the civil suits, except the suits of which is expressly or impliedly barred. The said Section is extracted hereunder:

“9. Courts to try all civil suits unless barred— The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation I].—A suit in which the right to property or to an office is contested is a suit of a civil nature,

notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II]. For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.”

15.The learned counsel appearing for the petitioners, except stating that the present suit is barred as per Section 9 of C.P.C., has not stated on what ground the suit is barred by Section 9 of C.P.C. There is nothing on record to show that the relief sought for by the respondent in the present suit is barred by Section 9 of C.P.C.

15(i) As far as the Order I Rule 8 of C.P.C. is concerned, a reading of the plaint and relief sought for in the suit shows that the respondent is claiming the said relief in his individual capacity and he is not claiming any relief on behalf of the members of the 2nd petitioner. The contention of the learned counsel appearing for the petitioners that the second relief sought for by the respondent is in the nature for the benefit of the members of the 2nd petitioner and therefore, the respondent ought to have

obtained permission under Order I Rule 8 of C.P.C. is not acceptable, in view of the nature of the relief sought for by the respondent in the suit. Further, this ground is not a ground as contemplated under Order VII Rule 11 of C.P.C. and unless the petitioners are able to substantiate that plaint is liable to be rejected on any one of the ingredients of Order VII Rule 11 of C.P.C., the application has to be rejected.

16. Cause of Action -

According to the learned counsel appearing for the petitioners, the plaint is bereft of material particulars and does not disclose any cause of action. It is well settled that the plaint, in its entirety, has to be considered and found out whether the cause of action mentioned is real or illusory. It is open to the Courts to consider and find out whether, by clever drafting, an illusory cause of action is created for the suit. The learned counsel appearing for the respondent referred to the averments in the plaint and also paragraph no.21-cause of action portion and relief sought for in the plaint. A reading of the plaint shows that the respondent has categorically

stated the cause of action that arose for the suit. The cause of action mentioned in the plaint cannot be termed as illusory or as created by clever drafting.

17.The learned Judge, considering the entire materials placed before him, rightly dismissed the I.A. The judgments relied on by the learned counsel appearing for the petitioners do not advance the case of the petitioners. This Court is of the view that the petitioners have not made out any case for rejection of plaint and hence, there is no reason to interfere with the order of the learned Judge made in I.A.No.21297 of 2010 in O.S.No.10304 of 2010.

18.For the above reason, the Civil Revision Petition is dismissed. The learned counsel for the petitioners as well as the respondent submitted that initially an interim stay was granted till 18.08.2016 and subsequently, it was not extended. In view of the same, the suit was proceeded, the petitioners filed written statement and draft issues and it is

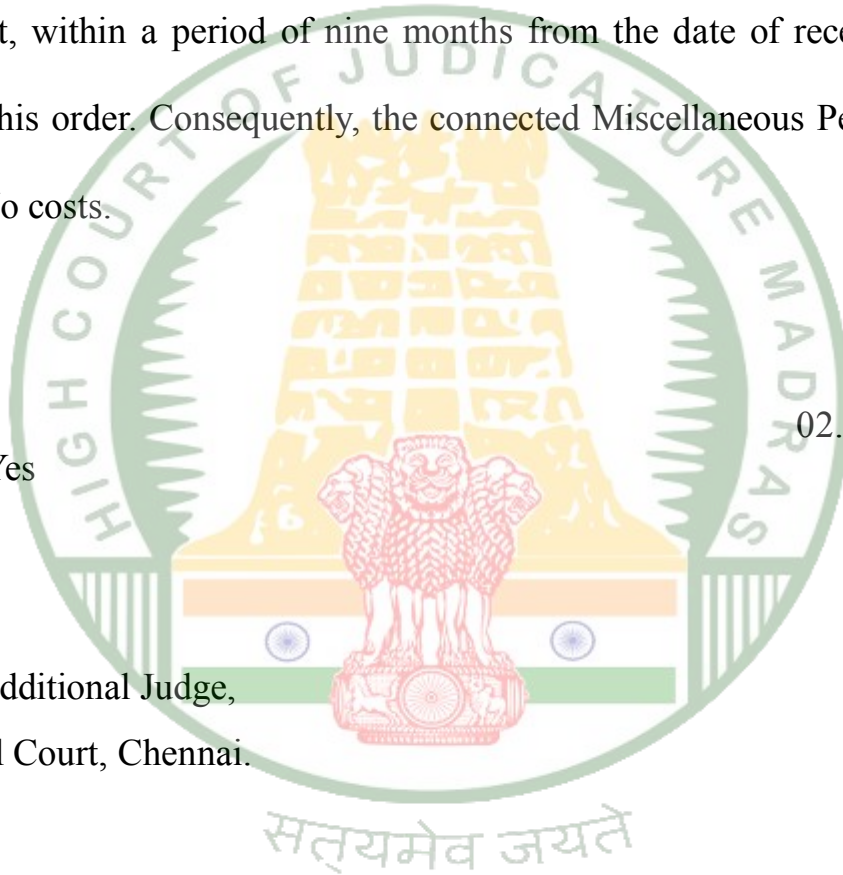
in the stage of framing issues. Considering the above and the fact that the suit is of the year 2006, the learned VI Additional Judge, City Civil Court, Chennai, is directed to dispose of the suit as expeditiously as possible, in any event, within a period of nine months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

02.09.2021

Index :: Yes
gsa

To

The VI Additional Judge,
City Civil Court, Chennai.



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C.R.P.(PD).No.1473 of 2016

V.M.VELUMANI, J.

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C.R.P.(PD)No.1473 of 2016

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