

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.4.2021.

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(NPD) No.994 of 2021

1. Logathal
2. Baby

Petitioners

vs.

1. Kanagamani
2. Samiyappan @ Saminathan
3. Thulasiyammal
4. Balathandapani
5. Venkidusamy
6. Kuppathal
7. Parameshwaran
8. Sivakumar

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decretal order dated 23.3.2021 passed in O.S. CFR No.6179 of 2021 on the file of the Principal District Court, Coimbatore.

For Petitioner : Mr.S.Kumaresan

For Respondents : No appearance.

ORDER

The revision petition has been filed by the plaintiff questioning the order dated 23.3.2021 in O.S.CFR No.6179 of 2021 filed on 11.3.2021.

2. Two plaintiffs have filed the suit against eight defendants. They had sought eight reliefs. The learned Judge had refused to take the plaint on record and had rejected the same at that stage itself by an order dated 23.3.2021. Questioning that order, the plaintiff had filed the present revision petition.

3. I have invited the learned counsel Mr. Kumaresan to examine para 17 of the order of the learned Judge. In the said paragraph, the learned Judge had observed about the lack of materials given in the plaint. In fact, the plaintiff had sought for partition and separate possession of the suit properties. They have not stated the date of death of the original owner of the suit properties viz., Arumuga Gounder. They have not stated whether the two other sharers Palaniappa Gounder and his wife Kuppthal were still alive or had already died. These materials, for the reasons best known to the plaintiffs, had been withheld by the plaintiffs.

4. Any plaint must be pleaded in a manner where the plaintiff will feel free to graze the witness box and speak about the pleadings in the plaint which should not be complicated. It should not be a strain on the plaintiff when he grazes the witness box. A reading of the plaint shows that an entirely disjointed series of facts had been given. The

learned Judge placed reliance on ***T.Arivanandam v. T.N.Satyapal*** (AIR 1977 SC 2421) wherein the Hon'ble Supreme Court placed an obligation on the Trial Court to have factual superintendence over the plaint and to exercise its power to nip it in the bud in case it is manifestly vexatious and meritless, not disclosing a clear right to suit.

5. I am in complete agreement with the observation of the Hon'ble Supreme Court and also appreciate the fact that the learned Judge had been vigilant enough to examine the plaint in its proper perspective and rejected the same.

6. In a later judgment reported in ***Dahiben v. Arvindebha Kalyanji Bhansalai (D) through LRs*** (AIR 2020 SC 3310), the Hon'ble Supreme Court had stated that if at all there is no cause of action for institution of the suit, the Trial Judge should take up the responsibility of curtailing further progress in the suit.

7. Yet another judgment had been delivered by the Hon'ble Supreme Court relating to the same issue in ***K.Akbar Ali Vs. K.Umar Khan and Others reported in 2021 SCC OnLine SC 238***, wherein the Honourable Supreme Court observed as follows:-

"5. It is well settled that while considering an application under Order VII Rule 11 of the CPC, the question before the Court is whether the plaint discloses any cause of

action or whether the suit is barred by any law, on the face of the averments contained in the plaint itself. While considering an application under Order VII Rule 11 of the CPC the Court is not to look into the strength or weakness of the case of the plaintiff or the defence raised by the defendant.

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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 **(1998) 2 SCC 70 : 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.*

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12. *It is patently clear from a meaningful reading of the plaint in its entirety that the plaintiff has no cause of action against the first defendant being the owner of the*

suit property, the Power of Attorney being patently invalid. The inter-se dispute between the heirs of the deceased-Defendant No. 1 will not confer any right on the petitioner as his claim is based upon a pre-emption agreement executed by a power of attorney, which does not authorize the attorney to deal with the property of the said defendant.

13. *The Division Bench of the High Court has done substantial justice by nipping in the bud, a suit which is ex facie not maintainable for want of cause of action against the defendants or any of them, thereby saving precious judicial time as also inconvenience and expenditure to the parties to the suit."*

(Emphasis Supplied)

8. On going through the plaint, it only expresses mere contention than throwing any light and therefore, there is no clarity in the pleadings. I am in complete agreement with the learned Judge, who had rejected the plaint as an abuse of process of law. I find no reason to entertain the revision petition. It is, therefore, dismissed. No order as to costs.

9. If at all the plaintiffs come forward with a plaint with some clarity and establishes a direct relation between the pleadings and the relief sought and material facts, material dates are also given in the

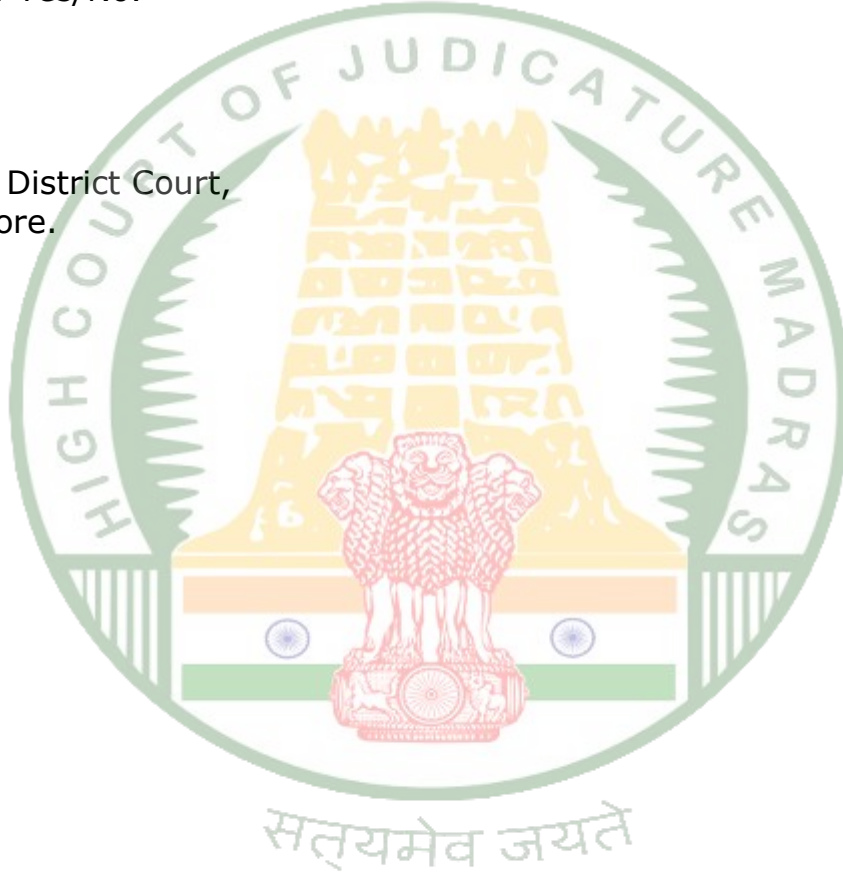
plaint, the plaintiff may be permitted to re-present the plaint and let the learned Judge consider it afresh.

29.4.2021.

Index: Yes/No.
Internet: Yes/No.
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To

Principal District Court,
Coimbatore.



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C.V.KARTHIKEYAN, J.

Ssk.



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