



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

CORAM

THE HON'BLE MR.JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

O.S.A.NO.334 OF 2021
AND
C.M.P.NO.20762 OF 2021

Dr.A.Anthony Irudayaraj ... Appellant

.Vs.

1. A.M.Pushpa Joe

2. Merlin Anita John

3. A.Joseph Andrews

4. Mary Stella ... Respondents

PRAYER:-

Appeal preferred under Clause 15 of Letters Patent r/w Order XXXVI Rule 9 of O.S. Rules against the order dated 08.09.2021 made in A.No.1957 of 2015 in C.S.No.733 of 2011.

For Appellant .. Mr.S.Thiruvengadam
For Ms.C.Auxilia Peter

JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 08 September 2021 recorded on A.No.1957 of 2015 in C.S.No.733 of 2011. This appeal is by the original first defendant.

2. A.No.1957 of 2015 was filed for rejection of the plaint under Order 7 Rule 11 of Civil Procedure Code principally on the ground that the suit was barred by limitation and further,



according to the applicant, the plaint did not disclose any cause of action. Said application is rejected by learned single Judge inter alia holding that on plain reading of the plaint, what is sought to be contended on behalf of the defendant can not be accepted and it needs trial. That order is under challenge by original first defendant who was the applicant in A.No.1957 of 2015.

3. Learned advocate for the appellant has submitted that clever drafting of the plaint should not be treated as disclosing cause of action and further bringing the grievance voiced in the plaint, within the period of limitation. Reliance is placed on the decision of the Supreme Court of India in Raghwendra Sharan Singh Vs. Ram Prasanna Singh ((2020) 16 SCC 601) to contend that the rejection of application under Order 7 Rule 11 C.P.C. needs to be interfered with.

4. Having heard learned advocate for the appellant/original first defendant and having considered the averments in the plaint and the order passed by learned single Judge, we find as under:

4.1. The contesting parties are four siblings/branches of one Mr.A.Arulappan. He died on 21.11.2020. Late Arulappan had two sons and two daughters. Two sons are defendants 1 and 2 and third defendant is the wife of first defendant. Thus two branches (both sons) are on one side. First plaintiff is the daughter of late Arulappan. Second plaintiff is the grand daughter of Arulappan (pre-deceased daughter's daughter). That is how two daughters/ branch thereof are on the plaintiff side. On the death of Arulappan, suit for partition is filed. Averments are made in the plaint inter alia to the effect that at least one of the plaintiffs was also occupying the property, the partition of which is asked for. It is also averred that the property which is stated to have been purchased in the name of the defendant brothers, was purchased at that time, when they did not have any earning. Apart from those properties, other properties are also referred to in the plaint. The suit is of the year 2011.

4.2 Written statement was filed in the year 2018. Application for rejection of plaint was filed in the year 2015. Though filing of application under Order 7 Rule 11 C.P.C. in the year 2015 itself is not the ground not to entertain such an application, if otherwise the Court finds that the plaint is required to be rejected - under either of the circumstances stipulated under Order 7 Rule 11 C.P.C., which in the present case were indicated to be (a) no cause of action and (b) barred by law of limitation.



4.3 Learned single Judge on overall consideration of the averments made in the plaint, arrived at the conclusion that the contest put forward by the defendants in the form of application under Order 7 Rule 11 C.P.C. is more based on their defence against the plaintiffs and is less on plain reading of the plaint. Learned single Judge has satisfied himself to the extent that, what is sought to be contested on behalf of the defendants if weighed vis-a-vis the say of the plaintiffs, suit needs adjudication, since according to learned Single Judge, it is mixed question of facts and law. We find that, this assessment of learned single Judge cannot be said to be erroneous in any manner which may require any interference by this Bench as the appellate forum. No interference is required in the impugned order. So far reliance on the decision of the Supreme Court is concerned, we find that in the facts noted above, that decision will not help the present appellant.

5. The original side appeal is therefore dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mmi/4

To

The Sub Assistant Registrar,
Original Side, High Court,
Madras.

O.S.A.NO.334 OF 2021

RSV(CO)
PBS/30/12/2021