

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2550 of 2017
and C.M.P.No.12126 of 2017

M.Subramaniam

... Petitioner

Vs.

Chinnamani

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 28.04.2017 made in I.A.No.339 of 2016 in O.S.No.630 of 2015 on the file of the V Additional District Court, Coimbatore.

For Petitioner : Mr.B.Nambi Selvan

For Respondent : Mr.N.Manokaran

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 28.04.2017 made in I.A.No.339 of 2016 in O.S.No.630 of 2015 on the file of the V Additional District Court, Coimbatore.

2.The petitioner is 3rd defendant and respondent is plaintiff in O.S.No.630 of 2015 on the file of V Additional District Court, Coimbatore. The respondent filed the said suit for declaration that the decree and judgment passed in A.S.No.61 of 2004 dated 30.12.2004 on the file of the Principal District Court, Coimbatore, as null and void and not binding on the respondent with respect to Item No.1 of the suit property and for other reliefs against the petitioner and 13 others. In the said suit, the petitioner filed I.A.No.339 of 2016 under Order VII Rule 11 of C.P.C. to reject the plaint.

3.According to the petitioner, as per Section 6 of Hindu Succession Act, a female heir is entitled to share in co-parcener's right only from

09.09.2005, but in the First Appeal in A.S.No.61 of 2004, the judgment and decree was passed on 30.12.2004. The respondent has no right to question the validity of the said decree. The validity of the said decree is barred by limitation, as respondent has knowledge of the said decree in the year 2011 itself, when the 2nd defendant filed O.S.No.1797 of 2011 on the file of the Principal District Munsif Court, Coimbatore, against the legal heirs of the deceased Manian Konar, for partition of property mentioned as 'B' schedule in A.S.No.61 of 2004. The respondent has entered appearance in the said suit, in the year 2011 itself. The present suit is filed only in the year 2015. The respondent had already filed O.S.No.618 of 2012 against the legal heirs of Manian Konar, for partition of 'F' schedule property in Item No.2 and the said suit is still pending before the III Additional District Munsif Court, Coimbatore. The cause of action for the present suit arose at that time itself and present suit is not maintainable as respondent has not obtained any leave from the Court for filing present suit on the very same cause of action. The respondent had filed O.S.No.609 of 2013 on the file of Principal District Munsif Court,

Coimbatore, to declare the sale deed dated 07.09.2011 executed by 8th defendant as null and void in respect of the suit property mentioned as Item No.2 in 'F' schedule property. In view of the three suits, the present suit is abuse of process of law.

3(i). From the averments in the plaint, it is seen that other defendants have created documents in respect of the suit property, which are subject matter of alleged Will dated 09.11.2002. The respondent ought to have prayed for declaration of title on the basis of the Will dated 09.11.2002. The relief of declaration sought for in the present suit is barred by limitation as the documents are of the year 2007, 2011 and 2012. The respondent has not approached the Court with clean hands and suppressed many material facts and prayed for rejection of plaint.

4. The respondent filed counter affidavit in the said I.A. and denied all the averments in the affidavit filed in support of the above application. According to the respondent, she came to know about the decree and

judgment in A.S.No.61 of 2004 only in the year 2013. Section 6 of Hindu Succession Act came into effect from 09.09.2005 and proviso to Section 6 protects any disposition, partition or testamentary disposition that had taken place before 20.12.2004. The preliminary decree was passed in A.S.No.61 of 2004 only on 30.12.2004 i.e., subsequent to 20.12.2004. In view of the same, the judgment and decree passed in A.S.No.61 of 2004 is null and void and not binding on the respondent and that the respondent did not appear in O.S.No.1797 of 2011 on the file of the Principal District Munsif Court, Coimbatore. The petitioner had not proved his allegation that the respondent appeared in O.S.No.1797 of 2011. The question of limitation is a mixed question of fact and law and the same cannot be based on the affidavit filed in the present I.A. The respondent filed O.S.No.618 of 2012 only with regard to 'F' schedule property and the present suit properties are not subject matter in the said suit. The respondent has not filed the said suit for partition of the whole property inherited or succeeded by her and for partition of the co-parcener property that 'F' schedule property is the reversenary

property derived from the death of her sister Rajamani and not as a co-parcener property. There is no necessity for obtaining leave for filing partition suit for other properties. The present suit is not hit by Order II Rule 2 of C.P.C. The averments made in the plaint can be proved only at the time of trial. The question of limitation is a mixed question of fact and law, which can be decided only after considering the evidence let in at the time of trial. Only preliminary decree was passed in A.S.No.61 of 2004 on 30.12.2004, alienations made before 20.12.2004 only were protected and prayed for dismissal of the application.

5.The learned Judge considering the averments in the plaint, affidavit and counter affidavit, dismissed the I.A.

6.Against the said fair and decretal order dated 28.04.2017 made in I.A.No.339 of 2016 in O.S.No.630 of 2015, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioner contended that after passing preliminary decree in A.S.No.61 of 2004, the petitioner filed I.A.No.188 of 2006 for impleading the respondent and other sisters as their father Manian Konar died on 02.02.2005 after passing preliminary decree in the First Appeal. The respondent and other sisters have entered appearance through Advocate and filed petition to set aside the exparte decree, which was dismissed. Hence, the respondent had knowledge of the decree dated 30.12.2004 in A.S.No.61 of 2004 in the year 2006 itself. She filed the present suit after 9 years of decree passed in A.S.No.61 of 2004, which is barred by limitation. The respondent suppressing the earlier suit filed by her filed present suit, which is not maintainable. The respondent is re-litigating the issue. The present suit is clear abuse of process of Court. The learned Judge without considering the materials erroneously dismissed the I.A. holding that question of limitation is a mixed question of fact and law. The said order is erroneous and 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 and submitted that the petitioner is putting forth a new case, which is not pleaded before the learned Judge. The learned Judge considering each and every points raised by the petitioner, rejected the same by giving valid reasons. The petitioner has not pointed out any irregularity in the impugned order of the learned Judge and prayed for dismissal of the Civil Revision Petition. In support of his contentions, the learned counsel relied on the following judgments:

(i) 2019 (4) CTC 721 (Madhav Prasad Aggarwal and another vs. Axis Bank Ltd. and another);

“13.Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) of CPC on account of non-compliance of mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to Clauses (a) to (f) of Rule 11 of Order 7 of CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but

not in part. In that sense, the relief claimed by respondent No.1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against respondent No.1 in the concerned suit is barred by Section 34 of 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 of CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.”

(ii) **2020 (2) CTC 93 (Natesan Poosar and others vs.**

K.M.Sundaramoorthy and others);

“31. The fourth point which has been raised is regarding the rejection of the plaint in part. Even according to the arguments advanced by the Revision Petitioner they would contend that it is relief B and C that is barred by the provisions of the Act. Therefore, by necessary implication the other reliefs are

maintainable. The Hon'ble Supreme Court in the Judgement reported in ***D.Ramachandran V. R.V.Janakiraman and others***, 1999 (1) CTC 715 (SC) : 1999 (3) SCC 267, has observed as follows:

"9. Under Order 6, Rule 16, the Court is enabled to strike out a pleading (a) which may be unnecessary, scandalous, frivolous or vexatious or (b) which may tend to prejudice embarrass or delay the fair trial of the suit; or (c) which is otherwise an abuse of the process of the Court. We have already pointed out that it is not the case of the First Respondent that the pleading in the election petition is vitiated by all or any one of the aforesaid defects mentioned in the rule. Hence, striking out parts of the pleading in this case was not at all justified.

10. On the other hand, Rule 11 of Order 7, enjoins the Court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this Rule. The Application filed by the First Respondent in O.A. No. 36/97 is on the footing that the averments in the Election Petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order 7, Rule 11 (a), learned Senior Counsel for the First Respondent took us through the entire Election Petition and submitted that the averments therein do not disclose a cause of action. On a reading of the Petition, we do not find it possible to agree with him. The Election Petition as such does disclose a cause of action which if

unrebutted could void the election and the provisions of Order 7, Rule 11(a) C.P.C., can not therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) C.P.C., the Court can not dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there can not be a partial rejection of the Plaint or Petition."

32. The Delhi High Court in the Judgment in ***Hyundai Motor India Ltd. V. Opal Metal Engineering Pvt. Ltd***, ***AIR 2009 DELHI 1***, has held as follows in Paragraph No.17:

"17.It may be emphasized that the object of the said provisions is to keep out irresponsible law suits. In a way it is to be used as a handy tool by the Courts to segregate the grain from the chaff, on a purely prima facie examination of the statements made in the Plaint. Hence, the effect of Section 35 of the Stamp Act shall have to be examined after the Suit is put to trial to decide if the relief sought by the Plaintiff in prayer 'c' can be granted. The said plea directed against the relief sought in prayer 'c' in itself is however insufficient to oust the Plaintiff at this stage, insofar as reliefs sought in prayers 'a' & 'b' are concerned, as the said reliefs cannot be held to be consequential to the relief sought in prayer 'c'. Hence, even if it is held that no relief can be granted to the Plaintiff under prayer

'c' in view of the bar of Section 35 of the Stamp Act, the Suit cannot be rejected for the reason that only a part of the plaint cannot be rejected and it is obligatory for the Court to reject the plaint as a whole, while examining the same under Order 7 Rule 11, C.P.C."

This view has been reiterated in a recent Judgment of the Hon'ble Supreme Court in ***Madhav Prasad Aggarwal and another V. Axis Bank Ltd and another, 2019 (4) CTC 721 (SC) (S.L.P. (C) No. 31579 of 2018, dated 1.7.2018)***. Therefore it is evident that there cannot be a rejection of part of the plaint.

33. From the above discussions it is, therefore, clear that the suit filed by the respondents 1 to 5 cannot be rejected at the threshold without going to trial where either parties have to prove the contentions raised by them. In the circumstances, I do not find any infirmity in the order passed by the learned Additional District Judge, Namakkal in I.A.No.38 of 2016 in O.S.No.164 of 2015."

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

10. From the materials on record, it is seen that the petitioner filed I.A.No.339 of 2016 in O.S.No.630 of 2015 under Order VII Rule 11 of C.P.C. for rejection of plaint. It is well settled that a plaint can be rejected as per the Order VII Rule 11 of C.P.C. only if the defendant satisfies any one of the ingredients mentioned in the said Rule. For better appreciation, Order VII Rule 11 of C.P.C. is extracted hereunder:

"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 under-valued, and the plaintiff, on being required by the Court to so 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-papers 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-papers, 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.]"

11.From the arguments of the learned counsel for the petitioner and the averments made in the affidavit filed by the petitioner in support of the present application, it is seen that the petitioner is seeking rejection of plaint on the grounds that the suit is barred by limitation and hit by Order II Rule 2 of C.P.C. According to the petitioner, the respondent was aware of the judgment and decree dated 30.12.2004 in A.S.No.61 of 2004 in the year 2011 itself, when she entered appearance in O.S.No.1797 of 2011

filed by the 2nd defendant for partition based on the preliminary decree in A.S.No.61 of 2004. The respondent denied having entered appearance in the said suit. Whether the respondent entered appearance in the said suit as claimed by the petitioner or she did not appear as claimed by the respondent is the disputed question of fact. This disputed question of fact cannot be decided based on the averments in the affidavit and counter affidavit. This can be decided only based on the evidence let in by the parties during the trial.

12.The petitioner has also sought for rejection of plaint on the ground that suit is hit by Order II Rule 2 of C.P.C. The learned Judge rejected the said contention as petitioner did not file the plaint in the earlier suit to verify whether the cause of action for the present suit arose, when the respondent filed earlier suit. In the C.R.P., the petitioner has given up the said ground. The petitioner has come out with a new case namely i.e., after preliminary decree dated 30.12.2004, the petitioner filed I.A.No.188 of 2006 for final decree against the respondent and his

other sisters as their father died on 02.02.2005 after passing preliminary decree. The respondent and others were set exparte. Subsequently, the respondent and others have entered appearance through Advocate and filed application for setting aside the exparte decree. The said I.A. was dismissed. The respondent did not challenge the said order and the same has become final. This is a new case put forth by the petitioner in the C.R.P.

13. According to the petitioner, in the affidavit filed in the present I.A. to reject the plaint, the respondent had knowledge about the preliminary decree in A.S.No.61 of 2004 in the year 2011 itself. But now the petitioner is claiming that respondent had knowledge in the year 2006 itself and filed suit after 9 years of knowledge of the preliminary decree in A.S.No.61 of 2004. When this plea has not been raised in the application filed in support of the above petition for rejection of plaint and respondent did not have any opportunity to make her submission, it is not open to the petitioner to raise the said issue for the first time in the Civil Revision Petition.

13(i).In addition to this, it is the case of the petitioner in the C.R.P. that the respondent is re-litigating the issue. This plea was also not raised before the learned Judge. In the grounds of revision, the learned counsel for the petitioner has not pointed out any error or irregularity in the order of the learned Judge, but raising new plea, which cannot be entertained. Further, the issue raised in the I.A.No.339 of 2016 filed under Order VII Rule 11 of C.P.C. to reject the plaint can be decided only considering the averments made in the plaint and the documents relied on by the plaintiff. The Court has to consider the averments in the plaint in its entirety and decide either to reject the plaint or dismiss the I.A. It will be useful to refer the ratio laid down in the judgment of the Division Bench of this Court reported in **2021 (1) MWN (Civil) 635 (S.Thakeer Ali vs. S.M.Gutha)**, wherein in paragraphs 17 and 18, it has been held as follows:

“17.The legal principle, which can be culled out from the various decisions of the Hon'ble Supreme

Court and this Court as to the scope of application of Order VII, Rule 11 are to the effect that if on a meaningful, not formal, reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII, Rule 11 C.P.C. Disputed questions cannot be decided at the time of considering an application filed under Order VII, Rule 11. The power to reject a plaint under Order VII, Rule 11 ought not to be exercised except any clear cut case and, if there is any serious question to be decided, then the suit has to proceed further.

18. The power under Order VII, Rule 11 can be exercised when the plaint is read as a whole, it does not disclose material facts giving rise to a cause of action, which can be entertained by a Civil Court, it may be rejected in terms of Order VII, Rule 11. The Court can look into only plaint allegations and the documents submitted by the plaintiff himself, but cannot look into the Defendant's defence. In other words, actual or probable Defence cannot be looked into at the stage when an Application under Order VII, Rule 11 is

considered. To put it differently, the Court has to scrutinise the averments/pleas in the Plaint and the pleas taken by the Defendants in the Written Statement are corley irrelevant and the matter is to be decided only on the Plaint averments.”

The averments in the written statement, affidavit filed in support of the application to reject the plaint and documents relied on by the defendant cannot be taken into account to decide the issue. The Court has to consider the I.A. for rejection of plaint as per the ingredients mentioned in Order VII Rule 11 of C.P.C. Considering the averments in the plaint, the respondent has mentioned cause of action for the suit and averments as to how she is claiming relief sought for in the present suit. It is for the respondent to prove such averments by letting in evidence during trial.

14.From the averments in the affidavit to reject the plaint as well as in the grounds of revision, the petitioner has not substantiated any one of the ingredients contemplated under Order VII Rule 11 of C.P.C. The learned Judge has elaborately considered the entire issue and dismissed

the 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.

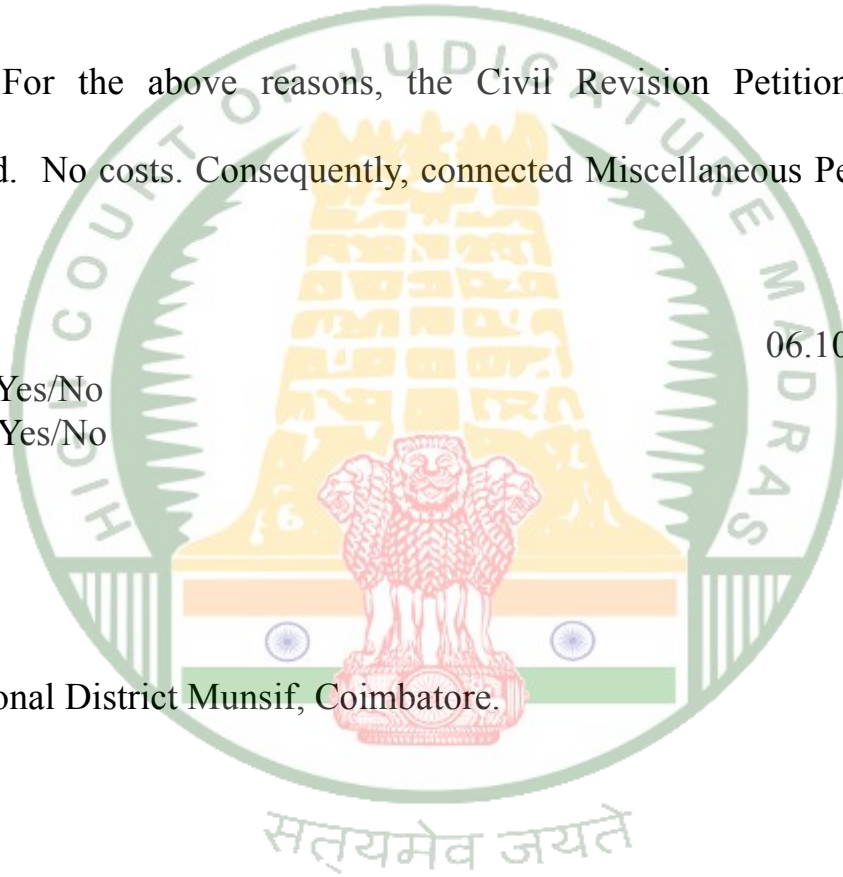
15.For the above reasons, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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V Additional District Munsif, Coimbatore.

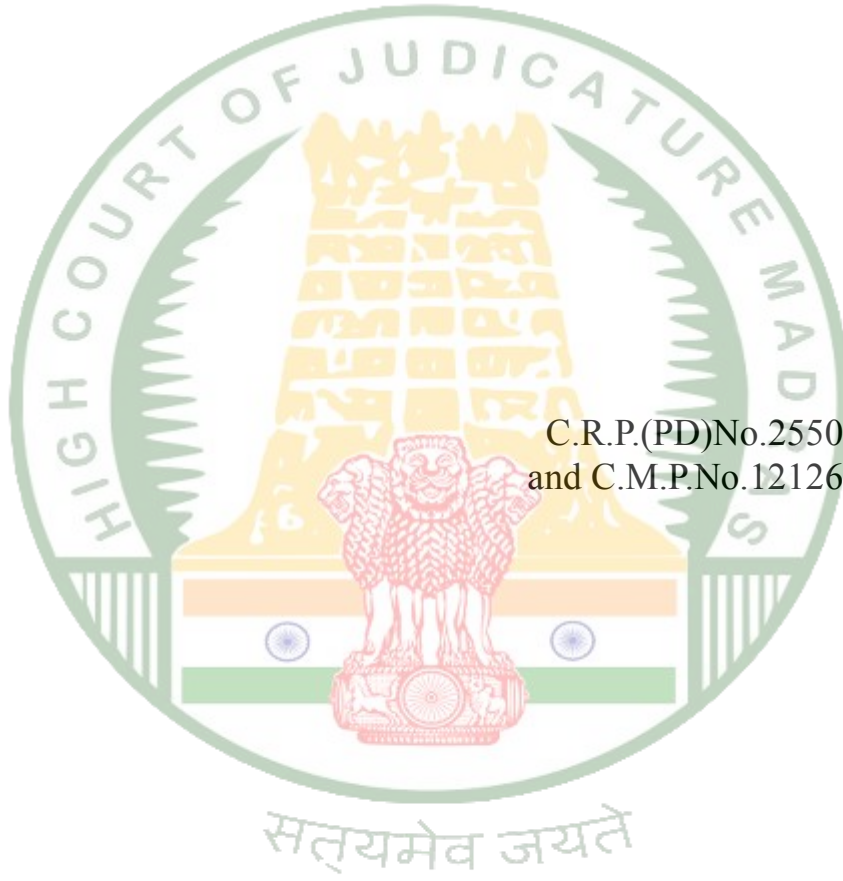


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