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C.R.P. (PD) .No.368 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.368 of 2017

and

C.M.P.No.1648 of 2017

Uma

.. Petitioner

Vs.

1.Dr.G.Arunai Theepan

2.Rohisha

3.Aadhith Ganesh

4.The Sub Registrar,
SRO, Tambaram,
MES Road, East Tambaram,
Chennai – 600 059.

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 26.10.2016 made in I.A.No.846 of 2015 in O.S.No.273 of 2014 on the file of the District Munsif Court, Tambaram, Chennai.

For Petitioner : Mr.L.Murali Krishnan

For R1 : Mr.P.T.Perumal

For RR 2 to 4 : No appearance



ORDER

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

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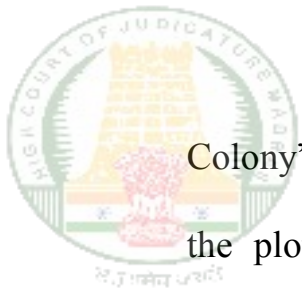
This Civil Revision Petition is filed against the fair and decretal order dated 26.10.2016 made in I.A.No.846 of 2015 in O.S.No.273 of 2014 on the file of the District Munsif Court, Tambaram, Chennai.

2.The petitioner is the 1st defendant in O.S.NO.273 of 2014. The 1st respondent is the plaintiff and the respondents 2 to 4 are defendants 2 to 4 in the said suit. The 1st respondent filed the said suit against the petitioner and respondents 2 to 4 for mandatory injunction directing the petitioner to convey the suit property to and in favour of her children, the respondents 2 & 3 by executing deed of settlement or gift, directing the 4th respondent / Sub Registrar not to receive and register any document of conveyance or encumbrance or charge pertaining to the suit schedule property, permanent injunction restraining the petitioner, her men and agents or anybody claiming under her from encumbering or alienating the suit property and for a direction to the petitioner to pay the cost of the suit to the plaintiff / 1st respondent herein. In the said suit, the petitioner filed I.A.No.846 of 2015 under Order VII Rule 11 C.P.C. to reject the plaint in the said suit. According to the



petitioner, the suit does not disclose any cause of action and liable to be rejected. The Court erred in numbering the suit. The suit property is standing in the name of the petitioner and the relief now sought for is not maintainable without seeking relief of declaration. The allegations in the plaint are vexatious and meritless. The averments in the plaint do not disclose a clear right or material to sue and in such circumstances, it is the duty of the Court to exercise its power under Order VII Rule 11 C.P.C. and reject the plaint in the beginning itself and plaint need not be kept pending till final adjudication. The 1st respondent must state in his plaint the fact or circumstances which will enable him to get a decree and the same should be set out in clear terms in the plaint. But, in the plaint nothing is stated so. When the 1st respondent has no right to sue, no right in respect of the suit property and when the 1st respondent has failed to establish the above required materials, the plaint must be rejected as plaint does not have any cause of action. The 1st respondent has no locus standi to file the suit and prayed for rejection of plaint.

3.The 1st respondent filed counter affidavit in the said I.A. and contended that he is a life member of Indian Medical Association (IMA), Tamil Nadu State branch. The layout was formed in the name of “Doctor's



Colony” and only life members of Indian Medical Association (IMA) can buy the plot either in his name or in his spouse name. The 1st respondent purchased the suit property in the name of the petitioner for the benefit of the children i.e., respondents 2 & 3 out of his own funds. The 1st respondent further stated that the transaction is benami transaction and the 1st respondent will prove the same by letting in evidence during Trial. The present suit has triable issue and the suit is maintainable as the 1st respondent has mentioned the cause of action in the plaint and plaint cannot be rejected and prayed for dismissal of the I.A.No.846 of 2015.

4.The learned Judge considering the averments in the plaint, affidavit filed in support of the above application and counter affidavit, dismissed the I.A., holding that whether the suit property was purchased by the petitioner or by the 1st respondent can be proved only at the time of Trial and the same cannot be decided in the I.A.

5.Against the said order of dismissal dated 26.10.2016 made in I.A.No.846 of 2015, the petitioner has come out with the present Civil Revision Petition.



6. The learned counsel appearing for the petitioner contended that the learned Judge erred in holding that it is for the petitioner to prove that the suit property was purchased by her out of her own funds. The reference to divorce, payment of amount by 1st respondent to petitioner have no relevance to decide the issue of rejection of plaint. The 1st respondent has not sought for declaration with regard to suit property and question of proof that petitioner purchased the property out of her own funds does not arise. When the 1st respondent is not seeking any declaration with regard to suit property, the question of benami transaction does not arise and the judgments relied on by the counsel for 1st respondent is not applicable to the facts of the present case. The learned Judge failed to give any reasons for not considering the grounds of petitioner for rejection of plaint when there is no cause of action for the suit and the 1st respondent has no right over the suit property for seeking the relief of mandatory injunction. In support of his contention, the learned counsel appearing for the petitioner relied on the following judgments and prayed for allowing the Civil Revision Petition.

(i) The judgment reported in ***(2019) 17 SCC 692, [Jharkhand State Housing Board Vs. Didar Singh and another]***, wherein the Hon'ble Apex Court at paragraph No.11, has held as follows:



“...11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff, it is not necessary that in all those cases, plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only where the defendant raises a genuine dispute with regard to the title, and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction.”

(ii) The judgment reported in ***(2020) 16 SCC 601, [Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by legal representatives]***, wherein the Hon'ble Apex Court at paragraph No.7, has held as follows:

“...7. ... Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court



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in the case of (T.Arivandandam Vs. T.V. Satyapal) reported in (1977) 4 SCC 467, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 of the CPC.”

7.Per contra, Mr.P.T.Perumal, learned counsel appearing for the 1st respondent filed written arguments and submitted that in the plaint, the 1st respondent has stated that the suit property was purchased by him out of his own funds and suit property can be purchased only by life members of Indian Medical Association (IMA) in his name or in his spouse name. The 1st respondent also made averments in the plaint that the suit property was purchased in the name of the petitioner for the benefit of their children, the respondents 2 and 3. The 1st respondent has filed the suit when the petitioner tried to alienate the suit property to third party against the interest of the respondents 2 & 3 and the 1st respondent issued notice dated 29.09.2014 to the 4th respondent / The Sub Registrar, SRO, Tambaram, not to receive and register any document in respect of the suit property. The 1st respondent has clearly disclosed the cause of action for the suit in the plaint and question of benami transaction can be decided only based on the evidence let in by the parties during Trial. The learned Judge considered the entire materials and



dismissed the I.A. by giving cogent and valid reason and relied on the following judgments and prayed for dismissal of the Civil Revision Petition:

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(i) The judgment of the Hon'ble Apex Court reported in **1995 (II) CTC 356, [Nand Kishore Mehra Vs. Sushila Mehra];**

(ii) The judgment of the Hon'ble Apex Court reported in **(2004) 7 SCC 233, [Valliammal (D) by Lrs. Vs. Subramaniam and others];**

(iii) The judgment of the Hon'ble Apex Court reported in **(2007) 6 SCC 100, [Binapani Paul Vs. Pratima Ghosh and others];**

(iv) The judgment of this Court reported in **2015 (3) CTC 316, [Shanthi @ Shanthi Sathya and others Vs. M.Masanam];**

(v) The Division Bench judgment of this Court reported in **CDJ 2020 MHC 1567, [M.Muthuvel Vs. Mangayarkarasi (deceased) & others]** and

(vi) The Division Bench judgment of this Court reported in **CDJ 2020 MHC 2382, [Renuka & Others Vs. A.Kamalam (died) & others].**



8. Though notice has been served on the respondents 2 to 4 and their names are printed in the cause list, there is no representation for them, either in person or through counsel.

9. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

10. From the materials on record, it is seen that the 1st respondent has filed the suit for a direction to the petitioner to convey the suit property to and in favour of children, the respondents 2 & 3 by executing deed of settlement or gift and direct the Sub Registrar, SRO, Tambaram, 4th respondent herein not to receive and register any document of conveyance or encumbrance or charge pertaining to the suit schedule property and for permanent injunction restraining the petitioner from encumbering or alienating the suit property. According to the 1st respondent, the petitioner and 1st respondent got married on 31.10.1988 and he purchased the suit property in the name of the petitioner for the benefit of their children, the respondents 2 and 3. Due to dispute, the marriage between the petitioner and 1st respondent was dissolved by decree of divorce dated 11.09.2014 and their children, the respondents 2



and 3 are with the 1st respondent. The 1st respondent is looking after the respondents 2 and 3 and maintaining them. The petitioner is trying to alienate the suit property, contrary to the intention of buying the suit property in her name and is trying to defeat the benefits of respondents 2 and 3 by alienating the suit property to the third party.

11.Contrary to the above contention, it is the case of the petitioner that 1st respondent, without seeking declaration of title in the suit, cannot maintain the present suit and suit does not disclose cause of action. When the title is disputed, the 1st respondent has no locus standi to maintain the present suit and he has no right to file the suit.

12.From the above materials it is seen that it is the contention of the 1st respondent that suit property was purchased for the benefit of the children, the respondents 2 and 3. It is purchased in the name of the petitioner which is a benami transaction. This issue whether the suit property was purchased for the benefits of respondents 2 and 3 by the 1st respondent or the petitioner has purchased the suit property from her own funds can be decided only after conclusion of Trial by appreciating the oral and documentary evidence let in by the petitioner and 1st respondent. The 1st respondent has made averments in



the plaintiff that the petitioner is trying to alienate the suit property to defeat the benefits of respondents 2 and 3 and also stated that the 1st respondent issued notice dated 29.09.2014 to the 4th respondent not to receive and register any document presented by the petitioner. These averments disclose cause of action.

13. It is well settled that while considering the application filed under Order VII Rule 11 C.P.C., the Court has to take into account only the averments in the plaint and documents filed along with the plaint. The averments in the written statement, affidavit filed in support of the application under Order VII Rule 11 or documents relied on by the defendants in the written statement cannot be taken into account at the stage of considering I.A. filed under Order VII Rule 11 C.P.C. As per the judgments relied on by the learned counsel appearing for the 1st respondent, the 1st respondent can prove that transaction is a benami transaction and suit property was purchased by the 1st respondent. This issue cannot be decided in the application filed under Order VII Rule 11 C.P.C., which is summary proceedings. The learned Judge has considered the entire materials and dismissed the I.A. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.



14.For the above reason, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

21.10.2021

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Index : Yes / No

Internet : Yes / No

To

The learned District Munsif,
Tambaram,
Chennai.



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V.M.VELUMANI, J.
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