

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.4046 of 2019 and  
C.M.P.No.26561 of 2019

P.Viswanathan

... Petitioner

Vs.

1. Jadgish Chandran  
2. Sahasranamam

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Final order dated 25.10.2019 made in I.A.No.805 of 2014 in O.S.No.2 of 1994 on the file of Sub Court, Sankari.

For Petitioner : Ms.Zeenath Begum

For Respondents : Mr.T.Sai Krishnan

O R D E R

The present Civil Revision Petition has been filed against the order dated 25.10.2019 in I.A.No.805 of 2014 in O.S.No.2 of 1994 on the file of Sub Court, Sankari by raising various grounds.

2. The case of the petitioner, who is the 8th defendant in the above suit is that he is the auction purchaser of the property in Survey No. 301 / 1B of Nedunkulam Village bearing an extent of 8.20 acres. The petitioner has taken possession of the suit property and enjoying the same, in which he already sold an extent of 6 acres out of the said 8.20 acres to one Govindaraj, son of Karuppana Gounder of Nedunkulam village through registered sale deeds dated 15.12.2003 and 05.01.2004. The said property was purchased in the court auction and the respondents / plaintiffs had filed a petition on 06.10.1986 under Order 21 Rule 90 of Code of Civil Procedure impeaching the said court auction held on 02.01.1986. The said petition was dismissed on 24.12.1993 and they has filed the present suit without filing an appeal against the order in R.E.A.No.18 of

1988 dated 24.12.1993 and the said plaint has to be rejected, as it falls under resjudicata as per order 7 Rule 11 (d) of Civil Procedure Code and there was a delay in filing the petition and hence prayed for allowing the petition.

3. The respondents / plaintiffs had filed a counter denying all the said averments and stated that there is no merit in the said averments and it is only a false, frivolous, vexatious petition and by order dated 24.12.1993 in REA No.18 / 88, the learned District Munsif Court, Sankari has held that the petitioner has not produced any oral or documentary evidence to substantiate hercase, hence the same was dismissed. Since the application to set aside the sale was dismissed, the petitioner was forced to file the suit for partition. The only remedy available to the respondent / plaintiff was to file a suit for partition for separate possession seeking for 1/4th share. In consequence, the petitioner filed I.A.No.805 of 2014 under Order 7 Rule 11 CPC to reject the plaint. The said petition filed by the petitioner/ 8th defendant was considered and the court below had dismissed the application on the ground that reading of the provision itself shown that the plea of res-judicata is not granted for rejection of plaint. The provision under Order 7 Rule 11 CPC is not attracted and also the application has been filed at the belated stage and the application does not warrant any merits and the same was dismissed. As the suit is pending from the year 1994, the court below ordered to bear their respective costs. Challenging the same, the present Civil Revision Petition is filed.

4. Heard the learned counsel for both the parties and perused the materials available on record.

5. It is seen that the petition filed under Order 7 Rule 11 of Civil Procedure Code, which was dismissed by the learned Subordinate Judge, Sankari is challenged in this Revision Petition. The petitioner, who is the 8th defendant in O.S.No.2 of 1994, had purchased 8.20 acres of land by way of auction purchase covered in Survey No.301/1B of Nedunkulam village and claims to have taken possession and in enjoyment of the property and had made mutations to the entire 8.20 acres. The petitioner also further claims that he has sold 6 acres out of 8.20 acres, as early as 15.12.2003 and 05.01.2004.

6. It is further submitted by the learned counsel for the petitioner that having taken the property in court auction, the respondent/Rajalakshmi (since deceased, respondents were impleaded) has filed a petition as early as 06.10.1986 under Order 21 Rule 90 CPC seeking impeachment of the court auction sale that held on 02.01.1986, in which the revision petitioner was also contested and the petition was dismissed on merits as

against the plaintiff. The plaintiff had not chosen to file any further appeal and the said order has become final and that being the case, O.S.No.2 of 1994 filed by the respondents / plaintiff for the same relief without filing the appeal as against the order in REA No.18 / 1988 dated 24.12.1993, are barred by Law and on the ground of res-judicata, therefore, the petitioner prayed that the trial court had wrongly mis-construed the provisions of Law and dismissed the application, which ought not to have been dismissed and the entire suit is barred by the Law of res-judicata, he pleaded.

7. It is the further case of the petitioner that he had also admitted that the petition under Order 7 Rule 11 has been filed belatedly, still it can be maintained, as the Law does not bar of filing such petition before passing of the Judgment.

8. The learned counsel for the respondents / caveator, who is on caveat had contended that as such, the petition filed under Order 7 Rule 11 is not maintainable for the reason that the revision petitioner, who was the party to the earlier order, as an auction purchaser, on 24.12.1993 itself when the order was passed in REA No.18 / 1988 in REP 29 of 1985 in O.S.No.1396 of 1981 had every knowledge and he being the party-defendant in O.S.No.2 of 1994 has chosen to file the petition to reject the plaint only in the year 2014. That apart, since the application to set aside the sale has been dismissed holding that the plaintiff had no right to file the petition, the only remedy available to the plaintiff is to file a suit for partition and separation possession of 1/4th share. On the above facts and circumstances, the counsel prayed that the suit is maintainable and the revision petitioner has not made any case for rejection of the plaint.

9. On the perusal of the records, it is seen that initially, a relief of partition for separate possession was sought by the plaintiff on the basis that the suit schedule property were self acquired property by one Duraisami Gounder and the said person died intestate and the respondents / plaintiffs are the legal heirs having the shares in the suit schedule property. The 3rd defendant had filed a suit in O.S.No.1396 of 1981 on the file of District Munsif Court, Bhavani and subsequently transferred to District Munsif Court, Tiruchengode and renumbered in E.P.No.20 of 1985 in which the properties were got for sale. As against E.P.No.20 of 1985, E.A.No.300 of 1986 was filed under Order 21 Rule 90 seeking for setting aside the same. At that point of time, once over again the said E.P. was transferred to District Munsif Court, Sankari and renumbered as REA No.18 of 1988 and same was dismissed on 24.12.1993. However, a subsequent suit in O.S.No.2 of 1994 is filed seeking for a partition for dividing the suit property

into four equal shares and allotting one such share to the respondents /plaintiff.

20. The petitioner herein has filed this revision petition as against the prayer of rejection of plaint filed under Order 7 Rule 11. The petitioner's counsel would submit that no separate suit would lie, as the same is barred by res-judicata and the respondent / plaintiff having not challenged the order in R.E.A. No.18 of 1988 by way of appeal, which was dismissed on 24.12.1993, the respondents / plaintiff has chosen to file a suit in O.S.No.2 of 1994 only to stall the entire execution proceedings and in fact, an application seeking for injunction was filed by the respondents and the same was allowed and to an appeal by this revision petitioner in C.M.A.No.31 / 1991, this Court by order dated 21.02.1997 partly allowed the appeal, thereby setting aside the order passed in injunction application.

21. After the said order, the I.A. No.805 of 2014 was filed under Order 7 Rule 11 in the year 2014. The petitioner further submitted that no doubt, one has to comply with reasons as contemplated under Order 7 Rule 11 seeking for rejection of plaint. If the petitioner has made out any one of the conditions stipulated under Order 7 Rule 11, the court has got every power to reject the plaint at any stage before passing the Judgment. For ready reference, Order 7 Rule 11 of CPC is extracted hereunder:-

"Order 7 Rule 11 : Rejection of Plaint - The plaint shall be rejected on 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.]

22. On going through the above said provision, it is clear that the Hon'ble Supreme Court as well as this Court, in various judgments had held that while rejecting the plaint under Order 7 Rule 11, the trial court has to strictly follow the conditions imposed under Order 7 Rule 11 CPC. No doubt, the trial court can entertain a petition seeking for rejection of a plaint under Order 7 Rule 11 at any stage before passing the Judgment. But the conduct of the parties, and the duration of pendency of the suit should also be taken into account, while entertaining an application under Order 7 Rule 11 of CPC.

23. As it could be seen from the present case, no doubt, the suit is of the year 1994 and the injunction application filed by the respondent / plaintiff came to be allowed by the trial court in E.P.No.20 of 1985, the said order was challenged by way of filing C.M.A. No.31 of 1991 by this petitioner and this Court by order dated 21.02.1997 has partly allowed the Civil Miscellaneous Appeal. In the meanwhile, the petitioner / defendant has also filed written statement to the O.S.No.2 of 1994 as early as on 20.11.2005, thereafter, nine years later, the petitioner has filed this petition seeking rejection of plaint under Order 7 Rule 11 of CPC that too when the matter was taken up for trial.

24. It is clear from the averments made in the affidavit filed in support petition filed by the petitioner under Order 7 Rule 11 of CPC, seeking rejection of plaint, the petitioner / defendant has not specifically mentioned how the suit is barred under Order 7 Rule 11 (d) of CPC, which is invoked by the respondent. A mere statement of the petitioner that the respondents failed to file appeal against the order dated 24.12.1993 made in REA No.18 of 1988 will not be sufficient, as the suit which ended in the execution proceedings, was O.S.No.1396 of 1981 and the same was a money suit seeking recovery of money, in which, property was brought for sale in court auction. But in the present suit, O.S.No.2 of 1994 is filed for seeking division of entire suit property into four equal shares on the basis that Duraisamy Gounder, who had inhibited the suit schedule property on his own and on his demise as intestate, the legal heirs of the said Duraisamy Gounder have equal shares in the said property left behind by the Duraisamy Gounder. While that being the case, there is no bar for filing a fresh suit seeking for partition.

25. It is clear that in the pleadings seeking for rejection of plaint, the petitioner has not raised any valid reasons to attract any provisions of Order 7 Rule 11 CPC, much less to say Order 7 Rule 11 (d) of CPC. The Sub Court at Sankari has rightly rejected the said application and this Court has no inclination to interfere with the said order. No doubt the petition seeking for rejection of plaint can be filed at any time before Judgment. The conduct of the parties are to be taken into account while considering the same. When the suit is pending from the year 1994, the petitioner has chosen to invoke a petition under Order 7 Rule 11 of CPC only in the year 2014, which is almost 20 years. When the petitioner / defendant has been arrayed as a defendant in the year 1994 itself, from the year 1994, almost 20 years, he has not taken any steps to file the said petition.

26. When nothing prevented the petitioner from invoking the provisions under Order 7 Rule 11 of CPC much earlier, the said provision has been invoked belatedly. It is also seen that the court auction sale took place in the year 1986 and the respondents have sought for impeaching the court auction sale that held on 02.01.1986. When the dispute persist from the year 1986, the callous attitude of the petitioner can be visualized. There is no valid and sufficient reason shown by the petitioner/defendant for not filing the petition under Order 7 Rule 11 CPC, for a long period of time.

27. Under the above stated facts and circumstances of the case, this Court finds no reason for interfering with the orders passed by the court below in I.A.No.805 of 2014 in O.S.No.2 of 1994 dated 25.10.2019 and the present Civil Revision Petition is dismissed. Since the suit is pending from 1994, this Court hereby directs the trial court to complete the entire suit proceedings on a day today basis, within a period of six months from the date of receipt of copy of this Order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Sub Court,  
Sankari

2. The Section Officer,  
V.R.Section,  
High Court, Madras

C.R.P.No.4046 of 2019 and  
C.M.P.No.26561 of 2019

CP(CO)  
CB(29/03/2021)