



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	28.09.2021
DELIVERED ON	22.10.2021

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI
C.R.P.(MD)No.55 of 2021

and

C.M.P.(MD)No.462 of 2021

N. Subramonian

...Petitioner/Petitioner/
1st Defendant

Vs.

1.Pugazh Veerapandian
2.R.Chellapandian
3.N.Rama Prakash
4.B.Bala Murugan
5.J.Rajeswari

...R-1/R-1/Plaintiff

...R-2 to R-5/R-2 to R-5/
D-2 to D-5

(RR2 to 5 are remained exparte before the courts below)

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 05.02.2020 made in I.A.No.3 of 2019 in O.S.No.223 of 2018 on the file of the learned Principal District Munsif, Nagercoil, Kanyakumari District.

For Petitioner : Mr.M.Suri
For R-1 : Mr.C.Sankar Prakash

O R D E R

The Civil Revision Petition has been filed by the revision petitioner to set aside the fair and decreetal order, dated 05.02.2020 made in I.A.No.3 of 2019 in O.S.No.223 of 2018 on the file of the learned Principal District Munsif, Nagercoil, Kanyakumari District.

2.The 1st respondent herein/plaintiff in O.S.No.223 of 2018 has filed a suit in O.S.No.223 of 2018 on the file of the Principal District Munsif Court, Nagercoil. During the pendency of the suit, the revision petitioner/1st defendant has filed a petition in I.A.No.3 of 2019 in O.S.No.223 of 2018 under Order 7 Rule 11 and Section 151 of Civil Procedure Code, for rejecting the plaint and the same was dismissed on 05.02.2020. Aggrieved over the same, the revision petitioner/1st defendant is before this Court.

3.Heard Mr.M..M.Suri, learned counsel appearing for the revision petitioner and Mr.C.Sankar Prakash, learned counsel
<https://hcservices.ecourts.gov.in/hcservices/>



appearing for the 1st respondent. Perused the material documents available on record.

4. The learned counsel appearing for the revision petitioner submitted that for filing of the suit the cause of action is essential in the pleading to be pleaded specifically in the plaint and when that is absent, it is against the mandate of Order 7 Rule 11(a) of the Code of Civil Procedure. He further submitted that there is no pleading re regarding the date of alleged encroachment by the petitioner herein is fatal to the suit, since from that date only the period of limitation would be calculated and to find out whether the suit was barred by limitation or not. He further submitted that the reasons assigned by the learned District Munsif in dismissing the application in I.A.No.3 of 2019 in O.S.No.223 of 2018 are unsustainable in law and hence liable to be set aside.

5. The revision petitioner/1st defendant has filed a interlocutory petition in I.A.No.3 of 2019 in O.S.No.223 of 2018, for rejection of plaint on the ground that the plaintiff did not disclose the cause of action in the plaint and the aforesaid petition was dismissed. Aggrieved by the order, the revision petitioner/1st defendant filed this Civil Revision Petition.

6. The contention of the 1st respondent herein/plaintiff is that he stated the cause of action in the plaint. The suit was filed for declaration of title of plaintiff for the encroachment portion by the defendant, for mandatory injunction and also for permanent injunction.

7. What is the cause of action for the suit? The defendant encroached a portion of suit property is the cause of action. The cause of action in the plaint is extracted hereunder:

"The cause of action for the suit arose on 05.03.2013 the date on which the plaintiff sent a legal notice to the 1st defendant and on 28.03.2013, the date on which the defendant sent a reply notice to the plaintiff's counsel and the property is situated at South Thamaraiikulam now as North Thamaraiikulam Village which is within the jurisdiction of this Court"

8. As per Order 7 Rule 11 (a), where a plaint does not disclose a cause of action we have to look after the entire plaint. In this plaint, the cause of action for the suit is that the defendant has encroached the property. The date of encroachment is not mentioned.

9. A Court cannot reject the plaint for non-mentioning of the date of encroachment.

10. The relevant portion of the Judgment reported in **2015(3)**

KCCR 2754, in the case of **Jagadish Poonja Vs. The South Canara**

<https://hcservices.ecourts.gov.in/hcservices/>



Hotel Complex Pvt. Ltd., Bengaluru and Others, is extracted hereunder:

.....

"When in the plaint the plaintiff specifically avers that the suit is filed within the time of limitation and hence the suit is in time, the Court cannot embark upon an enquiry on an application filed by the defendant under Order 7, Rule 11(d) to find out whether the statement is correct or not and then decide the said issue. The plaint to be rejected on the ground of bar of limitation under Section 3 what has to be seen is only the plaint averments. If the plaint averments do not disclose that the suit is barred by limitation, then the question of rejecting the plaint under Order 7, Rule 11(d) would not arise. When the defendant raises the plea of bar of limitation, the Court is bound to frame an issue regarding limitation. As the issue regarding limitation cannot be tried as a preliminary issue, the said issue has to be decided after recording of evidence upon all the issues framed in the suit including the issue regarding limitation. It is only thereafter the Court could decide the question whether the suit is barred by the law of limitation on an application filed under Order 7, Rule 11(d) CPC would not arise. Rejection of the plaint on the ground that the suit is barred by limitation is ex facie illegal and cannot be sustained. In that view of the matter, the order passed by the trial Court cannot be sustained".

In another ruling reported in **AIR 2014 SCW 5532 between Satti Paradesi Samadhi and Philliar Temple Vs. M.Sakuntala (D) Tr.LRs. Ors.** The Hon'ble Apex Court has observed that

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"Preliminary issue - Suit for declaration that settlement deeds in question executed by former trustee in favor of his daughters and grand daughters were null and void - Issue as to limitation for filing suit was framed - Questions whether settlement made by father was for consideration or not and similarly whether property belongs to trust as trust is understood within meaning of S.10 certain facts were to be established to throw lis from sphere of said provision so that it would come within concept of limitation. Suit cannot be dismissed on ground of limitation - Issue therefore, pertained to fact and law and could



not be adjudicated as preliminary issue."

11.The 1st respondent/plaintiff has disclosed the cause of action in the plaint. It is a duty of the plaintiff is to establish his case through evidence.

12.Since there is a cause of action in the plaint, the learned Principal District Munsif, Nagercoil, has rightly dismissed the petition filed by the revision petitioner herein/1st defendant, under Order 7 Rule 11 of Civil Procedure Code. This Court has no valid reason to interfere with the order passed by the Court below.

13.Finally, this Civil Revision Petition stands dismissed by confirming the fair and decreetal order, dated 05.02.2020 in I.A.No.3 of 2019 in O.S.No.223 of 2018 passed by the learned Principal District Munsif, Nagercoil, Kanyakumari District. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Principal District Munsif Court,
Nagercoil, Kanyakumari District.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.SURI, Advocate (SR-32406[F] dated 25/10/2021)

+1 CC to M/s.C.SANKAR PRAKASH, Advocate (SR-32438[F] dated 25/10/2021)

C.R.P(MD)No.55 of 2021
22.10.2021

MGJ/PM(10.11.2021) 4P 6C