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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 17TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

A.No.124 of 2019

in

C.S.No.11 of 2019

Dr.M.A.M.Ramaswamy Chettiar,
of Chettinad Charitable Trust,
Represented by its Managing
Trustee Dr.A.C.Muthiah, (aged 76 years),
Chettinad House, R.A.Puram,
Chennai 600028.

.. Plaintiff

-Vs-

1. M.A.M.R.Muthiah, (aged 46 years),
S/o.Sekkappa Chettiar,

2. Minor Ramasamy Muthiah, (aged 16 years)
Son of M.A.M.'R.Muthiah
Represented by Father/natural
Guardian Mr.M.A.M.R.Muthiah

Both are residing at
5th Floor Rain Seethai Hall Building
603 Anna Salai
Chennai 600006.

.. Defendants

A.No.124 of 2019:-

M.A.M.R.Muthiah,
S/o.Sekkappa Chettiar,
5th Floor Rain Seethai Hall Building
603 Anna Salai
Chennai 600006.

...Applicant



1. Dr.M.A.M.Ramaswamy Chettiar,
of Chettinad Charitable Trust,
Represented by its Managing
Trustee Dr.A.C.Muthiah, (aged 76 years),
Chettinad House, R.A.Puram,
Chennai 600028.

2. Minor Ramasamy Muthiah, (aged 16 years)
Son of M.A.M.r.Muthiah
Represented by Father/natural
Guardian Mr.M.A.M.R.Muthiah
5th Floor Rain Seethai Hall Building
603 Anna Salai, Chennai 600 006.

...Respondents

Application praying that this Hon'ble Court be pleased to reject the
plaint in CS 11 of 2019, filed by the plaintiffs as clear abuse of process and
does not disclose any cause of action.

This Application having been heard on 25.02.2022 in the presence of
Mr.T.Balaji, Advocate for the Applicant herein and Mr.R.Srinivas
Advocate for the respondent herein and upon reading the Judges
Summons and the affidavit of M.A.M.R.Muthiah and the Counter Affidavit
of Dr.A.C.Muthiah filed herein and having stood over for consideration till
this date and coming on this day before this court for orders in the presence
of the said advocates for the parties hereto and this Court having observed
that a careful reading of the plaint itself clearly shows that the plaint
discloses cause of action and the applicant/1st defendant has not established
any reason to reject the plaint as contemplated under order VII Rule 11



It is ordered:-

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That the A.No.124 of 2019, be and is hereby dismissed.

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR NATH
BHANDARI CHIEF JUSTICE, HIGH COURT AT MADRAS
AFORESAID, THIS THE 17TH DAY OF MARCH 2022.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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04.04.2022

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4

A.No.124 of 2019

in

C.S.No.11 of 2019

ORDER :-

DATED :17.03.2022

THE HON'BLE MR. JUSTICE

P.VELMURUGAN

FOR APPROVAL: 8.4.2022

APPROVED ON: 08.4.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 25.02.2022	Delivered on 17.03.2022
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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.Nos.124 of 2019
in
C.S.No.11 of 2019

Civil Suit No.11 of 2019 is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure by the plaintiff against the defendants to declare that settlement dated 18.05.2016 (document No.1689/2016, SRO Negamam), executed by the first defendant in favour of the second defendant is invalid, void and illegal and does not bind the plaintiff in respect of items 1 to 5 of the schedule mentioned suit properties and consequently pass a decree of permanent injunction restraining the 1st and 2nd defendants their men, agents and anyone claiming under or through them from in any manner disturbing the possession and right of the plaintiff over the Suit property items 1 to 5 and award the costs of the suit.

2. After filing of the Suit, the 1st defendant has taken out an

application in A.No.124 of 2019 seeking to reject the plaint in C.S.No.11 of



2019, filed by the plaintiff as a clear abuse of process and does not disclose any cause of action.

3. The case of the first respondent/Plaintiff Trust is that one Dr.M.A.M.Ramaswamy Chettiar had executed a deed of declaration of trust dated 09.02.2015 duly registered as the document No.51 of 2015 in the office of the Sub Registrar, Mylapore constituting Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust (for short Plaintiff Trust). The said Dr.M.A.M.Ramaswamy Chettiar had specifically bequeathed the immovable properties described as item Nos.1 to 5 in the schedule mentioned properties to the Plaintiff Trust through the Will dated 18.02.2015. After the demise of Dr.M.A.M.Ramaswamy Chettiar, during 2016, the plaintiff had filed an Original Petition in O.P.No.894 of 2016 seeking to issue probate of the Will dated 18.02.2015, against which, the first defendant filed a caveat petition opposing the probate of the above referred Will. In the meantime, the first defendant illegally, fraudulently and clandestinely executed a deed of settlement dated 18.05.2016 (document No.1689/2016, SRO Negamam) in favour of his son, the second defendant with regard to the properties belonging to the Plaintiff Trust. It is submitted that the aforementioned deed of settlement is a document created with an intention to improperly create an encumbrance and grab and acquire the properties to which the first



defendant and his family are not entitled to in any manner, as the immovable properties belong to a public charitable trust i.e., the Plaintiff Trust. The act of the defendants aimed to snatch the Trust properties is improper and illegal. Therefore, the Plaintiff Trust has filed the Suit in C.S.No.11 of 2019

4. According to the applicant/1st defendant, he is an adoptive son of Dr.M.A.M.Ramaswamy Chettiar and after demise of the Dr.M.A.M.Ramaswamy Chettiar, the applicant/first defendant is the absolute owner of the suit schedule properties and the claim of the first respondent/Plaintiff Trust is that the father of the applicant/1st defendant Dr.M.A.M.Ramaswamy Chettiar had executed a Will dated 18.02.2015 is not valid, as he was suffering from IV stage cancer and he could not have decided freely and voluntarily to execute a Will and he was not in a proper frame of mind at that time. Further, the father of the applicant/1st defendant executed any trust deed or not itself is a dispute of serious nature. Therefore, the applicant/1st defendant has taken out an application in A.No.124 of 2019 seeking to reject the plaint as a clear abuse of process and does not disclose any cause of action.

5. The learned counsel appearing for the applicant/1st defendant

submitted that the first respondent/Plaintiff Trust has no legal right and



therefore, the first respondent/Plaintiff Trust has no cause of action to file a suit and as the first respondent/Plaintiff Trust is not the owner of the property, a stranger and a third party to the settlement deed cannot seek any declaratory relief and the same is legally not maintainable. Further, the learned counsel submitted that though the first respondent/Plaintiff Trust claims that they are entitled to the suit scheduled property through the said Will, they have not obtained the probate of the Will till now and therefore, the suit is barred under Section 213 of the Indian Succession Act. Further it is submitted that the Settlement deed is valued at Rs.545 crores, but the first respondent/Plaintiff Trust has established that the suit is grossly undervalued and the Court fee has not been paid properly. Therefore, the applicant/first defendant has filed the present Application seeking to reject the plaint.

6. The learned counsel appearing for the first respondent/Plaintiff Trust by filing a counter affidavit submitted that the Suit Schedule properties originally belonged to Dr.M.A.M.Ramaswamy Chettiar and the applicant/first defendant is not an adoptive son, and though the applicant/first defendant claims as an adoptive son, he did not obtain any adoption order legally. Further, the learned counsel submitted that



the Will dated 18.02.2015 to the Plaintiff Trust and after demise of

Dr.M.A.M.Ramaswamy Chettiar, the first respondent/Plaintiff Trust filed an

Original Petition in O.P.No.894 of 2016 seeking to issue probate of the Will

dated 18.02.2015. in which the applicant/first defendant filed a caveat and

also filed a counter affidavit and therefore, the said Original Petition has

been converted into T.O.S and the same is pending before this Court.

Further, the learned counsel submitted that the first respondent/Plaintiff

Trust has got a perfect cause of action to file a suit and there is no legal

impediment to file the suit. Therefore, the question of maintainability of the

Suit does not arise. Further, the first respondent/Plaintiff Trust claims that

they have a perfect legal right to institute and maintain the suit in respect of

the subject matter of suit and the Plaintiff Trust has title over the suit

schedule property concerned and is entitled to seek the decree as prayed for.

Further, the learned counsel submitted that in view of the pendency of the

probate proceedings, the Suit is not barred under Section 213 of the Indian

Succession Act and therefore, in order to safeguard the Trust property, the

first respondent/Plaintiff Trust has filed a suit challenging the settlement

deed made by the first defendant in favour of his son, second defendant,

which document has to be challenged within three years from the date of the

execution and if they have been waiting for obtaining the probate, the relief

would be barred by limitation. In support of his contention, the learned



counsel placed reliance on the decision in *Crystal Developers vs. Asha Lata* reported in *[(2005) 9 SCC 375]*. Further, the learned counsel appearing for the first respondent/Plaintiff Trust submitted that the Suit can be filed for unprobated Will, for which, the learned counsel placed reliance on the following judgments:-

- (i) *M.Vaidurayamma vs. P.Suryanarayanan* reported in *[1997 1 LW 49]*
- (ii) *Antony Chelliah vs. Mariyal & Ors.*, reported in *[1997 1 LW 743]*
- (iii) *G.Ganesan vs. P.Sundari* reported in *[2011 1 LW 639]*
- (iv) *R.N.Shanmugavadivel vs. R.N.Myilsami* reported in *[(2011) 1 MLJ 29]*
- (v) *Govindasamy Pandaram vs. Ramasamy Asari* reported in *[2010 (1) CTC 295]*
- (vi) *Deokali Koer vs. Babu Kedar Nath* reported in *[(1912) ILR 39 Cal 704]*

7. Further the learned counsel submitted that the suit is not undervalued and is appropriately valued under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act, which is perfectly permissible and does not amount to under valuation. and no ground is available to the applicant/1st defendant for rejection of the plaint. Therefore, the learned

counsel submitted that the applicant/1st defendant has not made out any case



to reject the plaint under Order VII Rule 11 of CPC.

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8. Heard the learned counsel appearing for the parties and perused the materials placed on record.

9. On a reading of the plaint, it is seen that the first respondent/Plaintiff Trust has got cause of action in the Suit and the same is not barred by any law.

10. The case in ***Binapani Kar Chowdhury vs. Sri Satyabrata Basu & Anr.***, reported in ***(2006) 10 SCC 442***, wherein the Hon'ble Supreme Court held that the Suit is not barred under Section 213 of the Indian Succession Act and it is held that Section 213 does not come in the way of a suit or action being instituted or presented by the executor or the legatee claiming under a Will. It is further held that Section 213, however, bars a decree or final order being made in such suit or action which involves a claim as an executor or a legatee, in the absence of a probate or letters of administration in regard to such a Will. In view of the judgment of the Hon'ble Supreme Court, there is no bar for instituting the Suit and only before passing the final decree of the declaration of title, the Will has got to

be probated. Admittedly, in this case, the first respondent/Plaintiff has



already filed the application seeking to probate the Will and the applicant/first defendant has disputed the same and filed the caveat and the said Original Petition was converted into T.O.S and the same is pending before this Court. Only passing of decree or final order alone is barred under Section 213 of the Indian Succession Act and not for institution of any suit. As stated by the learned counsel appearing for the first respondent/Plaintiff Trust, admittedly applicant/first defendant executed a settlement deed in favour of his son, second defendant and even if, the first respondent/Plaintiff Trust cannot claim the right over the property and in order to safe guard the Trust property, they have filed the Suit and hence, Section 213 of the Indian Succession Act is not attracted and therefore, the Suit cannot be rejected on the ground of Will has not been so far probated. Further the suit is not undervalued and is appropriately valued and no ground is available to the applicant/1st defendant for rejection of the plaint. Rest of the grounds raised by the applicant/1st defendant regarding the rights of the parties and the validity of the adoption can be decided only after recording evidence and not at this stage.

11. It is a settled legal proposition of law that at the time of deciding the application filed under Order VII Rule 11, this Court has to look into the averments in the plaints and documents annexed with, and need not look



Therefore, a careful reading of the plaint itself clearly shows that the plaint discloses cause of action and the applicant/1st defendant has not established any reason to reject the plaint as contemplated under Order VII Rule 11 CPC and accordingly, the Application in A.No.124 of 2019 is dismissed.

Sd./-P.V.J
17.03.2022

//Certified to be true copy//
Dated at Madras this the day of 2022.

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