



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 11TH DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

A.No. 468 of 2022

in

C.S.No. 171 of 2021

Thilagavathy,  
Wife of Mr.A.P.Thiagarajan &  
Daughter of Late Sambasivam,  
No.D1, "Sterling Lotus" 264 B/1,  
11<sup>th</sup> Street, Korattur,  
Chennai 600 080.

... Plaintiff

-Vs-

1.Mrs.Sasireka,  
Wife of P.K.Ashok,  
138/139, Kaveri Road,  
Karungalpalayam, Erode,  
Presently claiming to reside at  
D 83, Friends Colony,  
Anna Nagar,  
Madras 600 102.

2.Mr.Rajvelu,  
Son of Sarojini,  
Residing at  
No.2630, Volaire Lane,  
Cumming, G.A.300041, U.S.A.  
Presently claiming to reside at  
D 83 Friends Colony,  
Anna Nagar,  
Madras 600 102.

... Defendants

**A.No. 468 of 2022:-**

1. Mrs. Sasireka,  
D/o. Subramanian,  
138/139, Kaveri Road,  
Presently reside at,  
D 83, Friends Colony,  
Anna Nagar,  
Madras 600 102.

2. Mr. Rajvelu,  
Son of Mr. Subramanian,  
No. 2630, Volaire Lane,  
Cumming, G.A. 300041, U.S.A.

... Applicants

Vs.

Thilagavathy,  
Wife of Mr. A.P. Thiagarajan &  
Daughter of Late Sambasivam,  
No. D1, "Sterling Lotus" 264 B/1,  
11<sup>th</sup> Street, Korattur,  
Chennai 600 080.

... Respondent

Application praying that this Hon'ble Court be pleased to reject the  
plaint in C.S.No.171 of 2021.

This Application coming on this day before this court for hearing, the  
court made the following order:-

This application has been filed by the applicants, seeking to reject the  
plaint in C.S.No.171 of 2021.

2. Applicants are the defendants and respondent is the plaintiff in the  
suit in C.S.No.171 of 2021. The respondent/plaintiff has filed the suit for  
declaration that she is the absolute owner of the suit schedule property and  
also for the relief of mandatory injunction to direct the



applicants/defendants to execute a deed of conveyance and also for recovery of possession.

3. The applicants/defendants have filed the present application to reject the plaint on the ground that the plaintiff has no cause of action to file the suit and the suit is barred by law.

4. The case of the applicants is that first applicant is the daughter of one Late Mr.M.Subramanian. Second applicant is the brother of the first applicant and son of Late Mr.M.Subramanian. The respondent/plaintiff is no way connected with their father. One Mrs.Kamala was the first wife of the father of the applicants. Plaintiff is neither the legal heir of the said Late Mr.M.Subramanian, nor the said Kamala. The claim of the respondent is that she is the legal heir of said Kamala, which is not correct. Already, there were legal proceedings in which, the claim of the respondent/plaintiff was rejected. Even the mother of the applicants have filed petition for issuance of Letters of Administration and the respondent also contested the same and it was converted as T.O.S.No.40 of 2001. At last, Letters of Administration was granted in favour of the mother of the applicants. Earlier, applicants' father filed a suit in O.S.No.7827 of 1985 on the file of the VIII Assistant Judge, City Civil Court, Chennai for specific performance. That suit was decreed in favour of said Late Mr.M.Subramanian. Though the defendant in the said suit filed appeal, that appeal was later dismissed and the decree



of the trial court was confirmed. Only the applicants and their mother had filed the Execution Petition in E.P.No.3688 of 2007 on the file of the X Assistant Judge, City Civil Court, Chennai and the sale deed dated 03.11.2009 was also executed in their favour by the Court on behalf of the vendor to that agreement. Even prior to this proceedings, physical possession in respect of the property was handed over to Late Mr.M.Subramanian and the said Subramanian, applicants and their mother had been living in the suit property. Therefore, the applicants claimed that one Kamala claimed to be the first wife of Late Mr.M.Subramanian and she has no issues. The mother of the applicants is the second wife of Late Mr.M.Subramanian. Applicants were born to Late Mr.M.Subramanian through her mother. Kamala died issueless. The respondent is claimed to be the sister's daughter of Kamala and she has no right in the property of said Late Mr.M.Subramanian. She has no cause of action and already in earlier proceedings, the claim of the respondent/plaintiff was rejected and also Letters of Administration was granted only in favour of the mother of the applicants. The suit is liable to be rejected under Order VII Rule 11(a) & (d) C.P.C.,

5. Learned counsel for the applicants further submitted that the respondent has filed the suit without any documentary proof and there is no cause of action for the respondent/plaintiff to file the suit against the



defendants/applicants. Already, the Court declared the applicants as legal heirs of Late Mr.M.Subramanian. Therefore, the second suit is not maintainable and the same is barred by law.

6. Heard the learned counsel for the applicants and the learned counsel for the respondent and perused the materials available on record.

7. Admittedly, the respondent/plaintiff has filed the suit against the applicants/defendants for declaration that she is the absolute owner of the suit schedule property and also for the relief of mandatory injunction to direct the applicants/defendants to execute a deed of conveyance and also for recovery of possession. The respondent claimed to be the sister's daughter of Kamala and the said Kamala has no issues. Therefore, the mother of the applicants are not the legally wedded wife and the applicants have no right or title over the property of Late Mr.M.Subramanian and Kamala. Therefore, the property was in the occupation of said Kamala right from the purchase, for the last 37 years. The suit property was in occupation of Kamala right from the purchase for more than 35 years. Property tax, water tax, sewage tax, electricity charge and all records stood in the name of said Kamala. Applicants' mother Sarojini is not the wife of testator Late Mr.M.Subramanian,. The property in which she resides is in acquisition of Late Mr.M.Subramanian. Subramanian was immobilized, sick and he could not execute the Will on his own. Even otherwise, the said



Will only related to the property at Kumbakonam and does not deal with any property of Late Mr.M.Subramanian. Kamala was the wife of Late Mr.M.Subramanian, who died on 02.05.2009. The plaintiff's mother late Saraswathi was the legal heir of said Kamala and she was impleaded as a party in T.O.S.No.40 of 2001. Applicants' mother has filed the application seeking to implead her children as legal heirs of Late Kamala. There was no marriage solemnized between Late Mr.M.Subramanian and Sarojini, the mother of the applicants. Therefore, they are not entitled to the property. Since Kamala is the owner of the property and she died intestate leaving behind her sister Saraswathi, the respondent/plaintiff is the only legal heir of said Saraswathi. Therefore, she is entitled to the relief of declaration and recovery of possession.

8. It is a well settled proposition of law, that at the time of deciding the application under Order VII Rule 11, the Court has to see the averments in the plaint and not the defence taken by the defendant. The applicants have stated that the plaint does not disclose any cause of action. There is a clear difference between the case where the plaint itself does not have any cause of action and the case in which the Court, after consideration of entire materials, including the oral and documentary evidence, comes to the conclusion that there was no cause of action. There is a difference between



of action in the suit. The ground for rejection of plaint is failure to disclose a cause of action and not that there is no cause of action in the suit. It is not competent for the court to go into the correctness or otherwise of the allegations constituting the cause of action. The correctness or otherwise of the allegations constituting the cause of action, is beyond the purview of Order VII Rule 11(a) C.P.C., The court has to find out from the averments made in the plaint itself as to whether the plaint discloses any cause of action or not and not beyond. It has to see as to whether a bogus, wholly vexatious or frivolous case has been made out by the plaintiff or that the claim made by the plaintiff is a legally recognizable claim. What is required to be disclosed by the plaintiff is a clear right to sue and failure to do so, will lead to rejection of the plaint. Where the averments made in the plaint, *prima-facie* discloses cause of action, the plaint cannot be rejected. Where the plaint discloses cause of action, the plaint cannot be rejected merely because inadvertently no relief has been claimed. Therefore, in this case, a reading of the plaint discloses the cause of action and therefore, this plaint cannot be rejected on the ground that the plaintiff has no cause action against the defendants to file the suit. Further the applicants have not specifically pleaded that the plaint is barred under which law, and they simply narrated the earlier proceedings and now stated that the plaint is barred by law. A reading of the plaint averments, it discloses that though in



the Letters of Administration proceedings, originally, the mother of the applicants was a party and subsequently the applicants were impleaded as parties. But the Will not covered the entire property and mere grant of Letters of Administration will not take away the rights of the plaintiff and all these have to be decided only after recording evidence. Therefore, this Court does not find any reason to allow this application and comes to the conclusion that the applicants have not made out a ground for rejection of the plaint under Order VII Rule 11(a) and (d) C.P.C., There is no merit in the application and the same is liable to be dismissed. Accordingly, the application is dismissed

Sd./-PVJ.

11/04/2022

//Certified to be true copy//

Dated at Madras this the                      day of                      2022.

COURT OFFICER(O.S.)

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EVK 18/04/2022