



WEB COPY



A.No.915 of 2021 in
C.S.No.724 of 2018

A.No.915 of 2021 in
C.S.No.724 of 2018

P.VELMURUGAN, J.

The fourth defendant in the suit has filed this application under Order VII Rule 11 CPC seeking to reject the plaint.

2 The learned counsel appearing for the applicant/4th defendant would submit that the plaintiff has no cause of action to file the present suit and no document has been filed to show that the temple is the owner of the property and the suit is vexatious and it is barred by limitation and therefore the plaint has to be rejected. The learned counsel would further submit that this Court in its earlier order dated 25.04.2019 itself held that even if the plaintiff succeeds, he would be entitled only for 2160 sq.ft. alone and not for the entire suit properties, whereas, the plaintiff has filed the present suit for larger extent of 4569 sq.ft and therefore the present suit is nothing but, a malicious practice. In support of his contentions, the learned counsel has placed reliance on the following judgments of the Hon'ble Supreme Court:



A.No.915 of 2021 in
C.S.No.724 of 2018

WEB COPY

1. 1977 SCC (4) 467 (T.Arivandandam vs. T.V.Satyapal & Another)
2. In the case of ITC Limited vs. The Debts Recovery Appellate Tribunal & Others, dated 19.12.1997
3. Civil Appeal No.9519 of 2019 in the case of Dahiben vs. Arvindbhai Kalyanji Bhanusali, dated 09.07.2020
4. S.L.P.(Civil).No.31844 of 2018 in the case of K.Akbar Ali vs. K.Umar Khan & Others, dated 12.02.2021

Therefore the learned counsel appearing for the applicant seeks to reject the plaint in the above suit.

3 The learned counsel appearing for the respondent would submit that he has filed the above suit for declaration, directing the defendants to surrender the suit schedule properties and to restrain them from putting up constructions in the suit properties. He would further submit that the plaint filed in the suit has disclosed the cause of action and the suit properties was dedicated to the plaintiff Temple, which was also elucidated in the plaint itself. The learned counsel would further submit that even the order of this Court referred to by the learned counsel for the applicant says that whether the suit property is partially or fully dedicated to the plaintiff temple is a matter for trial and such conclusion cannot be arrived at the application under Order VII Rule 11.



A.No.915 of 2021 in
C.S.No.724 of 2018

4 The learned counsel appearing for the respondent/plaintiff temple would further contend that the plaintiff Temple is the owner of the suit properties and the defendants are only the legal heirs of the Contractor. Therefore he prays to dismiss the application.

5 Heard the learned counsel on either sides and perused the materials available on record.

6 On reading of the averments made in the plaint filed by the respondent/plaintiff Temple, it is very clear that the plaint has disclosed the cause of action. As far as the contentions of the learned counsel for the application/4th defendant with regard to the limitation is concerned, it is a mixed question of law and facts, which can be decided only after recording evidence not at the threshold. Even though, the learned counsel appearing for the petitioner vehemently contended that the suit is nothing but a malicious prosecution, on reading of the entire averments made in the plaint, this Court does not find any reason to sustain the contentions of the learned counsel for the applicant/4th defendant. Further it is settled proposition of law that while deciding the application under Order VII Rule



A.No.915 of 2021 in
C.S.No.724 of 2018

11, the Court has to see the averments made in the plaint and not the defence taken by the defendants.

7 There is no quarrel with the propositions of law laid down by the Hon'ble Supreme Court, which were referred to by the learned counsel for the applicant/4th defendant, but, this Court finds that those decisions have not made applicable to the present case on hand and none of the provisions of Order VII Rule 11 has been satisfied. On a careful reading of the plaint filed by the respondent/plaintiff, this Court is of the opinion that the plaint disclosed cause of action and the suit can be proceeded with trial. The applicant/4th defendant can establish his defence during trial.

8 In view of the above observations, this application stands dismissed. List the suit on 09.03.2022 “ for framing of issues”.

09.02.2022

cgi

4/5



WEB COPY



A.No.915 of 2021 in
C.S.No.724 of 2018

P.VELMURUGAN, J.

cgi

A.No.915 of 2021 in

C.S.No.721 of 20148

09.02.2022