



C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1013 of 2020

and

C.M.P.No.5558 of 2020

Deva Annai Matric Higher Secondary School,
Rep. by its Correspondent K.Kanagaraj,
No.59, Pillayar Koil Street, Kilambakkam Village,
Kancheepuram District.

... Petitioner

Vs.

1.Minor.M.Dinesh
2.Minor.Kaviya
3.M.Amudha
(1 & 2 minors rep. by their mother and
natural guardian 3rd plaintiff)

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal orders dated 22.01.2020 made in I.A.No.13289 of 2017 in O.S.No.651 of 2017 on the file of the VII Additional City Civil Court, Chennai.



C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020

WEB COPY

For Petitioner : Mr.S.Subbiah, Senior Counsel
for Mr.G.Bharadwaj
For Respondents : Mr.R.T.Shyamala

ORDER

This petition has been filed to set aside the fair and decreetal orders dated 22.01.2020 made in I.A.No.13289 of 2017 in O.S.No.651 of 2017 on the file of the VII Additional City Civil Court, Chennai.

2.For the sake of convenience, the parties are referred to as per their ranking in the trial Court and in appropriate places, their rank in the present petition would also be indicated.

3.The revision petitioner is the 45th defendant in O.S.No.651 of 2017 on the file of the VII Additional Judge, City Civil Court, Chennai. The petitioner filed a petition in I.A.No.13289 of 2017 in the said O.S.No.651 of 2017 seeking for rejection of plaint under Order VII Rule 11 (a) CPC as against the 45th defendant as there was no cause of action



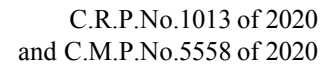
C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020

WEB COPY against him in the suit.

4.The suit in O.S.No.651 of 2017 was filed by one M.Amudha, 3rd plaintiff along with her minor sons Dinesh (1st plaintiff) and Kaviya (2nd plaintiff) for partition of the suit properties into five equal shares and to allot one such share to the plaintiffs and for removal of construction put up by the defendants. They have also prayed for permanent injunction restraining the defendants from alienating the suit properties to third parties and for rendition of accounts.

5.I.A.No.13289 of 2017 filed by the 45th defendant was dismissed by the learned VII Additional City Civil Judge, Chennai, by observing thus :

"6. The main thrust on the part of the petitioner is that the respondents have got no cause of action to file this suit. The above contention has been resisted by the respondents, stating that the cause of action is bundle of facts, which form the cause of action and in order to embolden his argument, the following decision has been produced :



*Mayar (H.K.) Ltd. and Ors V. Owners and parties,
Vessel M.V.Fortune Express and Ors.*

The complaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the complaint. The Court has to read the entire complaint as a whole to find out whether it discloses a cause of action and if it does, then the complaint cannot be rejected by the Court exercising the powers under O.7, R.11. Essentially, whether the complaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the complaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for



WEB COPY



C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020

the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the Court, mere fact that in opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the instant case, the averments made in the plaint, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under O.7, R.11 cannot be exercised for rejection of the suit filed by the plaintiff appellants.

2018(3) Civil Court Cases 651 (S.C.)

SUPREME COURT OF INDIA

Chhotanben & Anr.

Vs.

Kiritbhai Jalkrushnabhai Thakkar & Ors.

"3..... Moreover, at the time of deciding the application under Order 7 Rule 11 the Court has to just look into the averments made in plaint only and



C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020

WEB COPY

the plea or defense raised by defendant cannot be taken into account at the stage of deciding the application under Order 7 Rule 11 and here in this case merely looking to the pleading in the plaint it does not come out that the suit barred by law of limitation. Moreover, I am of humble view the case law cited by Ld. Advocate for plaintiffs reported as 2015 (1) GLH 1, fully supported to the case in hand."

This Court has perused the above decisions very carefully.

7.In this case, since the petitioner has challenged the maintainability of the suit through this petition on the ground of cause of action under Order 7, Rule 11 of CPC. This Court feels it more relevant to mention provisions of Order VII, Rule 11 of CPC

- (a) " where it does not disclose a cause of action ".*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to 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*



C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020

WEB COPY

plaint it written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper withing 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-paper 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 for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause great injustice to the plaintiff.

8.In this case, the petitioner has admitted in the petition as that the property comprised in S.No.142A/2B of Kelambakkam Village measuring about 34 1/2 cents, was purchased by one Kannappa Naicker from one Jayalakshmi



C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020

WEB COPY

and her son Gopal Raja on 09.04.1959. Thereafter, the said Kannappa Naicker had executed a Will to and in favour of his son Venketasan and after demise of the said Venkatesan, the petitioner purchased the property from the legal heirs of the said Venkatesan on 09.09.2004. Here the petitioner has admitted the origin of the property, which he is occupying as that the said Kannappa Naicker is the predecessor in title of the property. The petitioner has not disputed the relationship of the respondents with the said Kannappa Naicker.

9.In the plaint, the respondents are claiming the right over the property through the said Kannappa Naicker, who is the grandfather of the respondents. And also further it has been admitted by the petitioner that he gave the land to 45th defendant on lease to utilize the same as play ground. It is seen from the petition that the petitioner is the purchaser of the property as well as he is the correspondent of the 45th defendant school and now the property is in the custody of the school on lease. It has been stated in the plaint that the defendants 1 to 3 along with other defendants are refusing their right over the property. In such circumstances, to know the respondents claim of partition as the property belonged to their grandfather, it is necessary for recording of evidence



C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020

WEB COPY and a full fledged trial.

10.Nextly, another contention has been raised by counsel for the petitioner that the above said land is not the subject matter of the suit and as such this petition has to be allowed. Here in the petition, itself the petitioner has specifically admitted that the property was purchased by the said Kannappa Naicker and the said Venkatesan is the son of the said Kannappa Naicker and from the legal heirs of the said Venkatesan, the petitioner purchased the property. Here apparently it could be seen that the respondents have added all the properties of the said Kannappa Naicker. Even assuming for argument sake the said property is not the subject matter of the property, it could be brought out only after a full fledged trial.

11.Another contention has been raised by the petitioner is that he has been in possession over the property for the past 12 years. Here in the plaint it has been alleged that defendants 1 to 3 are denying the right of the respondents in colluding with the other defendants and hence the actual facts with regard to ownership of the property would be brought into light only after trial. On accounting the above facts, it cannot be said that there is no cause of action to file this suit. And the above decision is aptly applicable to this



C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020

WEB COPY *case.*

In the result, the petition is dismissed."

6.Heard Mr.S.Subbiah, learned senior counsel assisted by Mr.G.Karthikeyan, learned counsel for the appellants for the revision petitioner and Ms.R.T.Shyamala, learned counsel appearing for the respondents.

7.On a careful analysis of the plaint in O.S.No.651 of 2017, it is clear that the name of the present petitioner has been clearly mentioned. There is a specific prayer as against the 45th defendant seeking for a permanent injunction restraining him from removing sand and other building materials from the suit property. The petitioner is the Deva Annai Matric Higher Secondary School represented by Kanagaraj. The petitioner also admitted that the suit property was purchased in the name of Kanagaraj who in turn is the correspondent of the school and that the said land was originally owned by the Kannappa Naicker grandfather of the plaintiffs. The said Kannappa Naicker had executed a



C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020

WEB COPY

Will in favour of his son K.Venkatesan from whom the property was purchased by the said Kanagaraj. Kanagaraj had leased out the land to the school. Moreover, the present petitioner has also claimed that the land purchased by him bears S.No.142/A/2B of Kelambakkam Village which is not found in the schedule of properties mentioned by the respondents/plaintiffs in the suit schedule.

8.The trial Court had rightly held that at this stage it would not be just to delete the petitioner's name as the 45th defendant in the original suit as the vendor from whom the 45th defendant had purchased the property was the grandfather of the respondents/plaintiffs and the respondents/plaintiffs have also alleged that there had been many transactions with the defendants other than 1 to 3 and therefore, only the full trial would bring forth the actual status of all the properties which were owned by one Kannappa Naicker and Manickammal. I do not find any infirmity in the order of the trial Court and hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.



C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020

WEB COPY

28.10.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

R. HEMALATHA, J.

mtl

To

- 1.The VII Additional City Civil Court, Chennai.
- 2.The Section Officer, VR Section, High Court, Madras.

C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020



WEB COPY



C.R.P.No.1013 of 2020
and C.M.P.No.5558 of 2020

28.10.2022