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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 24TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

A.No.1339 of 2022

in

C.S. No.8 of 2022

N.Kothadevi,
W/o.P.Nagaraj,
No.1, Ashok Avenue,
United India Colony,
Kodambakkam,
chennai – 600 024.

..Plaintiff

-Versus-

N.Chandran,
S/o. Narayanasamy,
AP-599, H Block,
20th Street, Anna Nagar West,
Chennai – 600 040.

..Defendant

A.No.1339 of 2022:

N.Chandran,
S/o. Narayanasamy,
AP-599, H Block,
20th Street, Anna Nagar West,
Chennai – 600 040.

..Applicant

Vs

N.Kothadevi,
W/o.P.Nagaraj,
No.1, Ashok Avenue,
United India Colony,
Kodambakkam,



chennai – 600 024.

...Respondent

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Application praying that this Hon'ble Court be pleased to reject the suit under Order VII, Rule 11(a) & (d).

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

The respondent has filed the suit for delivery of possession and for cost of Rs.10,00,000/- towards the damages for use and occupation of the suit property and for further relief of permanent injunction and mandatory injunction.

2. The defendant has filed the present application under Order VII Rule 11 to reject the plaint on the grounds of no cause of action and further the suit is barred by law.

3. The learned counsel for the applicant/defendant would submit that even in the plaint itself, the plaintiff has averred that the applicant/defendant had filed a suit in the year 1989 and got ex-parte order. Now the suit has been filed in the year 2022, which beyond the period of 12 years. Therefore, it is barred by limitation and there is no cause of action.

4. Though the respondent/plaintiff has not filed any counter, to invoke Order VII Rule 11, the Court has to see only the averment in the plaint and not the defence taken by the defendant. A reading of the plaint reveals that the suit property was transferred to the plaintiff by the

TamilNadu Housing Board, which was originally allotted to the defendant



and by letter dated 19.03.1987 NOC was given to the plaintiff, but, the applicant/defendant has stated that the suit property was allotted to the applicant and he permitted the respondent/plaintiff to reside. Whether the respondent/plaintiff was in permissible occupation or she trespassed is a matter for trial. The earlier suit filed by the applicant/defendant is only bare injunction. Mere obtaining bare injunction will not confer any title on the suit property. It is a settled proposition of law that a plea of limitation is a mixed question of law and fact and it can be decided only after recording evidence and not at this stage. Further the ground of no cause of action and plaintiff does not disclose the cause of action is entirely different. The order 7 Rule 11 CPC is applicable to the ground for non disclosure of cause of action and not for no cause of action.

5. A reading of the plaint shows that the respondent/plaintiff has disclosed the cause of action for filing the suit. Therefore, this Court finds that the applicant has not made out any of the grounds under Order 7 Rule 11 CPC. Therefore, the application is dismissed.

6. The learned counsel for the defendant is directed to file the written statement .



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7. Registry is directed to receive the written statement would be filed by the defendant and place it on record if it is otherwise in order and list the matter on 12.04.2022 for framing issues.

Sd./-PVJ.

24/03/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

EVK 04/04/2022