



WEB COPY



C.R.P.(PD) No.1152 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2022

C O R A M

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

C.R.P.(PD) No.1152 of 2020

and

C.M.P.No.6052 of 2022

G.Ramalingam,
S/o.Govindasamy.

... Petitioner

-Vs-

Sivagami Ammal,
W/o.Kaliyaperumal.

... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure praying to set aside the Fair and Decretal order of the learned Additional District Munsif Court, Tindivanam, dated 21.09.2021 in I.A.No.16 of 2019 in O.S.No.178 of 2008.

For Petitioner : Mr.J.Antony Jesus

For Respondent : Mr.Sivagami Ammal,
Party-in-Person.



WEB COPY



C.R.P.(PD) No.1152 of 2022

ORDER

This Civil Revision Petition has been preferred challenging the order of the learned Additional District Munsif, Tindivanam dated 21.09.2021 made in I.A.No.16 of 2019 in O.S.No.178 of 2008.

2. The revision petitioner is the 5th defendant in the suit. The respondent-plaintiff has filed the suit for the relief of declaration and permanent injunction. During the pendency of the suit, the 5th defendant filed a petition in I.A.No.16 of 2019 to reject the plaint and the same was dismissed. Aggrieved over that, the 5th defendant has filed this Revision Petition.

3. The learned counsel for the revision petitioner submitted that the suit does not have any cause of action and the documents produced in support of the suit are bogus and the suit has been under-valued. On these grounds, the revision petitioner submitted that the plaint ought to have been rejected.



WEB COPY

4. Before advertent into the merits of the petition filed under Order VII Rule 11 of CPC to reject the plaint, it is to be noted that the petitioner's rejection of plaint petition has been filed only in the year 2019, after a lapse of 11 years. In fact, the 5th defendant alone has filed the Order VII Rule 11 petition, for which, other defendants were not added parties, despite they are also essential parties. Further, the revision petitioner, who is the 5th defendant has also filed his written statement and subjected himself to the jurisdiction of the Court. Even when the time the impugned order was passed, the trial was commenced and the plaintiff side witnesses were being examined.

5. At the fag end of the case, the 5th defendant had come up with the petition to reject the plaint under Order VII Rule 11(d) of CPC. For better understanding, it will be worthwhile to reproduce the provisions of Order VII Rule 11, which is as follows:

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so 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 plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within 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-papers 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 from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

6. It has been held in humpty number of cases that the cause of action has to be read from the averments of the plaint. As per the contention of the plaintiff, her cause of action would start from the date her grandmother Muniyammal had executed the Will and thereafter, she died and on and from



the date, the plaintiff got the entitlement to the suit property in terms of the Will. The defendants are at liberty to question the genuineness of the contentions raised by the plaintiff. When there are specific averments on which *prima facie* case is made out on the basis of supporting documents filed along with the plaint, the Court need not make a roving enquiry into the merits of the case at the time of taking it on file. This Court has already held in the Judgement authored by this Single Judge in ***A.S.(MD) No.74 of 2020*** [***C.Anantha Baskaran Vs. S.Venkatesan and Another***, reported in (2022) 4 ***MLJ*** 242] that irrespective of the genuineness of the claim made by the plaintiff, the plaints have to be admitted in the Court, if on the face of it, it makes out a civil case. The relevant portion is extracted as under:

“11. The entitlement or disentitlement for the relief prayed by him would only be the consequence of the trial based on the evidence available therein. Though there are written contracts like sale deed and sale agreement, when the plaintiff pleads otherwise, he would get the benefit of letting in oral evidence as per the proviso to Section 92 of the Indian Evidence Act. At the stage of taking the suit on file itself, the Trial Court need not venture into a roving enquiry without



getting the benefit of evidence available during the trial. That would certainly prejudice the plaintiff, especially, in the circumstances, where summon has not been sent to the defendants and the defendants have not come forward with a petition to reject the plaint under Order 7 Rule 11 CPC.

12. At the initial stage of plaint before numbering, the cause of action would be as how it was pleaded by the plaintiff. The risk goes with the plaintiff, if he pleads a weak cause of action or difficult cause of action. The fact remains that the plaint reveals some cause of action, for which, the plaint has been filed. Though it would have been better, if the plaintiff had chosen to pray the relief of declaration of the sale deed dated 25.03.2019 as sham and nominal, that cannot deprive the plaintiff to maintain a suit in respect of other reliefs sought by him. At the initial stage itself, the suit ought not to have been rejected without numbering. The trial Court ought to have numbered the plaint, if it is found otherwise in order.”

7. The benefits of bringing a good case or the risk of conducting a bad case are the choices of the plaintiff and the defendant cannot expect to deal with the merits of the case in a petition filed under Order VII Rule 11 CPC.



C.R.P.(PD) No.1152 of 2022

WEB COPY

8. In the case on hand, the petition to reject the plaint was not even filed in the initial stage, but it has been filed in the fag end of the suit after, 11 years and that too without impleading the other defendants as the parties to the suit. The learned Trial Judges rightly disallowed the petition and I find no grounds for interference.

9. In the result, Civil Revision Petition stands dismissed and the Fair and Decreetal order of the learned Additional District Munsif Court, Tindivanam, dated 21.09.2021 in I.A.No.16 of 2019 in O.S.No.178 of 2008 is confirmed. Consequently, the connected miscellaneous petition is also closed.

17.06.2022

Index: Yes / No
Speaking / Non-Speaking order
nsa



WEB COPY



C.R.P.(PD) No.1152 of 2022

R.N.MANJULA, J

nsa

C.R.P.(PD)No.1152 of 2022

and

C.M.P.No.6052 of 2022

17.06.2022