



C.R.P.No.1894 of 2020
and C.M.P.No.11488 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.R.P.No.1894 of 2020
and
C.M.P.No.11488 of 2020

1.Revathi
2.M.Dharani
3.D.Damodharan

... Petitioners

.. Vs..

1.J.Sundar @ Vembuli
2.Member Secretary,
CMDA, Egmore, Chennai - 8.
3.District Collector,
Kancheepuram District.
4.The Tahsildar,
Pallavaram Taluk Office,
Chromepet, Chennai - 44.
5.The Commissioner,
Pallavaram Municipality,
Chromepet, Chennai - 44.
6.The Sub Registrar,
Pallavaram Registrar Office,
Chromepet, Chennai - 44.

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order dated 13.11.2019 passed in I.A.No.970 of 2018 in O.S.No.154 of 2018 on the file of the Additional



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District Munsif Court, Alandur.

For Petitioners : Mr.M.L.Ganesh

For Respondents : Mr.S.Ambedkumar

ORDER

The present Civil Revision Petition is filed against the fair and decreetal orders dated 13.11.2019 passed in I.A.No.970 of 2018 in O.S.No.154 of 2018 on the file of the Additional District Munsif, Alandur.

2.The revision petitioners are the defendants 1 to 3 in O.S.No.154 of 2018 on the file of the learned Additional District Munsif, Alandur. The first respondent / plaintiff filed the suit for a declaration that the settlement deed executed by the defendants 1 & 2 in favour of the third defendant is null and void; and for a consequential relief of permanent injunction restraining the revision petitioners/defendants 1 to 3 from interfering with his peaceful possession and enjoyment of the suit property. He also prayed for a mandatory injunction directing the defendants 1 to 3 to demolish the construction put up by them in the suit property.

3.The revision petitioners/defendants filed a petition in



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I.A.No.970 of 2018 under Order VII Rule 11 CPC, praying to reject the
plaint on the following grounds :

- (1) The valuation of the suit under Section 25 (d) of the Court Fee and Suits Valuation Act, is not proper.
- (2) Even as per the settlement deed, the valuation of the suit property is more than Rs.5,00,000/- and therefore, the Additional District Munsif does not have pecuniary jurisdiction to try the suit.
- (3) The respondent/plaintiff is not in possession and enjoyment of the suit property and he has also suppressed material facts with regard to the earlier suits in O.S.Nos.498 of 2002, 13 of 2004 on the file of the Additional District Munsif, Alandur and O.S.No.718 of 2002 before the Additional Subordinate Court, Chengalpet, in respect of the same subject matter.
- (4) There is no cause of action for filing the present suit.
- (5) The suit is also barred by limitation.

The respondents/plaintiffs filed a counter in the said application.

4. After full contest, the learned Additional District Munsif, Alandur, vide his order dated 13.11.2019 dismissed the said application.



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Aggrieved over the same, the present Civil Revision Petition is filed by the revision petitioners/defendants 1 to 3.

5.Heard Mr.M.L.Ganesh, learned counsel appearing for the revision petitioners and Mr.S.Ambedkumar, learned counsel appearing for the respondents.

6.Mr.M.L.Ganesh, learned counsel appearing for the revision petitioners contended that the first revision petitioner filed a suit in O.S.No.13 of 2004 before the learned District Munsif, Alandur for a declaration that the settlement deed dated 17.05.2002 registered as Document No.1639/2002, SRO Pallavaram is null and void. The said suit was decreed vide decree and judgment dated 07.03.2006. Earlier the suit in O.S.No.528 of 2001 and O.S.No.492 of 2002 for a bare injunction was filed by the first revision petitioner. Both the suits were decreed.

7.The learned counsel for the revision petitioner also contended that the matter in issue in those suits related to the matter in issue in the



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present suit and the suit property is also the same. He further contended that apart from these suits the first respondent and his father filed a suit in O.S.No.716 of 2002 before the Additional Sub Court, Chengalpet for partition of the suit property in which the present revision petitioners filed a petition under Order VII Rule 11 CPC to reject the plaint and the said petition was allowed on 20.10.2004, after full contest.

8.The appeal preferred by the plaintiffs in that suit was also dismissed on merits. Thereafter, the first respondent has filed the suit for a relief of declaration, that the settlement deed dated 17.05.2002 is null and void and for a permanent injunction.

9.The learned counsel for the revision petitioner drew the attention of this Court to the order passed by the trial Court wherein it is observed as follows :

"10.Undoubtedly, rejection of plaint is a matter of the Court's discretion that has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised only special case. Admittedly, the suit is filed in the year 2018 and the petitioners/defendants were not filed their written



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statement. In the light of the provision of the Order 7 Rule 11 of CPC the present suit has to be considered as to case whether it is liable to be rejected without having a trial. Whether the respondent/plaintiff is in legal possession are not will be decided only after a full fledged trial. Further, the plaint did not suffer from any lack of cause of action , it is not barred by any law. No dispute on value of plaint and stamp duty. No any ground is available to attract the provision of Order 7 Rule 11 of CPC. Thus, this Court has considered this that this application is devoid of merits and liable to be dismissed."

The learned counsel relied on the decision in "*Saleem Bhai and Ors. Vs State of Maharashtra and Ors.* reported in "*AIR 2003 SC 759*" and contended that the direction to file the written statement without deciding the application under Order VII Rule 11, CPC. cannot but be a procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the Court as well as procedural irregularity. He also relied on the decision in "*R.K.Roja Vs U.S.Rayudu and Ors.*" reported in "*AIR 2016 SC 3282*" in which it has been held that once an application is filed under Order VII Rule 11 of CPC, the Court has to necessarily dispose of same before



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proceeding with the trial. There is no point or sense in proceeding with trial of the case, in case the plaint is liable to be rejected at the threshold level.

10.Per contra the learned counsel appearing for the respondents contended that the revision petitioner can be directed to file a written statement and proceed with the trial of the case and the application as well.

11.A bare perusal of the orders passed by the trial Court clearly shows that the trial Court without going into the contentions of the learned counsel and various averments made in the petition in I.A.No.970 of 2018, has passed a cryptic order. Moreover, the earlier suits between the same parties in respect of the same subject matter was not taken into by the trial Court.

12.In the circumstances, the matter is remitted back to the trial Court and learned Additional District Munsif, Alandur is directed to dispose of I.A.No.970 of 2018 and decide the matter a fresh on merits within a period of three months from the date of receipt of copy of this order.



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13.With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
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R. HEMALATHA, J.
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To

1. The Additional District Munsif Court, Alandur.
2. The Section Officer, V.R. Section, High Court, Madras.

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