



A.No.4255 of 2021
in
C.S.No.220 of 2021

P.VELMURUGAN.,J

This application has been filed under Order VII Rule 11C.P.C. by the applicant/first defendant to reject the plaint in C.S.No.220 of 2021.

2. The first respondent/plaintiff has filed the suit for partition.

3. Learned counsel for the applicant/first defendant has submitted that the applicant had already filed the suit before this Court in C.S.No.938 of 2016, in which, the first respondent/plaintiff herein has filed the counter claim and therein, he has not sought for the relief of partition. Now, the plaintiff herein has filed the fresh suit for partition. Therefore, it is hit by law. Hence, the application may be allowed and the plaint may be rejected.

4. Learned counsel for the first respondent/plaintiff has submitted that the applicant/first defendant has filed the said suit, in which he filed the counter claim, but he sought only the right in the property. The present suit has been filed only for partition. Therefore, Order II Rule 2 C.P.C., will not be applicable to the present suit. The present suit has got nothing to do with that suit in



C.S.No.938 of 2016. The reliefs sought for in both the suits are entirely different. He has taken another ground that the applicant/first defendant has no cause of action at all to file the said suit.

5. Heard the learned counsel appearing for both the parties and perused the materials available on record.

6. As far as the contention that the present suit is barred by law is concerned, the only ground taken in the present suit is that, it is hit by Order II Rule 2 C.P.C., Learned counsel for the first respondent/plaintiff submitted that the said suit in C.S.No.938 of 2016 has got nothing to do with the present suit. Reliefs sought for in both the suits are different. The present suit is for partition. In the earlier counter claim, he has not claimed any partition of any of the property. Further, whether the present suit is hit by Order II Rule 2 C.P.C., or not, can be decided only after recording evidence. In both the suits, the parties are same. Whether the present relief is already available in the said suit is a matter for trial. Therefore, under these circumstances, the plaint cannot be rejected only on the ground that no cause of action has arisen to file the suit.



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7. Order VII Rule 11 (a) C.P.C., clearly shows that the plaint shall be rejected where it does not disclose a cause of action. Therefore, non-disclosure of cause of action also is one of the grounds to reject the plaint. Non-disclosure of cause of action is different from no cause of action. Hence, under these circumstances, this Court finds that the applicant/first defendant has not made out a case to reject the plaint. In view of the same, this application has no merits and the same is liable to be dismissed. Hence, this application is dismissed.

8. Defendants are directed to file their written statement well in advance, ie., before 13.04.2022 if they want to contest the suit. Registry is directed to place the written statement on record, if it is otherwise in order. List the suit on 18.04.2022, for framing issues. It is made clear that no further time will be granted.

21.03.2022

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