



CRP.(PD).No.2305 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 10.08.2022

Delivered On: 22.09.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP(PD).No.2305 of 2021

and

C.M.P.No.17486 of 2021

K.Chandran

... Petitioner/Petitioner/Defendant

Vs.

I.Vinoth Singh

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal Order dated 23.08.2021 made in I.A.No.17 of 2021 in O.S.No.334 of 2013 on the file of the Subordinate Court at Tambaram and allow this Revision Petition.

For Petitioner : M/s.G.Kiruthika
for Mr.P.Gunaraj

For Respondent : Mr.K.Elango



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ORDER

This Petition had been filed by the Defendant seeking to set aside the order passed by the learned Sub Judge, Tambaram in I.A.No.17 of 2021 in O.S.No.334 of 2013. The Defendant is the Petitioner in this Petition.

2. It is the contention of the learned Counsel for the Revision Petitioner/Defendant before the trial Court that in the preliminary objection regarding the Court fees and Suit Valuation Act, the Petitioner/Defendant had marked documents showing the market value of the property. The learned Sub Judge did not accept the documents stating that the documents are not related to adjacent property of the suit property. Therefore, the valuation as stated by the Plaintiff in the plaint is accepted by the learned Sub Judge, Tambaram and the Petition seeking property valuation by the Defendant in I.A.No.17 of 2021 was dismissed stating that the properties for which document had been furnished by the Defendant are not adjacent properties but are nearby properties.



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2.1. Aggrieved by the same, Defendant had approached this Court by filing this Revision Petition.

2.2. It is the contention of the learned Counsel for the Revision Petitioner that the learned Sub Judge ought to have summoned documents from the Sub Registrar, Tambaram regarding adjacent properties and valuation and also from the Sub Registrar, Tambaram regarding guideline value. The learned Sub Judge had not done so and dismissing the Petition. Therefore, aggrieved by the same, the Defendant is seeking to set aside the Order passed by the learned Sub Judge in I.A.No.17 of 2021 in O.S.No.334 of 2013 and restore the I.A.No.17 of 2021 directing the Plaintiff to present the plaint before the appropriate Court as it has exceeded pecuniary jurisdiction of the learned Sub Judge, Tambaram.

3. The learned Counsel for the Respondent/Plaintiff submitted that



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the Plaintiff had filed the Suit seeking relief of declaration regarding the property which is encroached by the Defendant. The Plaintiff by way of reply stated that the Suit had been properly valued as per the Court fees and Suits Valuation Act. Therefore, the learned Sub Judge, Tambaram had rightly dismissed the I.A.No.17 of 2021 filed by the Petitioner herein. He had relied on the following rulings:

(I) **2019 (4) CTC 856** in the case of **N.Mohan Vs. P.Govindasami**

and others, the relevant portion is extracted hereunder:

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 – Rejection of Plaint – Scope of – Undervaluation of Plaint is curable defect – Plaint cannot be rejected on this ground – Limitation for rejection of Plaint mixed question of law and facts – Can be determined only after considering evidence – When Plaint read as whole discloses cause of action, same cannot be rejected as clever and astute drafting – Partial rejection of Plaint not permissible.

(II) **MANU/SC/0751/2016** in the case of **RK.Roja Vs. U.S.Rayudu**

and Ors, the relevant portion is extracted hereunder:

1. Stand taken by High Court in impugned Order cannot be appreciated. An application under Order VII Rule 11 of CPC, can be filed at any stage, as held by this Court in *Sopan Sukhdeo Sable and Ors. V. Assistant Charity Commissioner and Ors.* MANU/SC/0071/2004. Only restriction is that the consideration of application for rejection should not be on basis of allegations made by Defendant in his written



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statement or on basis of allegations in application for rejection of plaint. Court has to consider only plaint as a whole, and in case, entire plaint comes under situations covered by Order VII Rule 11 (a) to (f) of CPC, the same has to be rejected. (5) 2. Once an application is filed under Order VII Rule 11 of CPC, Court has to dispose of same before proceeding with trial. There is no point or sense in proceeding with trial of the case, in case the plaint (Election Petition in present case) is only to be rejected at threshold.(6) 3. Procedure adopted by Court is not warranted under law. Without disposing of an application under Order VII Rule 11 of CPC, the Court could not proceed with trial. In that view of matter, impugned order was set aside. (9)

4. However, concern expressed by High Court with regard to alleged attempt on part of Appellant for delaying trial of Election Petition could not be brushed aside. Application filed by Appellant under Order VII Rule 11 of CPC, does not come within purview of any of situations under Order VII Rule 11 (a) to (f) of CPC. Application rejected.(10).

4. On perusal of the plaint averments, the contention of the learned counsel for the Petitioner regarding the valuation is found acceptable. The Order passed by the learned Sub Judge, Tambaram is found reasonable and acceptable and it does not warrant any interference. Therefore, the Petition filed by the Defendant in Civil Revision Petition as having no merits and is dismissed. The Order passed by the learned Sub Judge, Tambaram dismissing the Petition under Order 7 & Rule 11 (b) of CPC is found reasonable warranting no interference of this Court. The



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submission of the learned Counsel for the Revision Petitioner that the learned Sub Judge, Tambaram had failed to appreciate the documents filed by the Petitioner in this Revision Petition as Petitioner in I.A.No.17 of 2021 cannot be accepted as it is based on the affidavit filed by the Petitioner and not based on the plaint averments. The rulings relied on by the learned counsel for the Respondent/Plaintiff is found acceptable in the light of the order passed by the learned Sub Judge, Tambaram in dismissing the Petition.

4.1. The Petition under Order 7 Rule 11 (b) CPC could be considered only based on the averments in the plaint as a whole. Therefore, the question of rejecting the plaint on the ground that all the documents filed along with the Petition by the Defendant in the Suit/the Petitioner in I.A.No.17 of 2021 was rightly rejected.

In the light of the above discussion, this ***Civil Revision Petition is dismissed*** as having no merits. Consequently, connected Miscellaneous Petition is closed. No costs.



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Index: Yes/No

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Speaking Order/Non-speaking Order



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To

1. The learned Subordinate Judge,
Tambaram.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

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