



C.R.P.(PD).No.3434 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.R.P.(PD).No.3434 of 2017

and

C.M.P.No.15946 of 2017

Amareswarasamy Temple,
Uthukuli Village, Pollachi Taluk,
by its Trustee Sri Arun Kumar Kalingarayar,
by his Power Agent Siddarth AMR Kalingaryar .. Petitioner

Versus

1.Jagadesh Kumar
2.Vidya .. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, for setting aside the fair and decretal orders dated 23.12.2016 in I.A.No.996 of 2014 in O.S.No.133 of 2014, on the file of the District Munsif's Court, Pollachi.

For Petitioner : Mr.C.R.Prasanan

For Respondents : Mr.K.Doraisamy



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ORDER

WEB COPY The plaintiff/temple is before this Court with this Civil Revision Petition, aggrieved by the order dated 23.12.2016 passed in I.A.No.996 of 2014 in O.S.No.133 of 2014 passed by the District Munsif Court, Pollachi.

2. The plaintiff has filed the suit for declaration and for consequential relief of recovery of possession. According to the plaintiff, the temple was the owner of the suit properties and it was gifted in favour of the temple (Manibam) much prior to 1968. However, by an order dated 10.10.1968 passed under Section 82 (1) (b) of the Tamilnadu Minor Inams Abolition and Conversion Act 1963, the settlement Tahsildar has transferred the title of the temple in favour of the predecessor in title of the defendants. It is vehemently contended that before transferring the title of the lands belonging to the temple, no notice was issued to the plaintiff/temple. Therefore, the order dated 10.10.1968, passed by the settlement Tahsildar is invalid and it is in violation of principles of natural justice. When the temple is the owner of the land they ought to have put on notice before transferring the title of the land. However, no such notice was issued to the



plaintiff/temple. The settlement Tahsildar has also invoked Section 11 of the Act but failed to follow the procedures contemplated thereof. As per Section 11, notice must be sent before initiating the settlement proceedings but such a notice has not been issued in this case. It was also mainly pleaded in the plaint that the limitation does not apply to temple lands and even assuming the defendants have set up possessory title, it will not be a ground to decline the relief sought for in the suit.

3. On notice, the defendants have taken out an application in I.A.No.996 of 2014 in O.S.No.133 of 2014, under Order 7 Rule 11 of C.P.C., to reject the plaint. According to the defendants, there is no cause of action in the suit and even according to the plaintiff the cause of action arose on 10.10.1968 when the lands granted to the plaintiff/temple as manibam was canceled by the Settlement Officer and those lands were vested with the predecessor in title of the defendants. After five decades, the present suit has been filed and therefore it is hopelessly bared by limitation. Even otherwise as against an order dated 10.10.1968, the plaintiff ought to have filed an appeal before the special Tribunal. The plaintiff having failed to file any



such appeal is estopped from filing the present suit. It is also submitted that the Court fee paid by the plaintiff by invoking Section 25 (a) of the Tamil Nadu Court Fee and Suit Valuation Act is improper. The suit ought to have been filed by paying Court fee as contemplated under Section 25 (d) of the said Act. The exemption conferred by the Government in the G.O.M.S.No.1574 of 2012 Home Department dated 12.06.1972, is not applicable to the plaintiff/temple and therefore also the Court fee paid by the plaintiff is improper, inadequate and therefore also the suit is liable to be rejected.

4. The counter affidavit has been filed by the plaintiff/temple contending that the application filed under Order 7 Rule 11 read with Section 115 C.P.C., is not maintainable. The plea relating to inadequacy of Court fee has been raised without any basis. The order passed by the Government in G.O.M.S.No.1574 of 2012, dated 12.06.1972 is very well applicable to the plaintiff/temple. There is a cause of action for filing the suit. The plea raised by the plaintiff in the plaint has to be tried and decided during the course of trial. Therefore, the plaintiff prayed for dismissal of the



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application filed under Order 7 Rule 11 of C.P.C.

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5. The trial Court allowed the application filed under Order 7 Rule 11 C.P.C., by holding that as against the order dated 10.10.1968, the plaintiff ought to have filed statutory appeal before the special Tribunal, without doing so, after a delay of more than five decades, the suit filed by the plaintiff/temple is not maintainable. The Court fee paid by the plaintiff is also improper when a relief of declaration and recovery of possession is sought for. The trial Court specifically pointed out that unless it was proved that the lands in question belonged to the temple the concessions granted under G.O.M.S.No.1574 of 2012 dated 12.06.1972 cannot be made applicable to the plaintiff/temple. For all these reasons, the trial Court rejected the plaint as having no cause of action. Aggrieved by this order, the present Civil Revision Petition has been filed.

6. The learned counsel appearing for the petitioner vehemently contended that the suit has to be tried and tested only during the course of trial. The trial Court ought to have dismissed the application of the



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defendants for rejection of the plaint under Order 7 Rule 11 of C.P.C. The trial Court did not consider that a suit filed for the relief of declaration is maintainable only before the Civil Court and not before the special Tribunal. There are legal grounds raised in the plaint and the defendants can very well contest the suit by filing the written statement instead they have filed the present application under Order 7 Rule 11 of C.P.C., and the trial Court ought to have dismissed the same. The valuation of Court fee is also proper and even if the plaintiff has paid inadequate Court fee, it is a curable defect and even that can also be adjudicated only after trial. The learned counsel for the petitioner/temple placed reliance on several judgments namely:-

- 1. A.A.Gopalakrishnan Vs. Cochin Devaswom Board and Others**, reported in **2007 (7) SCC 482**.
- 2. D.Ramachandran Vs. R.V.Janakiraman and Others**, reported in **1999 (1) CTC 715**.
- 3. Dr.Ravichander Vs. Karunkaran and Others**, reported in **2000 (2) Law Weekly 720**.
- 4. Madhav Prasad Aggarwal and Another Vs. Axis Bank Limited and Another**, reported in **2019 (7) SCC 158**.



5. *Srinivasan and Six Others Vs. Sri.Madhyarjuneswaraswami,*

Pattaviathalai, Tiruchirapally District by its Executive Officer at

Pettavaithalai Devasthanam and Others,* reported in *1998 (1) CTC 630.

6. *Arumigu Logavinayagr Temple Vs. Sankari and Others,* reported in

2013 (2) MWN (Civil) 705.

7. *Nawab Shaqafath Ali Khan and Others Vs. Nawab Imdad Jah*

Bahadur and Others,* reported in *2009 (5) SCC 162.

7. These decisions have been relied on to buttress his submission that even assuming that the defendants have set up a possessory title and claim adverse possession, such a plea of the defendants can be adjudicated only after trial. Therefore, the conclusion reached by the trial Court as if there is no cause of action for filing the suit and the court fee paid is improper is legally not sustainable and therefore, he prayed for allowing this Civil Revision Petition.

8. On the other hand, the learned counsel for the respondents



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would contend that the suit was hopelessly bared by limitation as it was filed after five decades, by questioning the order dated 10.10.1968 passed by the settlement Tahsildar. The plaintiff did not file an appeal within the time specified under the Act before the Tribunal. Having failed to do so the present suit has been filed with enormous delay. The Court fee paid by the plaintiff is also improper. An application under Order 7 Rule 11 C.P.C., can be entertained (i) if there is no cause of action for filing the suit (ii) the Court fee paid is improper and (iii) the Court before which plaintiff filed the plaint has no jurisdiction to try the same. In the present case, there is no cause of action for filing the suit and the cause of action portion in the plaint itself would prove that the plaintiff had slept over their right, if any for a long time. While so, the trial Court is right in rejecting the plaint filed by the plaintiff. The trial Court has also placed decision in ***N.Ravindran Vs. V.Ramachandran***, reported in ***2011 3 CTC 153***, to conclude that for considering an application under Order 7 Rule 11 C.P.C., the averments in the plaint has to be looked into and if the plaint does not disclose any cause of action and if it is bared by law, such plaint can be rejected even without requiring the defendants to file their written statement.



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9. The learned counsel for the respondents also relied several judgments in:

1. Sayyed Ayaz Ali Vs. Prakash G.Goyal and Others, reported in **2021 (7) SCC 456**.

2. Shamsheer Singh Vs. Rajinder Prasad and Others, reported in **1973 (2) SCC 524**.

3. Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others Vs. Tuticorin Educational Society and Others, reported in **2019 (9) SCC 538**.

4. G.Murugan and Others Vs. Manickam, reported in **2002 SCC OnLine Mad 692 : AIR 2003 MAD 129**.

10. These decisions have been relied on to drive home the point that when there is statutory remedy available and a person who failed to avail such a remedy, he is estopped from filing a Civil Suit. It was also contended that as against the rejection of the plaint, a revision will not lie and only an appeal will lie. By placing reliance on the decision of the Hon'ble Supreme



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Court in *Sayyed Ayaz Ali's* case, cited supra, it was contended that when the averments in the plaint are barred by the period stipulated under the Limitation Act, it is well open to the trial Court to entertain an application under Order 7 Rule 11 C.P.C., and reject the plaint.

11. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the materials available on record.

12. It is well settled that for considering an application under Order 7 Rule 11 C.P.C., it is necessary that the averments of the plaint has to be looked into and if the Court is satisfied that there exist a cause of action, the application under Order 7 Rule 11 C.P.C., has to be rejected. In such event, the parties must be relegated to prove their respective claim during the course of trial. In the present case, it was seen from the order dated 10.10.1968 that earlier the lands in question were in the name of the plaintiff/temple and subsequently by an order dated 10.10.1968, the title of the suit properties stood transferred to the predecessors in title of the



defendants. However, it is pleaded that no notice was issued to the plaintiff/ temple before passing the order dated 10.10.1968. Even though, the plaintiff had approached the trial Court with the present plaint for the relief of declaration and consequential recovery of possession from the defendants, the plea with respect to the delay in filing the suit is a matter for trial. It is well settled that limitation is a mixed question of facts and law and such a issue relating to limitation can be tried only by way of trial in the said suit. The trial Court therefore, in the opinion of this Court ought to have rejected the plaint filed by the plaintiff thereby shutting the doors of justice to the plaintiff to prove their case in the trial.

13. As regards the maintainability of this revision in the decision relied on by the learned counsel for the petitioner in ***Nawab Shaqafath Ali Khan and Others Vs. Nawab Imdad Jah Bahadur and Others***, reported in ***2009 (5) SCC 162***, it was held that even if revisional jurisdiction under Section 115 Code of Civil Procedure, is not available the remedy in terms of Article 226, 227 of Constitution of India would always be available in exercise of the supervisory powers vested in the High Court under 227 of the



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Constitution of India. Further more, this Civil Revision Petition was filed in the year 2017 and after four years, this Court is not inclined to hold that the Civil Revision Petition is not maintainable and an appeal ought to have been filed before the appellate authority.

14. As regards the plea of Court fee, here again, it is a matter for trial and the correctness or otherwise of the Court fee paid by the plaintiff can also be gone into at the time of trial in the suit. Therefore, this Court is of the view that the comprehensive suit filed by the plaintiff for declaration and recovery of possession has to be decided only at the time of trial and the *gay-abandon* with which the trial Court jumped to a conclusion to reject the plaint is improper. There are triable issues involved in the present case and the averments in the plaint can very well be rebutted by the defendants by filing their written statement. In such view of the matter, the application filed under Order 7 Rule 11 of CPC., is not maintainable at the instance of the defendants and the Civil Revision Petition is liable to be allowed.

15. In the result, the orders dated 23.12.2016 in I.A.No.996 of



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2014 in O.S.No.133 of 2014, on the file of the District Munsif's Court,

Pollachi, is set aside and this Civil Revision Petition is allowed. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No

To

The District Munsif's Judge,
Pollachi.



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S.KANNAMMAL.J.,

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