



WA(MD)No.126 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **22.09.2022**

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

A.S.(MD)No.126 of 2013

V.K.Amalraj

... Appellant / Respondent / Plaintiff

/Vs./

K.John Britto @ Peter

... Respondent / Petitioner / Defendant

PRAYER: Appeal - filed under Section 96 of the Code of Civil Procedure, setting aside the order dated 15.04.2013 passed in I.A.No.165/2011 in O.S.No.40 of 2010 by District Court, Sivagangai with costs.

For Appellant : Mr.Anand Chandrasekar

For Respondent : Mr.K.Balasundaram



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JUDGMENT

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

This appeal has been filed against the rejection of plaint ordered by the Court below under Order VII Rule 11 of CPC mainly on the ground that there was no cause of action for the plaintiff to maintain the suit.

2. The appellant / plaintiff filed the suit seeking for the relief of declaration to declare that the suit property is the property of the Trust and for a consequential direction to the defendant to reconvey the suit property to the plaintiff Trust and for permanent injunction directing the defendant or his men or agents not to encumber or alienate the suit property.

3. The plaintiff laid the suit mainly on the ground that the Trust called as Gomathy Trust was instituted by the plaintiff and his family members in the year 1984 and the property purchased by the plaintiff was brought in as a Trust property.



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4. The responsibility for running the Trust was handed over to the Trustees and one of the Trustee in connivance with the defendant was alleged to have misused and taken hold of the funds of the Trust and the property was bought in the names of the defendant and his wife. It is this property, which is shown as the suit property in this case. In view of the same, a police complaint was also given and investigation was pending. In the meantime, the suit came to be filed for the reliefs stated supra.

5. A written statement was also filed by the defendant by denying all the allegations and by taking a very specific stand that the defendant has nothing to do with the Trust and he is not even a Trustee in the above said Gomathy Trust and the property was purchased out of the own funds of the defendant.

6. Pleadings were completed and at that point of time, the defendant filed an application under Order VII Rule 11 of CPC seeking for the rejection of the plaint on the ground that the plaintiff did not file any documents to prove that the suit property belongs to the Trust. The



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defendant took a further stand that without there being any material to show that the suit property belongs to the Trust, there is no cause of action for maintaining the suit and accordingly, the defendant sought for the rejection of the plaint.

7. The Court below, on considering the averments in the plaint and the stand taken by the defendant, came to a conclusion that there was no cause of action for continuing with the suit and accordingly, the plaint was rejected under Order VII Rule 11 (a) of CPC. Aggrieved by the same, the present appeal has been filed before this Court.

8. Heard Mr.Anand Chandrasekar, learned counsel appearing for the appellant and Mr.K.Balasundaram, learned counsel appearing for the respondent.

9. While considering the application for rejection of plaint, the trial Court is expected to look into the averments made in the plaint and those averments must be taken to be correct. The stand taken by the defendant by challenging the averments in the plaint, can be considered only after the trial



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is concluded. The trial Court is not expected to go into merits of the pleadings made in the plaint and the trial Court should not take into consideration the defence taken by the defendant while dealing with the application seeking for rejection of plaint.

10. In the present case, the trial Court has specifically gone into the merits of the case. The trial Court, in paragraph 14, has taken into consideration the allegations made by the plaintiff and has come to a conclusion that there is no material to show that the suit property belongs to the Trust. The trial Court also found that since the defendant is not a Trustee, there is no question of misappropriation of funds and the suit property might not have been purchased from the funds of the Gomathy Trust. The trial Court has further held that the criminal case is pending and the plaintiff has not filed any documents or evidence to prove their claim and hence, there is no cause of action for laying the suit. Accordingly, the trial Court proceeded to reject the plaint.

11. The issue as to whether the suit property was purchased by misusing or mismanaging the funds of the Trust, is a matter for trial. The



burden of proof is upon the plaintiff to prove that the suit property was purchased by the defendant in connivance with one of the Trustee and the funds of the Trust was utilized for purchase of the property. It is not necessary that the allegation should be proved only by way of documents. It is possible that the plaintiff may also rely upon oral evidence of persons, who know about this transaction. After all, the evidence includes both the oral and documentary evidence and just because there were no documents available to prove the allegations, at the stage of pleadings, that does not mean that the trial Court can proceed to reject the plaint.

12. While ascertaining cause of action, it can be done only by considering the averments made in the plaint. The cause of action cannot be ascertained based on the absence of materials at the stage of pleadings. The test that was employed by the trial Court for rejecting the plaint, is against settled principles of law and the trial Court unfortunately has gone into the merits of the case and dealt with the same, while passing the order. In view of the same, this Court has to necessarily interfere with the order passed by the Court below.



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13. It goes without saying that whatever defence has been taken by the defendant can be established before the Court below and the initial burden is only upon the plaintiff to prove the allegations made in the plaint. It will be left open to the Court below to decide the suit, on its own merits, based on the evidence collected during the course of trial and deal with the issues strictly in accordance with law.

14. In the result, order of the Court below made in I.A.No.165/2011 in O.S.No.40 of 2010 is hereby set aside. The Court below is directed to proceed further to deal with the suit strictly in accordance with law and the suit in O.S.No.40 of 2010 shall be disposed of by the learned Principal District Judge, Sivagangai, within a period of six (6) months from the date of receipt of a copy of this order.

15. This Appeal Suit is allowed in the above terms. No costs.

(J.N.B.,J.) (N.A.V.,J.)
22.09.2022

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J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

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To:

1.The District Court, Sivagangai.

Judgment made in
A.S.(MD)No.126 of 2013

Dated
22.09.2022