



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	30.03.2022
DELIVERED ON	20.04.2022

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CR.P. (MD)No.171 of 2019

and

C.M.P. (MD)No.755 of 2019

C.P.Singaravelu ...Revision Petitioner/Petitioner/D-1

Vs.

1.S.Kandasamy
2.K.Selvaprakash
3.M.Mariyappan
4.M.Mani
5.C.Balasubramaniyan
6.C.Kumar

...Respondents/Petitioners/Plaintiff and
D-2 to D-5

PRAYER: Civil Revision Petition under Article 227 of Constitution of India, to allow the Civil Revision Petition by setting aside the fair order and decretal order dated 22.11.2018 passed in I.A.No.95 of 2018 in O.S.No.1107 of 2017 on the file of the learned II Additional District Munsif, Tiruchirappalli and further allow the I.A.No.95 of 2018 in O.S.No.1107 of 2017 by rejecting the plaint in O.S.No.1107 of 2017 on the file of the learned II Additional District Munsif, Tiruchirappalli.

For Petitioner :Mr.Shangar Murali

For R-1 & R-2 :Mr.M.Vallinayagam, for
Mr.P.Arun Jayatram

For R-3 to R-6 : No Appearance

ORDER

This Civil Revision Petition has been filed by the revision petitioner to set aside the order, dated 22.11.2018 in I.A.No.95 of 2018 in O.S.No.1107 of 2017 passed by the learned II Additional District Munsif, Tiruchirappalli.

2.The parties are referred to as per the rank mentioned before the Court below.

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restricted right was given in the said decree as alleged by the respondent Nos.1 & 2. When the rights of the parties are crystalised and the same is confirmed by the competent courts the vexatious suit if filed is to be nipped in the bud and if it is taken on file the same is liable to be rejected. When the plaint apparently discloses the decree in O.S.No.1130 of 1996 the bogus claim of the respondent Nos.1 & 2 in O.S.No.1107 of 2017 ought not to have entertained and the lower court ought to have rejected the plaint in O.S.No.1107 of 2017. The cause of action alleged is only an illusion and the suit in O.S.No.1130 of 2017 is also liable to be dismissed by exercising the power under Order X of Civil Procedure Code.

8.The plaintiff has stated that the 1st defendant had given only easementary rights in the suit lane. The trial Court has also wrongly construed the Judgment and decree in O.S.No.1130 of 1996.

9.In O.S.No.1130 of 1996 the suit lane was declared as a common lane. The plaintiff cannot go beyond the decree since one of the present plaintiffs is the plaintiff to the suit in O.S.No.1130 of 1996. Now, he claimed rights in A, B, C, D lane as his absolute property. So, it is clearly abuse of process of Court. Eventhough the 1st defendant did not plea, it is only question law.

10.The ingredients of **Order VII Rule 11(d) of Civil Procedure Code**, is extracted hereunder:

"11.Rejection of Plaint :

(d)where the suit appears from the statement in the plaint to be barred by any law;".

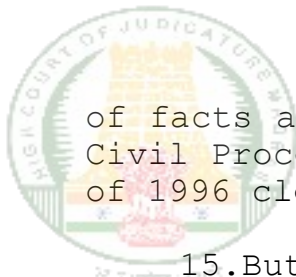
11.If the plaint is barred by any law it can be rejected.

12.The ingredients of **Section 11 of Civil Procedure Code** is extracted hereunder:

"Resjudicata: No Court shall try any suit or issue in which matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between the parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue subsequently raised and has been heard and finally decided by such court."

13.In the case on hand, the issue in the suit was already decided in O.S.No.1130 of 1996 between the predecessor of the 1st defendant and the same plaintiff.

14.As per various Judgments the Resjudicata is mixed question



of facts and law. So, it cannot be decided under Order 7 Rule 1 of Civil Procedure Code. But, here reading the Judgment in O.S.No.1130 of 1996 clearly shows that the issue was already decided.

15. But, there is another cause of action the 1st defendant try to break the compound wall. So there is another 'C' prayer in suit.

"C. To further permanently restrain the defendant men and agent from in any manner elongating the said suit A, B, C, D lane further to the west of point C and D by break opening the western boundary north-south compound wall with a view to use the suit ABCD wall to the illegally constructed and stealthily operated bar in T.S.76/1 and 76/2."

16. The relevant portion of the Judgment reported in **AIR 2017 SC 4477, Sejal Glass Ltd. V. Navilan Merchants Pvt. Ltd.**, is extracted hereunder:

.....

"It is settled-law that the plaint as a whole alone can be rejected under Order VII, Rule 11. In *Maqsood Ahmad v. Mathra Datt & Co.*, AIR 1936 Lahore 1021 at 1022, the High Court held that a note recorded by the trial Court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms:-

"There is no provision in the Civil Procedure Code for the rejection of a plaint in part, and the note recorded by the trial Court does not, therefore, amount to the rejection of the plaint as contemplated in the Civil Procedure Code."

17. Nipping of a false or vexatious suit in the bud is one aspect of the matter. The relevant portion of the Judgment reported in **1977 (4) SCC 467, T.Arivandandam v. T.V.Satyapal and another**, is extracted hereunder:

....

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court,



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Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful not formal reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage".

18. But as per new cause of action and new relief, the suit can be maintained after striking off the (b) relief in the complaint and cause of action supporting the relief. The rights of disputed wall is not yet decided.

19. The ingredients of **Order VI Rule 16 of Civil Procedure Code**, is extracted hereunder:

"16. Striking out pleadings:

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading:-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

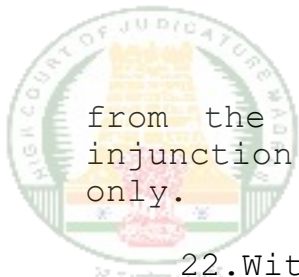
(c) which is otherwise an abuse of the process of the court.

Judgment:

365. Parties should not offend the rules of pleadings by making averments or introducing pleas which are unnecessary, which may tend to prejudice, embarrass or delay fair trial. In such cases, the court will interfere. This power must be exercised by the court sparingly, held by the Supreme Court in *K.K. Modi Vs. K.N. Modi* AIR 1998 SC 1297."

20. In this case the cause of action regarding common lane and relief sought for regarding common lane should be struck off.

21. The plaintiff is directed to file amended copy of complaint after striking off the above matter, within a period of one month



from the date of receipt of copy of the order. Whether bare injunction can be entertained will be decided by the Court below only.

22. With the above directions, this Civil Revision Petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

ksa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To:

The II Additional District Munsif,
Tiruchirappalli.

+1 CC to M/s.K.S. SANKAR MURALI, Advocate (SR-19639[F] dated 20/04/2022)

+1 CC to M/s.P. ARUN JAYATRAM, Advocate (SR-20567[F] dated 22/04/2022)

C.R.P. (MD) No.171 of 2019

20.04.2022

RD(04.05.2022) 6P 4C