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C.R.P.(MD) No.2838 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.02.2022**

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.2838 of 2018

and

C.M.P. (MD) No.12311 of 2018

Saritha ... Petitioner/Petitioner/2nd Defendant

vs.

1.Jeyalakshmi

2.Senthilkumar ... Respondents/Respondents/Plaintiffs

3.M.Muruganantham

(R3 given up because the petitioner
is not claiming any relief against R3)
... Respondent/Petitioner/1st Defendant

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.467 of 2018 in O.S.No.9 of 2018 on the file of the learned Principal District Munsif, Manamadurai, dated 06.12.2018.

For Petitioner : Mr.S.John for
Mr.G.Jeremiah

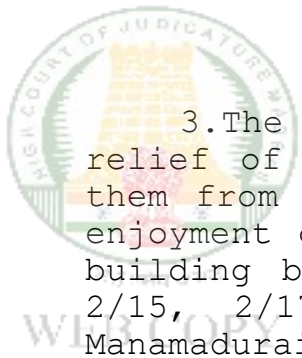
For R1 & R2 : Mrs.Vijaya Kumari Natarajan
for S.Natarajan

For R3 : Given up

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.467 of 2018 in O.S.No.9 of 2018 on the file of the learned Principal District Munsif, Manamadurai. The 2nd defendant is the revision petitioner before this Court. The order impugned in this revision is the dismissal of the application to reject the plaint in O.S.No.9 of 2018.

2.In order to appreciate the challenge to the said order, it is necessary to briefly touch upon the facts that has culminated in the filing of the above revision. The parties are referred to in the same litigative status as before the Principal District Munsif Court, Manamadurai.

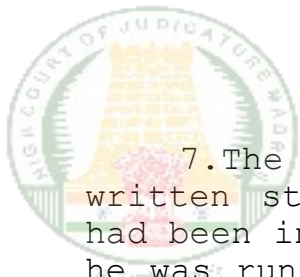


3.The plaintiffs had filed a suit O.S.No.9 of 2018 seeking the relief of permanent injunction against the defendants restraining them from interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties. The property in question was the building bearing Old.D.Nos.148, 149, 150 and 151, New.D.Nos.2/13, 2/15, 2/17 and 2/19 situated at Sivagangai Road, Keelkarai, Manamadurai.

4.The case of the plaintiffs as set out in the plaint in question was that the suit property belonged to the husband of the 1st plaintiff, who is the father of the 2nd plaintiff, late.Ramakrishna Pillai, who had purchased the same from Ramasami Raju, S/o.Mallikarjuna Raju, and his minor children under a sale deed dated 03.03.1989. The plaintiffs' contention is that from the date of the purchase, Ramakrishna Pillai has been in possession and enjoyment of the property, where he was running a tea shop. Ramakrishna Pillai died on 19.07.2010 leaving behind the plaintiffs as his legal representatives. They have continued to run the tea shop.

5.The plaintiffs would contend that the predecessor in title of the property, Mallikarjuna Raju and his son, Ramasamy Raju, the vendor of late.Ramakrishna Pillai had filed suits O.S.Nos.49 of 1996 and 107 of 1998 against late.Ramakrishna Pillai for declaration and recovery of possession. The said suits were taken on appeal right up to this Court and it is a reported judgment in **2002 (1) CTC 523**, as per which late.Ramakrishna Pillai's possession and enjoyment of the property was protected with an order of injunction restraining the respondents from interfering with the possession. Since there was an obstruction in his possession by the children of Mallikarjuna Raju, namely, his daughter, Usha Devi @ Usha Venkateswaran, and son, Ramasamy Raju, late.Ramakrishna Pillai had filed a suit O.S.No.50 of 2001 on the file of the learned Additional District Munsif, Manamadurai. This suit was decreed in favour of late.Ramakrishna Pillai, against which Usha Devi @ Usha Venkateswaran had filed an appeal in A.S.No.75 of 2007, which she later allowed to be dismissed for default on 22.06.2009. Therefore, the judgment and decree in O.S.No.50 of 2001 had attained finality.

6.While so, in the year 2014 around the month of March, the said Usha Devi @ Usha Venkateswaran attempted to sell the property to the third parties in order to create third party interest. The plaintiffs had issued a legal notice on 04.03.2014. A publication was also issued warning third parties from purchasing the property. However, under two sale deeds dated 14.12.2017, registered as Doc.Nos.2169/2017 and 2170 of 2017, the property was sold to the defendants, who attempted to interfere in the possession and therefore, the suit.



7.The defendants, who had entered appearance, had filed their written statement. They would submit that late.Ramakrishna Pillai had been inducted as a tenant in respect of the suit property, where he was running a tea shop. They had questioned the sale executed by Ramasamy Raju in favour of late.Ramakrishna Pillai in respect of ancestral property and that too when his father was alive and without obtaining permission from him. The defendants would submit that therefore the suit had to be dismissed. The defendants had also pleaded mis-joinder of necessary parties. The defendants had also questioned as to why the plaintiffs have not sought for declaration that the sale in favour of the defendants was invalid and not binding on them. They would also contend that the said Mallikarjuna Raju had executed a settlement in favour of Usha Devi @ Usha Venkateswaran on 09.02.1998 under a registered settlement deed and therefore, the suit property belonged to Usha Devi @ Usha Venkateswaran.

8.Further, Ramasamy Raju had executed an agreement of sale dated 05.06.1988 agreeing to sell his 1/14th share in the suit property in favour of Usha Devi @ Usha Venkateswaran. This has culminated in a suit for specific performance being filed by Usha Devi @ Usha Venkateswaran before the District Munsif Court, Manamadurai in O.S.No.147 of 1998. The suit has been decreed and execution proceeding has also been instituted in E.P.No.21 of 1999. The sale deed has also been executed and registered on 28.07.1999. The exclusive title of Usha Devi @ Usha Venkateswaran to the suit property has also been declared by the learned District Munsif, Manamadurai on 28.07.1999. Therefore, in the written statement, the defendants had given out that they are the owners of the suit property by virtue of the sale in their favour by Usha Devi @ Usha Venkateswaran.

9.After filing the written statement on 22.02.2018, the defendants had come forward with the application for rejecting the plaint in I.A.No.467 of 2018 in the month of September, 2018. It is their case that the plaintiffs had suppressed the filing of the earlier suits O.S.No.138 of 1991 and O.S.No.311 of 1991 and A.S.No.160 of 1996 and prepared the plaint only on the basis of the suit O.S.No.50 of 2001. The suit is based on the sale deed dated 03.03.1989 suppressing the earlier suit filed by late.Ramakrishna Pillai for declaration and permanent injunction. The plaintiffs have not filed a suit for partition though their right to a 1/14th share was declared in the earlier suit O.S.No.138 of 1991 in A.S.No.160 of 1996 and O.S.No.311 of 1991 in A.S.No.133 of 1996 and therefore, the present suit was barred under Article 65 of the Limitation Act.

10.The learned counsel appearing for the plaintiffs was the Advocate Commissioner in the earlier suit in O.S.No.138 of 1991. The counsel therefore had knowledge about the proceedings between



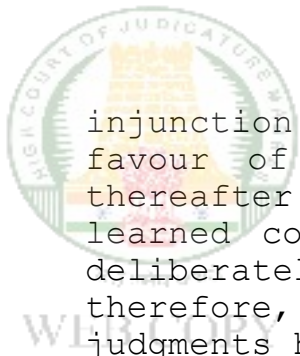
late.Ramakrishna Pillai and the vendors of the defendants and therefore, the plaint has been cleverly drafted suppressing the earlier judgment and decree. Therefore, the application for rejecting the plaint is only on the ground that the earlier suits O.S.No.138 of 1991 and O.S.No.311 of 1991 had been suppressed.

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11.The learned Principal District Munsif, Manamadurai, by his very detailed order dated 06.12.2018 had dismissed the application. The learned Judge opined that the defendants were third parties to the earlier proceedings and only the relevant details had been set out in the plaint in order to provide a cause of action relevant for the suit. The learned Judge has very clearly held that there was no suppression of any facts. Challenging the same, the 2nd defendant has come before this Court.

12.Mr.J.John, learned counsel appearing for the petitioner would extensively make his submissions that the plaintiffs have come to Court with unclean hands. The plaintiffs have suppressed the earlier suit O.S.No.138 of 1991, which was filed by late.Ramakrishna Pillai for declaration and injunction in respect of D.No.149. This suit was dismissed, against which he preferred A.S.No.160 of 1996. The appeal was partly allowed holding that the suit property was a joint family property, in which Ramasamy Raju had a share. Thereafter, O.S.No.49 of 1996 was filed by Mallikarjuna Raju in respect of shop No.148 for a declaration that the property is a joint family property excluding Ramasamy Raju and for recovery of possession from Ramakrishna Pillai. The suit was dismissed, against which A.S.No.24 of 1999 was filed. Likewise, O.S.No.107 of 1998 was filed for the same relief in respect of D.No.151 claiming the property to be a joint family property excluding Ramasamy Raju. A decree was passed in the said suit stating that it was a joint family property including Ramasamy Raju. Mallikarjuna Raju has filed A.S.No.25 of 1999 challenging this judgment and decree, which was partly allowed and possession was directed to be handed over to the family. This was challenged by late.Ramakrishna Pillai by filing S.A.Nos.384 and 385 of 2000. This Court had held that since the purchase is from a co-owner, the said Ramakrishna Pillai was entitled to be in possession, until a partition decree is passed.

13.Mallikarjuna Raju had also filed O.S.No.311 of 1991 to declare himself as the owner of property in respect of D.No.150 and also for an injunction. The suit was decreed and on appeal by Ramakrishna Pillai in A.S.No.133 of 1996, the property was directed to be the joint family property including Ramasamy Raju. Yet another suit, which has been filed is O.S.No.50 of 2001 against Usha Devi @ Usha Venkateswaran and Ramasamy Raju by late.Ramakrishna Pillai for an injunction in respect of D.Nos.148, 149, 150 and 151, which was decreed in his favour. Usha Devi @ Usha Venkateswaran had challenged this judgment and decree by filing A.S.No.75 of 2007. However, she allowed the appeal to be dismissed for default. Therefore, the



injunction decree in respect of D.Nos.148, 149, 150 and 151 in favour of late.Ramakrishna Pillai had attained finality. It is thereafter that the property had been sold to the defendants. The learned counsel would state that all these proceedings have been deliberately kept away and suppressed by the plaintiffs and therefore, on this score, the suit has to be rejected. The following judgments have been cited in support of his contentions:-

"1) An unreported order of this Court in **C.R.P.No.4171 of 2010 dated 13.07.2018 (Vijayalakshmi Vs. R.Balasubramaniam)**.

2) In the case of **Rajendra Bajoria and others Vs. Hemant Kumar Jalan and others** reported in **2021 SCC Online SC 764**.

3) In the case of **Sri Lankappa and others Vs. Karnataka Industrial Corporation and others** reported in **2016 (4) CTC 353**."

14. Per contra, Mrs.Vijayakumari Natarajan, learned counsel appearing for the respondents 1 and 2 would submit that all the proceeding relevant to the suit has been set out by the plaintiffs. The right of late.Ramakrishna Pillai to enjoy the property and continue to be in the premises has been declared in the suit O.S.No.50 of 2001, which was filed by late.Ramakrishna Pillai against Usha Devi @ Usha Venkateswaran, the vendor of the defendants herein in respect of the suit schedule properties. This has been pleaded in the plaint. Usha Devi @ Usha Venkateswaran, who challenged the said decree by way of an appeal, has allowed the appeal to be dismissed for default. Therefore, the right to be in possession has been confirmed by this judgment. Since the property has been purchased by the defendants from the said Usha Devi @ Usha Venkateswaran, the suit, which has relevance to the cause of action, has been cited and therefore, it cannot be stated that the plaintiffs have suppressed the facts. She also submit that though the application for rejecting the plaint had been filed by both the defendants, the 1st defendant has not chosen to challenge the order and by not filing the revision he has agreed to abide by the order. She would rely on the following judgments in support of his contentions.

"1.**C.Natarajan Vs. Ashim Bai and another** reported in **(2007) 14 Supreme Court Cases 183**.

2.**N.Ravindran Vs. V.Ramachandran** reported in **2011 (3) CTC 153**.

3.**Surjit Kaur Gill and another Vs. Adarsh Kaur Gill and another** reported in **2014 (2) CTC 199**.

4.**P.V.Guru Raj Reddy represented by GPA Laxmi Narayanan Reddy and another Vs. P.Neeradiia Reddy and others etc** reported in **2015 (1) TNCJ 907 (SC)**.

5.**Chemplast Sanmar Limited, Chennai 600 086 Vs. Senthamizhselvi and another** reported in **2016 (4) CTC 344**.



6. **Balasaria Construction Private Limited Vs. Hanuman Seva Trust and others** reported in (2006) 5 Supreme Court Cases 658.

7. **C.V.Karthikeyan Vs. P.Subramaniam and another** reported in 2015 (1) TNCJ 525 (Mad).

8. **G.Subramani Vs. V.Rajasekaran and another** reported in 2013 (4) CTC 468.

9. **Virgo Industries (Eng). Private Limited Vs. Venturetech Solutions Private Limited** reported in (2013) 1 Supreme Court Cases 625.

10. **Guruvamal and another Vs. Alagammal and other** reported in 2017 (4) CTC 779."

15. Heard the learned counsels on either side and perused the records.

16. Since the learned counsel for the petitioner/2nd defendant had argued extensively on the issue that there is a suppression, it is necessary to look into the contents of the plaint. The suit is filed for injunction against the defendants. The defendants have purchased the property from Usha Devi @ Usha Venkateswaran. The plaintiffs in their plaint have narrated in extenso about the suit O.S.Nos.49 of 1996 and 107 of 1998, which was filed by Mallikarjuna Raju for a declaration that the property therein namely, D.No. 148 and 151 are the joint family property excluding the son, Ramasamy Raju, the vendor of late.Ramakrishna Pillai and for recovery of possession from late.Ramakrishna Pillai. In the appeal A.S.Nos.24 and 25 of 1999, the decree insofar as the declaration was dismissed, but the said Ramakrishna Pillai was directed to hand over the possession to the plaintiffs. This was challenged by Ramakrishna Pillai by filing S.A.Nos.384 and 385 of 2000. These appeals were allowed by stating that since the purchase is from a joint owner, he is entitled to possession till such time as a partition decree is obtained. Thereafter since there was a disturbance to his possession from Usha Devi @ Usha Venkateswaran and Ramasamy Raju, his vendor, Ramakrishna Pillai had filed O.S.No.50 of 2001 for injunction. The suit was decreed by a judgment and decree dated 16.03.2004. The said judgment and decree was challenged only by Usha Devi @ Usha Venkateswaran. However, she allowed the matter to be dismissed for default and the judgment dismissing the appeal was passed on 22.06.2009. By reason of this judgment, the decree in O.S.No.50 of 2001 had attained finality. The suit O.S.No.50 of 2001 had been filed in respect of the property, which is the property in the present suit. The pleadings regarding this suit and the appeal have been set out clearly in the plaint and it is only these suits that has relevance to the respondents, who are claiming under the said Usha Devi @ Usha Venkateswaran. Even assuming without admitting that the other suits have some relevance, it is to be established only at the time of trial. The Courts have time and again held that when considering a petition for rejection of plaint, it is only the contents of the plaint that has to be looked into.



17.The Hon'ble Supreme Court in the judgment of **P.V.Guru Raj Reddy represented by GPA Laxmi Narayanan Reddy and another Vs. P.Neeradiia Reddy and others etc** reported in 2015 (1) TNCJ 907 (SC) has observed as follows:-

"Rejection of the plaint under Order 7, Rule 11 of the CPC is a drastic power conferred in the Court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7, Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7, Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."

18.In the petition before this Court, the rejection of the plaint is sought for only on the ground of suppression. As discussed earlier, there is no suppression of facts. In fact, the judgments, which have a direct bearing on the defendants, have been discussed in detail in the plaint. Therefore, there is no suppression. The provisions of Order VII Rule 11 of the Code of Civil Procedure would make it clear that the plaint can be rejected only if on the face of the plaint, the ingredients contemplated in Rule 11 (a), (b) and (d) are made out. In the instant case, no such grounds have been made out. The learned Principal District Munsif, Manamadurai has passed a very detailed and well considered order, which does not require any reconsideration on the part of the Court. Consequently, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Principal District Munsif,
Manamadurai.

+1 CC to M/s.S.NATARAJAN, Advocate (SR-4569[F] dated 07/02/2022)
+1 CC to M/s.G.JEREMIAH, Advocate (SR-4611[F] dated 07/02/2022)

C.R.P. (MD) No.2838 of 2018
04.02.2022

SK (CO)

TR(18.02.2022) 8P 4C