



C.R.P. Nos.4380 & 4381 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P. Nos.4380 & 4381 of 2015

and

M.P.Nos.1 & 1 of 2015

C.R.P.No.4380 of 2015

M/s. Chinmaya Garden Trust,
rep. by its Trustee
Mr.D.Venkatraman

.. Petitioner

Vs.

1. M/s.Karunya Educational Trust,
rep. by its Trustee
Mr.C.Sundarraaraj

2. Mr.N.S.Shanmugam
3. Mrs. Kamalam @ Kamalammal
4. Mrs.K.S.Muthulakshmi
5. Mr.N.S.Shanthanamoorthy
6. Mr.N.S.Sathasivam
7. Mr.V.Skthivel
8. Mr.D.Subramaniam
9. Mr.S.Velmurugan
10. Mr.S.Easwaran
11. Mr.S.Subramanian



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12. Mr.S.Palanisamy

13. Mr.V.Marimuthu

14. The Tahsildar,
Coimbatore South,
Functioning at South Zone,
Coimbatore.

15. The District Collector,
Coimbatore Collectorate,
Coimbatore.

.. Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, to set aside the fair and decreetal order dated 10.08.2015 made in I.A.No.12 of 2014 in O.S.No. 463 of 2013 on the file of IV Addl. District and Sessions Judge, Coimbatore.

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1. Mr.N.S.Shanmugam
2. Mrs. Kamalam @ Kamalammal
3. Mrs.K.S.Muthulakshmi
4. Mr.N.S.Shanthamoorthy
5. Mr.N.S.Sathasivam

... Petitioners

Vs.

M/s.Karunya Educational Trust,
rep. by its Trustee
Mr.C.Sundarraaraj

.. Respondent



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PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, to set aside the fair and decretal order dated 10.08.2015 made in I.A.No.181 of 2014 in O.S.No. 463 of 2013 on the file of IV Addl. District and Sessions Judge, Coimbatore.

For Petitioners in : Mr. T.R.Rajagopalan,
both C.R.P.s Senior Advocate
for Ms.P.Veena Suresh

For 1st Respondent in : Mr.G.Masilamani,
C.R.P.No. 4380 of 2015 Senior Advocate for
Mr.Ebenezer Paul

For Respondent in : Mr.G.Masilamani,
C.R.P.No. 4381 of 2015 Senior Advocate for
Mr.Ebenezer Paul

COMMON ORDER

Challenging the impugned common order passed in I.A.Nos.12 and 181 of 2014 in O.S.No.463 of 2013 on the file of IV Addl. District and Sessions Court, Coimbatore, the present Civil Revision Petitions were filed by the 6th defendant and 1st to 5th defendants.



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2. The Revision Petitioners herein are the 6th defendant and 1st to 5th defendants in the suit and the 1st respondent herein is the plaintiff in the above suit in O.S.No.463 of 2013. The 6th defendant therein filed an application in I.A.No.12 of 2014 under Order 7 Rule 11 of C.P.C. to reject the plaint and the defendants 1 to 5 have filed an application in I.A.No.181 of 2014 under Order VII Rule 11 of C.P.C. to reject the plaint. The said applications were objected by the 1st respondent/plaintiff. On hearing both sides, the trial judge dismissed both the applications. Against which, the present Civil Revision Petitions have been filed.

3. Brief facts of the case is as follows :-

The 1st respondent/plaintiff filed a suit for partition claiming for division of 8/9th share in the suit property and also prayed to declare the release deed, sale deed, gift deeds and exchange deeds are null and void and also to appoint a receiver to take possession of the property along with the relief of permanent injunction against the defendants 1 to 15. According to the plaintiff, it is a public charitable trust engaged in providing education to the persons in and around Coimbatore and it was looking out for further lands for educational purpose, thereby an extent of



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35.17 acres of land owned by the family of one M.S.Sembarichi Gounder was offered for sale, who derived his title through a family arrangement dated 21.03.1948 along with his brothers and consequently, the said M.S.Sembarichi Gounder and his 7 sons enjoyed the joint family property till his death on 10.07.1981 leaving behind his 7 sons and two daughters and thereafter, they enjoyed the property.

4. The first son of M.S.Sembarichi Gounder viz., N.S.Sembarichi Gounder caused disturbance and for an amicable settlement, the second son of N.S.Sembarichi Gounder, Lakshmana Gounder filed a suit in O.S.No.517 of 1992 before the Sub-Court, Coimbatore for partition and separate possession of 1/9th share in entire property. While the said suit was pending, on 14.02.1996, 8 of co-sharers except the 1st defendant (N.S.Sembarichi Gounder) entered into a sale agreement to sell their 8/9th share to the plaintiff and in pursuance of the said agreement, a sale deed was executed on 22.12.2000 for a valuable consideration and the plaintiff trust was put in symbolic possession of the property conveyed, as the property sold was undivided. The unsold 1/9th share is belong to 1st



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defendant, but with regard to 8/9th share, title was transferred to this plaintiff and consequently, he stepped into shoes of his vendors, but the 1st defendant manipulated the revenue records by abusing possession of his son and obtained patta in his name by misrepresentation. In pursuance of the said patta, the 1st defendant got mutation of the entire property and changed to his name. So, the plaintiff is unable to produce the patta before the Sub-Registrar for getting the Sale Deed released. Therefore, still their sale deed dated 22.12.2000 is retained by the Sub-Registrar.

5. Further, the 1st defendant along with his sons exchanged 33.12 acres (suit property) in favour of Chinmaya Garden Trust, who is 6th defendant herein through Exchange deed dated 13.10.2008 though they have no title to transfer the said land and it was impleaded as one of the party in the suit. So, the alleged Exchange deed is void and illegal, besides the 1st defendant and his sons executed number of Sale deeds in the year of 2010. During the pendency of the suit in O.S.No.517 of 1992 (now transferred to District Munsif Court, Coimbatore, which was renumbered as O.S.No.1604 of 2012), one of his vendors, the plaintiff Lakshmana



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Gounder died and other legal heirs have not taken steps to proceed with the said case and due to subsequent developments, the plaintiff constrained to file the present suit for partition and division of their 8/9th share and other consequential relief against defendants 1 to 14.

6. The defendants 1 to 5 are the legal heirs of deceased N.S.Sembarichi Gounder/eldest son of M.S.Sembarichi Gounder and 6th defendant is Chinmaya Garden Trust, who enjoyed the property through a Exchange deed executed by deceased M.S.Sembarichi Gounder, father of 1st defendant. So, all the defendants 1 to 6 filed two separate applications, in which 6th defendant filed an application in I.A.No.12 of 2014 and the defendants 1 to 5 filed an application in I.A.No.181 of 2014 to reject plaint under Order 7 Rule 11 of C.P.C. The contention of 6th defendant/Chinmaya Garden Trust is that the suit property originally belongs to grandfather of 1st defendant herein M.S.Sembarichi Gounder absolutely through a family arrangement in the year of 1948. Thereafter, he executed a registered Will in favour of his eldest son N.S.Sembarichi Gounder on 09.03.1981 and after the demise of testator, the beneficiary N.S.Sembarichi Gounder, based



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on the Will mutated the revenue records, by which, he enjoyed both properties. The said N.S.Sembarichi Gounder and defendants 1 and 4 entered into an agreement of sale with regard to 30.13 acres with the Revision Petitioner, Chinmaya Garden Trust to sell the suit property and they were put in possession of the property as a part performance of the contract and his actual possession was also delivered permitting them to put up buildings. Accordingly, the property was developed and other buildings were constructed and thereafter, Chinmaya residential school was also constructed and entire property fenced with a compound wall, thereby the 6th defendant claims that he is in exclusive possession and enjoyment of the property under a deed of sale dated 13.10.2008. An extent of 33.12 acres, as he exchanged with the property owned by 6th defendant, the right claimed by the plaintiff based on the alleged sale deed dated 21.10.2000, as such is not a valid document for the reason that the alleged vendors have no right, title and interest in the suit property.

7. Furthermore, the alleged sale deed dated 22.12.2000 was also not at all a registered document as on date, thereby the plaintiff has not



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conferred with any lawful title and they have also raised objection stating that the suit in O.S.No.517 of 1992 filed by the alleged vendors of the plaintiff is still pending and during the pendency of the suit, this plaintiff said to have purchased the property and also filed an application in I.A.No.212 of 2001 to implead himself as 10th defendant in that suit. Thereafter, it has also filed another application in I.A.No.405 of 2002 to transpose itself as plaintiff in the said suit. During the pendency of those applications, the plaintiff filed a separate suit in O.S. No.463 of 2013 for the relief of partition along with the relief of declaration, as such, is a clear abuse of process of court and also barred by law. Furthermore, the alleged cause of action to file the present suit, as such is improper and there is no cause of action to file the present suit, besides suit valuation, proper court fee also not paid by the plaintiff, since because the suit properties are not an agricultural land on the date of filing the suit. After developing the property, now educational institutions and other buildings are constructed thereon and without a proper valuation, the court fee paid by the plaintiff, as such is incorrect. So, on this ground also, he prayed to reject the plaint.



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8. Further, the other defendants 1 to 5 filed an application in I.A.No.181 of 2014 praying to reject the plaint under Order 7 Rule 11 of C.P.C. contending that their ancestors purchased the property on 22.07.1935 along with their grandfather M.S.Sembarichi Gounder. Thereafter, he along with his two brothers partitioned the property in the year of 1948 as per family arrangement, in which their grandfather M.S.Sembarichi Gounder was allotted with the suit property. Thereafter, he enjoyed the same as absolute owner and executed a Will on 09.03.1981 in favour of his eldest son N.S.Sembarichi Gounder, father of 1st defendant. Thereafter, his father on 07.12.1994 executed an agreement of sale in favour of 6th defendant and subsequently, he exchanged a portion of the property with the 6th defendant. Thereafter, they sold some of portion of property to third parties i.e. Defendants 6 to 13 and they have mutated the revenue records in their name and became absolute owners of the property, thereby they have contented that the defendants 6 to 13 are having valid title over the property and his third party, the plaintiff has no right over the property. Having failed to proceed with the suit in O.S.No. 517 of 1992, the plaintiff filed the present suit for the same relief without prosecuting the



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earlier suit. Hence, they have no cause of action and the alleged court fee also improper one. Accordingly, they prayed to reject the plaint.

9. Both applications were strongly objected by the plaintiff/1st respondent contenting that the reasons assigned to reject the plaint under Order 7 Rule 11 of C.P.C. as such is not maintainable. The plaintiff further contented that the alleged sale deed said to be executed by the grandfather of 1st defendant viz., M.S.Sembarichi Gounder in favour of his eldest son on 09.03.1981 as such is totally false and fabricated one. Furthermore, the alleged testator has no right to bequeath the entire property, at the most, father of 1st defendant is entitled to only 1/9th share and other co-sharers already conveyed their 8/9th share to this plaintiff, thereby, the plaintiff is the major shareholder, having valid right and title over the property and the plaintiff is not a third party to the proceedings as claimed by the defendants. Further, the plaintiff has filed an application to transpose himself as plaintiff in the suit in O.S.No.517 of 1992, which is still pending and other legal heirs have not cooperated to proceed with the suit. Hence, the plaintiff filed a comprehensive suit, as such is valid one. Furthermore,



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the application for transposing itself as a plaintiff was pending for a long time and hence, to avail an alternative remedy, the plaintiff filed the present suit. He would also submit that the plaintiff purchased the property as agricultural land, thereby it has correctly valued the court fee and the reasons assigned by the 6th defendant, as such is invalid one. So, the right of the party is mixed question of law and fact, which can be decided only after the full-fledged trial. Hence, he prayed to dismiss those applications as no merits.

10. Considering both side submissions, the trial judge held that while disposing the applications filed under Order 7 Rule 11 of C.P.C., the court is not required to take into consideration the defence set up by the defendants in the written statement and the point is to be decided whether the plaint disclosed with cause of action is to be decided by looking at the plaint averment and also did not traverse beyond the plaint averments. He has also observed that the expression of facts needs bundle of facts and the same is bound to be proved by the plaintiff. The trial judge observed that both the petitioner (6th defendant) and the 1st respondent/plaintiff purchased



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the property, pending the earlier suit in O.S.No.517 of 1992 from the legal heirs of M.S.Sembarichi Gounder, which was filed by one of legal heirs against other legal heirs for the relief of partition. Admittedly, the earlier suit is still pending for disposal. But, as per the plaint averment of earlier suit, the prayer sought is a relief of partition, but in the present suit, the plaintiff not only claiming the relief of partition, but also claiming the relief of declaration to declare the sale deeds, gift deeds and exchange deeds are null and void and also of his opinion, it is a comprehensive suit. So, the facts and circumstances of the present case is totally different from the earlier suit. Hence, the case in hand does not hit Order 2 Rule 2 of C.P.C. Further, the trial court also observed that in the earlier suit in O.S.No.517 of 1992 based on the sale deed, this plaintiff was impleaded as 6th defendant, but also moved an application to transpose itself as plaintiff, but there was no progress in the said suit. Further, there is lot of transaction between the parties after the said suit. Hence, the plaintiff filed a comprehensive suit for the relief of declaration, injunction and appointment of receiver and the cause of action to file the present suit, as such due to the development of subsequent circumstances. Therefore, there is a cause of action to file the



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present suit is acceptable one. Further, the trial court also held that when the earlier suit has no progress nearly about 20 years and with regard to court fee also based on the sale agreement as such is acceptable one and the issues are to be decided in a comprehensive suit by adducing evidence. Therefore, the applications to reject the plaint, as such is not maintainable. Accordingly, the trial judge dismissed those applications.

11. Challenging the said findings, the 6th defendant and defendants 1 to 5 filed the present Civil Revision Petitions. The learned counsel for Revision Petitioners argues that the court below failed to take note of the fact that the 1st respondent/plaintiff can very well work out its remedy in the previous suit as he has already filed the application to transpose himself as a plaintiff. Furthermore, he would also submit that whether the plaintiff is entitled to a share in the suit property can be decided only in the earlier suit in O.S.No.517 of 1992, because he is the pendente lite purchaser and his right over the property is to be decided only subject to the outcome of earlier suit. Therefore, the plaintiff has no right to file the present suit as it possessed with valid title is totally erroneous one. But, the court below



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failed to appreciate all these legal aspects and erroneously dismissed the applications filed by the Revision Petitioners. Hence, he prayed to set aside the findings of the trial judge. He would also submit that under Order 2 Rule 2 of C.P.C., which reads as follows:-

“ORDER II- FRAME OF SUIT

1. Frame of suit— Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2. Suit to include the whole claim— (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he



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shall not afterwards sue for any relief so omitted.

Explanation—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

So, a subsequent suit on the same cause of action is barred by law. Hence, the present suit as such is not maintainable. He would submit that already there is a registered Will in favour of 1st defendant's father, which was already submitted before the trial court in the earlier suit. Therefore, the present suit as such has no cause of action, since because the earlier suit for partition is pending among the sharers. So, as on date, the plaintiff has no right over the property. Moreover, the sale deed has not been registered, he has no valid title, thereby he is not entitled to file a separate suit. Without appreciating all these legal aspects, the trial judge dismissed the applications filed by the petitioner, as such is totally unfair and the same is liable to be set aside. Therefore, the present suit is not maintainable in law and the same is to be dismissed on the ground of abuse of process of court or it hit by the doctrine of relitigation.



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12. To support his contentions, he relied the ratio laid down in the authority reported in **2009 (4) L.W. 785** in the case of **M.Somasundaram and another vs. Mr.V.Srinivasan and others**, wherein in para 18, this Court held as follows :-

“However, while considering whether a suit is to be dismissed on the ground that it is an abuse of process of court or hit by the doctrine of “relitigation”, obviously the court is not confined to the averments made in the plaint, but the court is required to look into undisputed surrounding circumstances to come to a conclusion whether filing of the suit is an abuse of process of court and hit by the doctrine of relitigation.”

13. He has also relied on the ratio laid down in the authority reported in **2011 (1) Law Weekly 394** in the case of **T.G.Ashok Kumar vs. Govindammal and another**, wherein the Apex Court held as follows:-

“If the title of the pendente lite transferor is recognized or accepted only in regard to a part of the transferred property, then the transferee's title will be saved only in regard to the remaining portion of the transferred property, then the transferee's title will be saved only in regard to that extent and the transfer in regard to the remaining portion of the



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transferred property to which the transferor is found not entitled, will be invalid and the transferee will not get any right, title or interest in that portion.

A suit for partition filed by the 1st respondent against the second respondent which included the suit property, was pending in a court of competent jurisdiction on the date of sale by the 2nd respondent in favour of the appellant – Partition suit was not collusive – Sale by the 2nd respondent in favour of the appellant did not in any way affect the right of the 1st respondent (plaintiff in the partition suit) or the decree made in her favour in the said partition suit – Sale by 2nd respondent in favour of the appellant though not void, did not bind the 1st respondent, who was the plaintiff in the partition – Sale pendente lite would be subject to the decree in the partition suit.....”

14. Per contra, the learned counsel for plaintiff/1st respondent would submit that as per the family partition held in the family of grandfather of the 1st defendant, the suit property an extent of 35.17 cents allotted to grandfather M.S.Sembarichi Gounder and he died intestate leaving behind his 7 sons and 2 daughters. As the eldest son N.S.Sembarichi Gounder,



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father of 1st Revision Petitioner caused interference, a partition suit was filed in O.S.No.517 of 1992 before the Sub-Court among the co-sharers by one of the legal heirs and during the pendency of the suit, major share of 8/9th share was offered to sell to this respondent/plaintiff on 14.02.1996. In pursuant to the agreement, 8/9th share was conveyed through a sale deed dated 22.12.2000 as the patta was obtained in the name of 1st defendant's father (M.S.Sembarichi Gounder) fraudulently. Hence, the sale deed was not registered by the authority, however, he is in possession of undivided share of 8/9th share. Further, after his purchase, he filed an application to implead himself as 10th defendant in the earlier suit in O.S.No.517 of 1992. Subsequently, the plaintiff filed the present suit, thereby he filed another application to transpose himself as plaintiff in I.A.No.405 of 2002. Now, the said suit was pending in O.S.No.1604 of 2012 and the parties are not interested to proceed with the trial, since because some of legal heirs died during the pendency of proceedings. As there was no progress in the earlier suit, the plaintiff filed the present suit in O.S.No.517 of 1992 (renumbered as No.1604 of 2012) for the relief of partition, declaration, permanent injunction and appointment of receiver as a comprehensive suit. After their



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purchase, the father of 1st defendant fabricated the revenue records and transferred the patta and also sold the property to third party including the defendants. So, the necessity arose for the plaintiff to file the present suit based on the subsequent cause of action and as per the sale deed, he purchased the agricultural land. Hence, he paid correct court fee, besides the 1st revision petitioner claiming right over the property based on the sale agreement executed by the grandfather, which is under dispute. Therefore, the right of the parties could be decided only after the full-fledged trial and the same was rightly appreciated by the trial judge by dismissing the applications, which needs no interference. Accordingly, he prayed to dismiss the Revision Petition.

16. To support his contentions, he has relied on the authority reported in **2008 (12) SCC 661** in the case of ***Kamala and others vs. K.T.Eshwara Sa and others***, wherein the Apex Court held as follows :-

“A. Civil Procedure Code, 1908 – Or. 7 R.11(d), S.12 Or.14 R.2(2) and Or. 18 – Rejection of plaint – Applicability of Or.7 R. 11(d) – Precondition for – Necessary considerations for



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determination thereof – Bar for res judicata – Consideration of, at said stage – Power as to – Held, Or. 7 R. 11(d) has limited application – For applicability thereof it has to be shown that the suit is barred under any law – Such conclusion has to be drawn from the averments made in the plaint – For invocation of Or. 7 R. 11(d), no amount of evidence can be looked into – At that stage, the issues on merit of the matter would not be within the realm of the court – Principles of res judicata, when attracted, would bar another suit in view of S.12 CPC – But such question being a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit, may be taken up either as a preliminary issue or at the final hearing – Said question cannot be determined at the stage of proceeding under Or. 7 R. 11(d).

--Appellants filing a suit claiming partition in the properties, which were same as were described in earlier partition suit – Earlier suit was dismissed for default at the stage of final decree proceedings – Respondent/defendants contending that : (i) the present suit was barred by principles of res judicata, (ii) there had been a division of the joint family properties by metes and bounds, which having been admitted in the plaint, no cause of action survived for grant of a decree



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for partition, (iii) severance of joint status being not vitiated by any fraud, it should not be permitted to be reopened at this stage, (iv) after passing of the preliminary decree in the earlier suit, no property was available for partition, and (v) sale deeds having been executed by the co-sharers and their validity having not been assailed directly, the same could not be done in an indirect manner by way of the present suit – Held, what would be the effect of a partition suit which had not been taken to its logical conclusion by getting the properties partitioned by metes and bounds, could not be gone into in a proceeding under Or. 7 R.11 (d) – Contentions raised for rejection of the present suit involved various questions which could not be considered at the stage of proceeding under Or. 7 R. 11(d) – Thus, rejection of plaint under Or. 7 R. 11 (d) CPC by courts below, held on facts, was not proper.”

17. He has further relied on the authority reported in **2014 (1) L.W. 173** in the case of **M.Prince Manohar and others vs. Mrs.Bhima Lakshmi Narasammah and others**, wherein this Court had held in para 6 and 8 as follows :-

“ 6. Though the Revision Petitioners have filed an Application under Order 7 Rule 11 CPC seeking rejection of plaint, they have not stated anything as to under which of the



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six limbs of Order 7 Rule 11 CPC, the said relief is sought for. Learned trial Judge has also found that no argument was advanced by the learned counsel for the Petitioners on the question of cause of action. Insofar as the other objections, viz., principle of res judicata and applicability of Order 2 Rule 2 CPC, the learned Judge held that since they are mixed questions of fact and law, the same can be gone into only at the time of trial. Based on the above reasoning, the Application to reject to the plaint was dismissed.

8. Clause A deals about the disclosure of cause of action. The idea undermined in the said provision is that when no cause of action is disclosed in the plaint, the Court will not unnecessarily protract and the party should not be unnecessarily harassed in the suit. For the purpose of invoking the power, the Court has to read the plaint whether it discloses the cause of action and if it does, then the plaint cannot be rejected by the Court by exercising power under Order 7 Rule 11 CPC. It is a trite law that the cause of action is a bundle of facts and whether the plaint discloses cause of action is a question of fact which has to be gathered based on the averments made in the plaint in its entirety by taking those averments to be correct. So long as the plaint discloses some



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cause of action which requires determination by the Court, the mere opinion that the plaintiff may not succeed cannot be a ground for rejection of the plaint.

18. He has also relied on the authority reported in **2014 (8) MLJ 513** in the case of ***C.V.Karthikeyan vs. P. Subramaniam and another***, wherein this court held as follows :-

“The applicability of the principles of resjudicata, especially in the above stated facts and circumstances of the present case, is a question which cannot be considered and decided at the threshold while deciding the application under Order 7 Rule 11 CPC itself and on the other hand, the same has to be considered and decided only after full-fledged trial, since such principle involves mixed question of law and fact. The point raised by the petitioner as the eighth defendant on the question of res judicata is necessarily a mixed question of fact and law, which needs to be gone into only by conducting trial and considering the pleadings and evidence of the respective parties.”



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19. He has further relied on the authority reported in **1934 SCC Online Mad 424 : air 1935 Mad 458 : 1935 MWN 666 (1)** in the case of **Kannikandath Kizhe Purakkal Velia's son, Thayyan vs. Kannikandath Kozhe Purakkal**, wherein this court held as follows :-

“1. The first point is whether the present suit is barred under O.9 R.9 by reason of the former suit cases of a second suit for partition fall under three classes, (1) where the former suit ended in a final decree e.g. 3 Bom. L.R. 91 distinguished in C.W.N. 839, cases where there was preliminary decree but not a final decree.....example of this are 1915 All. 33, Cal.110 and 1918 Mad. 751, (3) cases where the suit was dismissed for default; 28 All 627.

2. The case before us falls under the last heading. Following the decisions in 28 All. 627 and 1926 Mad. 1018 we hold that the present suit is not barred. The reason is that even after the dismissal of the former suit, the jointless continues and there is a continuing cause of action.”

So, as per the decision cited above, subsequent developments are the continuing cause of action. Hence, he filed the present suit.



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20. Considering both side submissions, the fact reveals that the Revision Petitioner/6th defendant and the 1st respondent/plaintiff are admittedly claimed to be purchased the property during the pendency of the earlier suit in O.S.No. 517 of 1992 and the present suit in O.S.No.463 of 2013. As per the contention of Revision Petitioner Chinmaya Garden Trust, originally the property belongs to one M.S.Sembarichi Gounder by way of family arrangement. Thereafter, during his life time, he executed a Will in favour of his eldest son N.S.Sembarichi Gounder on 09.03.1981 and after the death of testator, the beneficiary viz., eldest son N.S.Sembarichi Gounder became absolute owner of the property and enjoyed absolutely, but second son of M.S.Sembarichi Gounder filed the suit in O.S.No.517 of 1992 before the Sub-Court, Coimbatore for partition of 1/9th share in the suit property, in which in the year of 1992, the beneficiary of the Will viz., eldest son of M.S.Sembarichi Gounder filed the written statement claiming that as per the registered Will dated 09.03.1981, entire suit property belongs to him, but other sons denied the alleged execution of Will by filing their written statement. While so, during the pendency of the suit, on 07.12.1994 the beneficiary of the Will viz., N.S.Sembarichi Gounder and his sons



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entered into an agreement of sale. The 6th defendant/Revision Petitioner herein agreed to sell the property and possession was also handed over to the said trust. Thereafter, in the year of 2008, an Exchange deed was executed between 6th defendant and defendants 1 to 5, thereby 6th defendant constructed the building and running an educational institution by forming a layout and constructed residential quarters for Chinmaya residential school by constructing a compound wall around the entire property.

21. Admittedly, in the said suit in O.S.No. 517 of 1992 in para No.7, the then plaintiff stated that the 1st defendant attempted to sell away the property to third parties and the alleged attempt of the 1st defendant is the main cause of action in the said suit. It is an admitted fact that during the pendency of the suit, the present plaintiff Karunya Educational Trust said to have purchased the property in the year of 2000 and also claimed that he was in symbolic possession of the property. That apart, he contented that the suit properties are agricultural land. Furthermore, the 1st respondent also filed an application to implead himself as 10th defendant in the earlier suit and also filed another application to transpose himself as plaintiff in the



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suit. Those facts are admitted facts. After filing those applications, the present suit was filed by the plaintiff/1st respondent stating that the 1st defendant's family sold the property to third party and they purchased his major share of 8/9th share and also to declare the alleged sale deed released, but the said suit is to be a comprehensive suit, which is also continuous cause of action of earlier suit and claimed that the suit, as such is maintainable.

22. Admittedly, it is a settled proposition that while disposing the application under Order 7 Rule 11 of C.P.C., the court should not traverse beyond the plaint averment. On considering the fact that the 1st respondent itself admits that so far, the sale deed was not registered for want of patta and other documents by the registering authority in para No. 6 of the plaint. So, on the date of filing of the suit, as per the plaint averments prima facie reveals that the plaintiff is not holding valid right over the property. Furthermore, since because the alleged purchase said to be made during the pendency of earlier suit not only hit by the principles of lispendence, but also his right is to be decided subject to the outcome of earlier suit filed



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among vendors and other sharers in the earlier suit in O.S.No.517 of 1992.

Furthermore, even on a bare perusal of the alleged agreement said to be entered by this plaintiff with his alleged vendors as per recitals, which reads as follows :-

“தற்சமயம் கோர்ட்டில் உள்ள பாகஸ்த சூட் வழக்கை முடித்து, நில உரிமையை ஊர்ஜிதம் செய்து நிலத்தை விற்கும் உரிமையைப் பெற்றுத்தருவதுடன், அவைகள் சம்மந்தப்பட்ட அனைத்து ரெக்கார்டுகளையும் தங்களுக்கு ஒப்படைக்கவும் சம்மதிக்கிறோம்.”

Furthermore, as per the recitals of alleged sale agreement and other sale deed, which reads as follows :-

“வழக்குகளை இன்று முதல் எங்கள் சார்பில் நீங்களும் கட்சி சேர்ந்து நடத்திக்கொள்ள வேண்டியது.”

Therefore, the recitals of those documents clearly show right of plaintiff with regard to the property is subject to the outcome of earlier suit in O.S.No.517 of 1992. Further, in the earlier suit in O.S.No.517 of 1992 the claim of defendants is that already grandfather executed a Will in favour of his eldest son, father of 1st defendant in the year of 1983, thereby they claimed absolute right over the property, but the said Will is not accepted



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by other sharers and they are disputing the same by filing the written statement. Therefore, the right of parties as well as validity of the Will is to be decided in the earlier suit in O.S.No.517 of 1992, because the said suit was filed among co-sharers. Unless the validity of the Will is decided, the right of the parties morefully the claim of this defendant said to be holding major share of 8/9 could not be accepted. So, the present plaintiff, who claimed himself as a subsequent purchaser of major share is bound to challenge the same in the suit in O.S.No.517 of 1992, since because during the pendency of the said suit, the plaintiff said to have purchased major shares. Therefore, the alleged Will can be challenged in that suit only, not in the instant case. Furthermore, in the instant case, the plaintiff/1st respondent claimed it as a continuing cause of action, but there is no specific allegation with regard to the Will relied by the 1st defendant's family, in which Exchange deed and Gift deeds are the subject in issue in the present suit. Unless the right of this plaintiff's vendor is decided, the alleged share purchased by the plaintiff could not be accepted as a valid one. Admittedly, it is subject to outcome of the suit in O.S.No.517 of 1992. Therefore, the authorities relied on by the Revision Petitioner to that effect



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in support of their contentions, the present suit filed by the plaintiff as such is amounting to relitigation for the reason that already he took steps to transpose itself as a plaintiff and instead of contesting the suit in O.S.No.517 of 1992, he filed the present suit is a clear abuse of process of law. Therefore, the suit as such is liable to be rejected on that ground alone, but the trial court failed to appreciate those facts and erroneously dismissed the applications, as such is liable to be set aside. It is pertinent to mention here that on a bare perusal of facts, it is seen that Chinmaya Garden Trust/6th defendant developed the property, in which it is running an international school and put up some other construction, but the description of property in the instant suit, this plaintiff simply mentioned the property as agricultural land as such is total suppression of the fact in that suit. Suppression of the fact itself clearly shows that the plaintiff has not approached the court with clean hands. Furthermore, the plaintiff is entitled to take any number of defence in the earlier suit itself, inspite of that, he filed the present suit, as such is abuse of process of law and also there is no cause of action to file the present suit, since because his right could be decided only after the disposal of earlier suit. Therefore, there is no cause



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of action to file the present suit. Accordingly, the authorities relied on by the 1st respondent/plaintiff is not applicable to the facts of the case, thereby both the Civil Revision Petitions are allowed. The findings of the trial judge in I.A.Nos.12 and 181 of 2014 is set aside and therefore, the suit in O.S.No.463 of 2013 is ordered to be rejected. No costs. Consequently, the connected Miscellaneous Petitions are closed.

28.06.2023

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp
To

The Sub-Judge,
Dharmapuri.



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T.V.THAMILSELVI, J.

rpp

Pre-delivery order in
C.R.P. Nos.4380 & 4381 of 2015

28.06.2023