



WEB COPY



C.R.P.No.723 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

Civil Revision Petition.No.723 of 2023
and C.M.P.No.5617 of 2023

Arunakumari

... Petitioner

Vs.

1.Premiya

2.Ramasamy

3.Saravanaprakash

4.Palaniammal

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.5 of 2022 in O.S.No.128 of 2020 dated 16.11.2022 on the file of the Additional District Judge at Dharmapuri.

For Petitioner : Mr.R.Jayaprakash

ORDER

This Civil Revision Petition is filed challenging the dismissal of I.A.No.5 of 2022 in O.S.No.128 of 2020, dated 16.11.2022 on the file of the learned Additional District Judge, Dharmapuri, filed under Order 7 Rule 11 and Section 151 of C.P.C.



WEB C

2. It is submitted by the learned counsel for the petitioner/defendant that the respondent/plaintiff has filed the suit in O.S.No.128 of 2020, seeking partition and separate possession in respect of three schedules of properties. As per the pleadings in O.S.No.128 of 2020, second and third schedule of properties were purchased with the funds of joint family nucleus. The petitioner/defendant has filed I.A.No.5 of 2022 under Order 7 Rule 11 C.P.C., for rejection of plaint alleging that the second and third schedule of properties are not the joint family properties, but self acquired properties of the defendant which were purchased about twenty years ago, however same was dismissed.

3. Heard the learned counsel for the petitioner and perused the record.

4. Rejection of plaint under Order 7 Rule 11 of C.P.C., will have to be considered basing on the pleadings of the plaint and not basing on the averment in the written statement and the documents filed by the defendants in the written statement. The defendant has contended that plaint 2nd and 3rd schedule of properties are not joint family properties but self acquired properties of petitioner/defendant. Hence, under Order VII Rule 11 can be considered if no case of action is disclosed in the plaint or if the suit is



barred by limitation so that the judicial time is not wasted. The questions raised by the petitioner/defendant requires through trial after framing appropriate issues before the Trial Court.

5. The Hon'ble Supreme Court has held in a case between ***Ramisetty Venkatanna & another v. Nasyam Jamal Saheb & Ors.***, reported in **2023 LiveLaw (SC) 372**, as under:-

"5.1 In the case of T. Arivandandam (supra) in paragraph 5 while considering the provision of Order VII Rule XI, this Court has observed as under: -

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly 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, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC 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 10 CPC. An activist Judge is the answer to irresponsible law suits."



WEB COPY



C.R.P.No.723 of 2023

5.2 In the case of Sopan Sukhdeo Sable Vs. Charity Commr., (2004) 3 SCC 137 in paras 11 and 12, this Court has observed and held as under:

“11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code. 12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467].)”

5.3 In the case of Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal, (2017) 13 SCC 174, this Court observed and held as under:

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire



WEB COPY



C.R.P.No.723 of 2023

and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

5.4 In the case of Ram Singh Vs. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364, this Court observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit



C.R.P.No.723 of 2023

is barred by law of limitation. Similar view has been expressed by this Court in the case of Raj Narain Sarin (supra).

7.1 Now so far as the reliance placed upon the decision of this Court in the case of Nusli Neville Wadia (supra) is concerned, again there cannot be any dispute with respect to the proposition of law laid down by this Court that while deciding the application under Order VII Rule XI, mainly the averments in the plaint only are required to be considered and not the averments in the written statement. However, on considering the averments in the plaint as they are, we are of the opinion that the plaint is ought to have been rejected being vexatious, illusory cause of action and barred by limitation and it is a clear case of clever drafting."

6. Considering the circumstances, this Civil Revision Petition is disposed of at this stage itself, directing the petitioner to take all possible defense which are raised in the written statement. The Trial Court is directed to take up this matter and dispose of the same, as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

21.06.2023

jai

Index: Yes/No



C.R.P.No.723 of 2023

Speaking Order: Yes/No

WEB COPY



C.R.P.No.723 of 2023

To
The Additional District Judge, Dharmapuri.



WEB COPY



C.R.P.No.723 of 2023

Dr.D. NAGARJUN, J.
jai

C.R.P.No.723 of 2023

21.06.2023