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CRP.Nos.2344 & 2345 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.Nos.2344 & 2345 of 2018 and
CMP.Nos.14507 to 14510 of 2018

CRP.No.2344 of 2018

Radjacoumar(died)

1.Radjasankar

2.Pouchepalatha

3.Babu

... petitioners

Vs.

1.Tayanayaki @ Chandira

2.Shankar

3.Indiran

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 21.07.2017 passed in CMA.No.6 of 2009 on the file of Additional Sub Judge, Pondicherry confirming the order made in IA.No.4891 of 2006 in OS.No.1566 of 2006 dated 20.02.2008 on the file of the Principal District Munsif at Pondicherry.

For Petitioners : Mr.G.Ethirajulu
for Mr.K.Balu



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For Respondents : No appearance

WEB CRP.No.2345 of 2018

Radjacoumar(died)

1.Radjasankar

2.Pouchepalatha

3.Babu

... petitioners

Vs.

1.Manikan @ Kalidass

2.Masilamani

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 21.06.2017 passed in CMA.No.7 of 2009 on the file of Additional Sub Judge, Pondicherry confirming the order made in IA.No.4735 of 2006 in OS.No.1566 of 2006 dated 20.02.2008 on the file of the Principal District Munsif at Pondicherry.

For Petitioners : Mr.G.Ethirajulu
for Mr.K.Balu

For Respondents
For R1 : Mr.K.S.Karthik Raja

COMMON ORDER

The civil revision petition in CRP.No.2344 of 2018 has been filed to to set aside the order dated 21.07.2017 passed in CMA.No.6 of 2009 on the file of Additional Sub Judge, Pondicherry confirming the order made in IA.No.4891 of 2006 in OS.No.1566 of 2006 dated 20.02.2008 on the file of the Principal District Munsif at Pondicherry, and the civil revision petition in CRP.No.2345 of 2018 has



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been filed to set aside the order dated 21.06.2017 passed in CMA.No.7 of 2009 on the file of Additional Sub Judge, Pondicherry confirming the order made in IA.No.4735 of 2006 in OS.No.1566 of 2006 dated 20.02.2008 on the file of the Principal District Munsif at Pondicherry, thereby rejected the plaint.

2. The plaintiff is one, Ramasamy and the petitioners are his legal heirs. The respondents in both the civil revision petitions and another are the defendants in the main suit, which was filed suit for bare injunction restraining the defendants from alienating and/or creating encumbrance of any kind over the property of the plaintiff. While pending the suit, the respondents filed applications for rejection of plaint under Order 7 Rule 11 of CPC on the ground that there is absolutely no cause of action for the present suit. Further averred that the petitioners failed to pay adequate court fee and for want of pecuniary jurisdiction, the trial court has no jurisdiction and as such the plaint is liable to be rejected. The trial court allowed the petitions and aggrieved by the same, the plaintiff preferred appeals and the same were also dismissed and confirmed the fair and decretal orders passed by the trial court. Hence, the present civil revision petitions have been filed.

3. The learned counsel for the petitioners would submit that the plaint has to be read in whole to find out whether the averments contained therein



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discloses the cause of action. In the case on hand, there are averments in the plaint disclosing the cause of action to file the suit. The plaintiff categorically stated that the cause of action for suit arose at Pondicherry on 28.07.1962 when his mother purchased the suit property on 20.12.1965 and 18.05.1968. Thereafter, his mother settled the suit property in favour of the plaintiff by the settlement deed dated 23.10.2006. While being so, the respondents are taking steps to alienate and create encumbrance over the suit property. Insofar as the averments made in the plaint, defendants 2 and 3 have executed agreement to sell the suit property in favour of the first defendant. Therefore, the cause of action is a bundle of facts including some acts done by the defendant, if traversed it would be necessary for the plaintiff to prove, in order to support his claim for the relief sought for in the suit. The cause of action includes material facts on which it is founded. Therefore, the courts below ought not to have rejected the plaint.

4. Heard the learned counsel appearing on either side.

5. On perusal of records, revealed that the plaintiff filed the suit for bare injunction restraining the defendants from alienating or creating any encumbrance over the property. According to the plaintiff, originally the suit property was purchased by his mother on 20.12.1965 and 18.05.1968. Thereafter on 23.10.2006,



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the suit property was settled in his favour. Thereafter, defendants 2 and 3 have executed agreement for sale in order to sell the said property. The plaintiff admittedly failed to state what is the date of the alleged agreement entered between the defendants 2 and 3 with the first defendant, on what date they attempted to trespass the said land and what they attempted to alienate or create encumbrance over the suit property. Nothing have been mentioned arising of cause of action to file the present suit. That apart, the respondents submitted that even in the year 2003, the plaintiff caused public notice by way of paper publication in Dinamalar on 11.02.2003 as against the respondents restraining them from making any encumbrance over the property. The respondents issued reply notice to the plaintiff on 28.02.2003 by a paper publication by denying all those averments made by the plaintiff. Therefore, the true cause of action arose on 11.02.2003 and not on 23.10.2006. Further, nowhere the plaintiff whispered about the exchange of notice or any paper publication with the respondents. Hence, the plaintiff also suppressed the main fact in order to attract any relief in the present suit.

6. The learned counsel for the petitioner relied upon the judgment of this Court in the case of *L.Venkatraman Vs. Narasus Coffee Company rep. by its Managing Partner* reported in *2019-5-LW 379*, in which this Court held that for the purpose of determining whether the suit is liable to be rejected under Order 7



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Rule 11 of CPC, the court has to read the plaint on the whole to file out whether the averments contained therein discloses the cause of action and if it does not, the plaint can be rejected by the court by exercising its power conferred under Order 7 Rule 11 of CPC. Further held that the cause of action is a bundle of facts and whether the plaint discloses the cause of action is a question of fact which has to be discovered based on the averments made in the plaint in its entirety.

7. Whereas in the case on hand, on reading of entire plaint, there was no cause of action arose to file the present suit for permanent injunction restraining the respondents from alienating or creating any encumbrance over the suit property. The plaintiff did not lodge any complaint and did not disclose any exchange of notice between them. After purchase of the suit property by his mother, it was settled in his favour. Immediately, he filed suit. Therefore, there was no cause of action to file the present suit as against the respondents and the courts below rightly rejected the plaint for want of cause of action. As such, this Court finds no infirmity or illegality in the orders passed by the courts below.

8. Accordingly, both the civil revision petitions are dismissed. However, the petitioners are at liberty to file a fresh suit on fresh cause of action.



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Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To

1.The Additional Sub Judge,

Pondicherry

2.The Principal District Munsif at Pondicherry.

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