



C.R.P.No.2447 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.2447 of 2019
and CMP.No.15976 of 2019

Govindan

... Petitioner / Petitioner / 3rd Defendant

Vs.

1.K.Sundaram

2.S.Murugan

3.S.Rajugandhi

... Respondents / Respondents / Plaintiffs

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 14.12.2018 made in I.A.No.1311 of 2017 in O.S.No.774 of 2016 on the file of the Principal District Munsif Court, Salem by allowing this civil revision petition and pass such further and other suitable orders as this Court deems fit and proper in the circumstances of the case

For Petitioner : Mr.A.Saravanan



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ORDER

The third defendant in O.S.No.774/2016 on the file of IV Additional District Court, Salem, has preferred this revision challenging the order dismissing his application filed for rejecting the plaint.

2. The material facts of the case is that :

- The plaintiffs have laid a suit for mandatory injunction for removing certain encroachments made by the defendants 1 to 3 over an extent of 3½ cents in two items of suit properties, and for certain other reliefs (that does not concerns the revision petitioner, as it was directed against defendants 6 to 11).
- In his plaint, the plaintiffs have alleged that sometime in 1966, under a partition deed, a certain Kandasamy was allotted 23 cents in Sy.No.62/3, and another 18 cents in Sy.No.62/4 of Sivadhapuram Village in Salem Taluk.
- The first plaintiff is the son of said Kandasamy, and plaintiffs 2 and 3 are the sons of first plaintiff.
- According to the plaintiffs, the plaintiffs have sold 10.75 cents in



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Sy.No.62/3 to defendants 1 and 2, and another 5.5 cents in the survey number to one Sundaram and Bakkiyam. Thereafter, the first defendant had purchased 5.5 cents sold to Sundaram and Bakkiyam , in 2002.

- According to the plaintiffs, after the sale of 16.25 cents as referred to above and also after providing some extent for providing a pathway, they are now entitled to balance 2.5 cents.
- So far as the property in Sy.No.62/4 is concerned, out of 18 cents available in the survey field, the plaintiffs have sold 4 cents to a certain Chinnapaiyan, an extent of 5 cents to Ganesan, the fourth defendant herein, and an extent of 2 $\frac{3}{4}$ cents to one Ravi, the vendor of the fifth defendant. In all, the plaintiffs have sold 12 cents out of 18 cents in Sy.No.62/4.
- As in the case of Sy.No.62/3, even in this survey number, the plaintiffs retain 2.5 cents after the aforesaid sales and also providing pathway for them.
- The property measuring 2.5 cents in Sy.No.62/4 is described as 'B' schedule in Item-I.
- The plaintiff alleges that the third defendant/revision petitioner has encroached into the same and hence, laid a suit *inter alia* for relief of



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mandatory injunction against defendants 1 to 3 for the encroachments they have made.

- The revision petitioner has filed I.A.No.1311/2017 for rejection of plaint on the ground that after the sales as described above, the plaintiffs retained no property in S.No.62/3 and 62/4 and consequently, the plaint does not disclose the cause of action.
- This application was dismissed by the trial Court vide order dated 14.12.2018, on the ground that (a) the dispute raised is one fit for trial; and (b) the claim of the third defendant alone cannot be considered in isolation.

This order is now in challenge.

3. Heard the learned counsel for the revision petitioner. The third defendant raises a dispute on facts and that cannot be resolved by presuming the said allegations to be true. It is firmly settled that while considering the prayer for rejection of plaint for non-disclosure of cause of action under Order VII Rule 11(a) CPC, the Court is required to look only to the plaint and the allegations made therein. Unless it is demonstrated that the plaint is an abuse of judicial process, the Court may not travel beyond the plaint. Here the issue raised is one on facts, and as was rightly



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decided by the trial Court, this is a material for trial and not for rejection of the plaint.

4. In conclusion, this Court finds no merit in the revision and hence dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.03.2023

Index : Yes / No
Internet : Yes / No
Speaking order / Non-speaking orders

To:

1. The IV Additional District Munsif
Salem.
2. The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,
ds

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