



O.P.No.533 of 2022 in C.S.No.155 of 2022

A.No.3755 of 2023

in

O.S.No.155 of 2022

N.SATHISH KUMAR, J.

This application has been filed to reject the plaint filed under Order VII Rule 11 of Code of Civil Procedure.

2. It is the contention of the learned counsel appearing for the applicant that suit has been filed without any details whatsoever as to how the business run including a third party to show as a joint family business. The learned counsel appearing for the applicant further submitted that since there is no averments to prove the factum of joint family business, the suit is not maintainable. In support of his contentions, he relied on the judgment of the **Delhi High Court** in **C.S. [O.S.] No.1528 of 2010**. It is the further contention of the applicant that the joint family business has to be conducted by the Kartha and in his absence, the next senior member alone can continue the business. Whereas, in this case, the plaintiff is not the



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senior member of the family and hence, the entire plaint has to be thrown out.

3. It is the contention of the first respondent/plaintiff that the applicant and the first respondent are children of one K.S.Kannaiah Naidu and the applicant, first respondent and one C.K.Ramakrishnan were running a running a fancy store as a family business and the first defendant was taking care of the family. Apart from the above business, following business also run by the family :

- a. Balaji Cycles, Virugambakkam
- b. Alankar Sncks Bar, Vijaya Hospital
- c. Geeta Constructions, Saaligramam
- d. Shri Venkateshwara Xerox and Stationary
- e. Venkateshwara Cycle, Vadapalani
- f. Indira Cut Piece, Saaligramam
- g. Indira Electricals, Vadapalani
- h. Geeta Cycles and Electrical Mart

It is the further contention of the first respondent/plaintiff that there are



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various business in the name of other family members. Hence, submitted that the application has to be dismissed.

4. I have perused entire materials available on record. The suit has been filed for partition of the suit property and separate possession, for injunction restraining the first defendant from encumbering the suit properties to any third party, for rendition of accounts and for mandatory injunction directing the first defendant to handover all the deposit receipts including postal deposits and acknowledgement standing in the name of the plaintiff to the plaintiff and for costs. For rejection of the plaint, the averments in the plaint has to be seen to find out whether there is any cause of action for filing the suit. A perusal of the entire plaint, the plaintiff has pleaded that the business is run by the family and the family has also several other business. Therefore, merely because some of the properties have been purchased in the name of individual member of the family, it cannot be said that those properties are individual properties. Whether the properties have been acquired in the name of the individual or self acquired properties or the properties have been purchased from the joint family income, is a matter of



evidence. These facts cannot be gone into at this stage.

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5. A plaint can be rejected under Order VII Rule 11 of Code of Civil procedure under the following grounds :

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law.

In such view of the matter, merely on the basis allegations in the nature of



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defence set up by the applicant, the plaint cannot be rejected. Hence, I do not find any merits in this application.

6. Accordingly, this application is dismissed. The applicant/defendant is directed to file written statement, if it is not filed already, by 18.10.20223.

03.10.2023

vrc



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