



A.S.No. 458 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.458 of 2021

and

C.M.P.No.19157 of 2021 & C.M.P.No.8142 of 2022

V.Priyadharshini

. . Appellant

Vs

1. M.Parthiban

2. P.Arun Karthick

3.Palaniammal

4. Dhanabakkiam

5. Eswari@ Fathima

6. Muthulakshmi

. . Respondents

Prayer: This Appeal Suit is filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure to set aside the judgment and decree in I.A.No.3 of 2021 in O.S.No.29 of 2021, on the file of IV Additional District & Sessions Judge, Coimbatore dated 29.10.2021.



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For Appellant : M/s.V.Raghavachari
For Respondents : Mr.M.Guru Prasad for R1 & R2
: Mr.N.Manokaran for R4.

ORDER

The Appeal Suit on hand has been instituted challenging the judgment and decree in I.A.No.3 of 2021 in O.S.No.29 of 2021. The plaintiff is the appellant in the present appeal suit who instituted a suit for partition. The appellant Smt.Priyadharshini is the daughter of the 1st defendant, who filed a suit in O.S.No.29 of 2021 for partition and separate possession claiming 2/25th share in the entire properties.

2. The appellant / plaintiff Smt.Priyadharshini had not been impleaded as a party in the Suit filed for partition earlier in O.S.No.414 of 2014. The said Suit was decreed and the rights of the parties were crystallised. Relying on the said judgment and decree passed in O.S.No.414 of 2014 dated 27.02.2018, the respondents / defendants 1 and 2 in O.S.No.29 of 2021 filed an Interlocutory Application in I.A.No.3 of 2021 for rejection of plaint under Order VII Rule 11 of Code of Civil Procedure. The Trial Court adjudicated the grounds raised in the Interlocutory Application filed by the respondents / defendants 1 and 2 in the Suit and allowed the application mainly on the ground



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that the judgment and decree passed in O.S.No.414 of 2014 is binding on the revision petitioner herein, since the Suit Schedule Property in both the Suits are one and the same. Accordingly, the plaint was rejected.

3. The learned Senior Counsel appearing on behalf of the appellant contended that primarily the appellant / plaintiff in O.S.No.29 of 2021 had not been impleaded as party in the earlier Suit filed in O.S.No.414 of 2014. Thus, the judgment and decree passed in O.S.No.414 of 2014 is not binding on the appellant herein and thus, there is no bar for institution of fresh Suit by the appellant for partition. When the legal heirs, who are the eligible persons are not impleaded as a party in the Suit for partition, then such persons are entitled to file a fresh Suit seeking partition for their portion and the decree passed earlier in another Suit may be relied on for collateral purposes, but cannot be a binding judgment as far as the non parties to the Suits are concerned.

4. In view of the fact that the suit is instituted for partition and the appellant was admittedly not a party to the earlier suit, rejection of plaint is improper and not in consonance with the provisions of Order VII rule 11 CPC and thus the appeal suit is to be allowed.



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5. The learned counsel for the respondents objected the said contention by stating that the partition decree passed in the earlier Suit are binding even in case, where some of the legal heirs are not parties. In the present case, the father of the appellant was a party in O.S.No.414 of 2014 and therefore, the judgment and decree is binding on his daughter, who is the appellant herein. The learned counsel for the respondents contended that it is a settled principle that in a partition Suit if father is a party, the decree is binding on the son or daughter and thus, the Appeal Suit is to be rejected.

6. Considering the arguments as advanced by the learned Senior Counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the respondents, this Court is of the considered opinion that all Suits are to be decided on merits and in accordance with law. The powers conferred under Order VII Rule 11 are to be exercised sparingly and cautiously where there is a direct bar for institution of Suits but not otherwise. Even in case of doubtful cause of action in the plaint opportunity is to be provided to the parties to establish their case on merits and in accordance with law. Rejection of plaint before adjudication would deprive the parties from establishing their case on merits. It is not in dispute that the appellant herein is not a party in the Suit filed in O.S.No.414 of 2014. It is further contended that the appellant is



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claiming her share even against her father, who was a party in O.S.No.414 of 2014. There are several circumstances, which may arise for a person to institute Suit for partition even against the other legal heirs, and in the present case, the appellant herein is not a party in earlier Suit and therefore, she need not be deprived of an opportunity to establish her right of property in accordance with law.

7. The Conditions for rejection of plaint are enumerated in Sub Clause of Order VII Rule 11 of Code of Civil Procedure:

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the court to so 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 written 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;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provision of rule 9.*



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8. The power under Order VII Rule 11 of CPC is to be exercised sparingly by the Courts. All the Suits are to be adjudicated on merits and in accordance with the law. Lenient view is certainly not desirable when the plaint and cause of action reveals certain facts and therefore, the Courts are expected to be doubly cautious, while exercising the power under Order VII Rule 11 of CPC. There may be vexatious suits filed by the litigants. May that as it be. Even in such cases, if there are certain doubtful facts or otherwise, then conducting a trial would be more preferable than rejecting the plaint. Order VII Rule 11 of CPC enumerates rejection of plaint on certain circumstances as contemplated under sub-clause (a) to (f) in Rule 11.

9. Order VII Rule 13 of CPC denotes: *“The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.”*

10. Holistic reading of Order VII Rule 11 and Rule 13 of CPC would reveal that Order VII Rule 11 is intended to reject the plaint more on technical grounds rather on merits. Thus, even in case, a plaint is rejected under



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Order VII Rule 11 by the Courts, the plaintiff is entitled to institute a fresh Suit by correcting the cause of action or the mistakes or otherwise and by invoking Order VII Rule 13 of the Code of Civil Procedure. Thus, rejection of plaint is not a total bar of institution of a fresh Suit by the plaintiff, which can be instituted after setting out the correct cause of action or by rectifying the errors or mistakes, if any found, which was the basis for rejection of the plaint.

11. Careful reading of Order VII Rule 11 would reveal that the Courts are empowered to reject the plaint on certain specific circumstances. The language employed in Order VII Rule 11 Sub-clause (a) is that “*where it does not disclose a cause of action*”, it does not state “where there is no cause of action”. There is a difference between “no cause of action” and “it does not disclose a cause of action”. In the second phrase, there is a cause of action but it was not disclosed in the plaint. That exactly is the reason to reject the plaint. If so, the plaintiff would naturally be entitled to set out the cause of action in a correct manner and institute a fresh Suit as per Order VII Rule 13 of CPC. In this regard, Order VII as a whole must be considered by the Courts.

12. Order VII Rule 7 denotes relief to be specifically stated in the plaint. Accordingly, every plaint shall specifically state the relief which plaintiff



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claims, either simply or alternatively, and it shall not be necessary to ask for general or other relief which may always be given by the Court, just to the same extent as if it had been asked for, and the same rule shall apply to any relief filed by the defendant in his written statement. Rule 9 speaks about “*procedure on admitting the plaint*”, Rule 10 stipulates “*return of plaint*”. Thus, Rule 11 contemplates “*rejection of plaint*”. Once the plaint is not in compliance with the other rules contemplated under Order VII, then such claims are to be rejected under Rule 11 of CPC. If it is rejected on the ground stipulated under Rule 11, then the plaintiff is entitled to institute a fresh suit, setting out the corrections or cause of action as the case may be and proceed with the suit. No other ground, on which the plaint was rejected, other than those mentioned under Rule 11, can be saved under Rule 13, except when the suit was instituted afresh, correcting the cause of action or mistakes or otherwise.

13. Holistic reading of the Order VII would clarify that no plaint is to be rejected on merits. The Trial Court cannot adjudicate the merits in an Interlocutory Application filed under Order VII Rule 11. Even if the cause of action is improperly set out, the plaint as a whole must be read and merely on the basis of the facts in one paragraph or in the cause of action paragraph, plaint need not be rejected under Order VII Rule 11 of CPC.



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14. This exactly is the reason why this Court has to emphasise that the power under Order VII Rule 11 has to be exercised sparingly and even if the plaint is rejected on the grounds stipulated under Rule 11, then the plaintiff is entitled to institute a fresh suit by setting out the correct cause of action or correcting the mistakes on which the plaint was rejected, or otherwise. The intention of the Court is not to deprive a person to get relief on the adjudication of the facts on merits. The spirit of the code in this aspect is to be borne in mind by the Courts while dealing with the Interlocutory Applications filed under Order VII Rule 11 of CPC.

15. In the present appeal suit admittedly the appellant Smt.Priyadharshini was not a party to the earlier suit wherein her father was a party. The learned Senior Counsel appearing on behalf of the appellant states that in the present suit filed by the appellant in O.S.No.29 of 2021 she is claiming share against her own father and therefore there is a cause of action and thus the issues are to be adjudicated on merits and in accordance with law.



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16. It is needless to state that all the parties are entitled to adjudicate the issues on merits and in accordance with law based on the documents and evidences. Contrarily, the plaint cannot be rejected merely on the ground that a judgment and decree in O.S.No.414 of 2014 is binding on the appellant herein. Such a finding made by the trial court would result in deprivation of the right of the appellant for adjudication of issues on merits and in accordance with law and thus this Court is inclined to consider the appeal suit. Accordingly, the judgment and decree dated 29.10.2021 passed in I.A.No.3 of 2021 in O.S.No.29 of 2021 is set aside and consequently, the present Appeal Suit in A.S.No.458 of 2021 stands allowed. No costs. Consequently, connected Miscellaneous Petitions stands closed.

02.02.2023

Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.

Neutral Citation:Yes/No

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To

The Judge,
IV Additional District & Sessions Court,
Coimbatore.



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S.M.SUBRAMANIAM, J.,

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