



C.R.P.No.3813 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.3813 of 2022

and

C.M.P.No.19406 of 2022

1.Krishnaswami

2.Radhakrishnan

3.Natarajan.

4.Ravi Kumar

... Petitioners

Vs

1.S.Kumar

2.The State of Tamil Nadu Government,
Rep.by its District Collector,
Coimbatore.

3.Director,

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Directorate of Town and Country Planning,
Coimbatore Zonal, Coimbatore.

4.The Block Development Officer,
Pollachi North.

5. The Sub Collector,
Pollachi.

6.The President,
Achipatty Panchayat,
Sangampalayam Village.

... Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Decretal Order dated 03.08.2022 in I.A.No.02 of 2021 renumbered as I.A.No.03 of 2022 in O.S.No.256 of 2020 on the file of the Additional District Munsif Court, Pollachi.

For Petitioners : Mr.C.R.Prasanan

For Respondents : Mr.P.Rajendran (for R1)
: Dr.S.Suriya, AGP (for R4 to R6)
: Mr.P.Harish, GP(CS),
(forR2, R3 & R5)

ORDER



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The civil revision petition has been instituted against the Fair and Decretal Order dated 03.08.2022 in I.A.No.02 of 2021, re-numbered as I.A.No.03 of 2022, in O.SNo.256 of 2020. The revision petitioners are the defendants 1 to 4 in the suit which was instituted by the first respondent for mandatory injunction.

2. During the pendency of the suit, the revision petitioners filed an Interlocutory Application under Order VII Rule 11 of CPC for rejection of the plaint. The petitioners filed the Interlocutory Application mainly on the ground that the suit is barred by the principles of Res Judicata and Estoppel, contending that the plaint does not disclose any cause of action and the plaintiff did not produce any sale deed of his endorse or any other document to show any right or title over the Park and therefore, the suit instituted is not maintainable and consequently, the plaint is to be rejected.



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3.The Trial Court considered the grounds raised by the revision petitioners and made a finding that in respect of the earlier suit filed in O.S.No.396 of 2012, the plaintiff in the present suit and the house site owners were not made as a party and therefore, the said decree passed in O.S.No.396 of 2012 is not binding on the plaintiffs. Further, the Trial Court made a finding that the plaint averments and the document filed therewith, disclose the first respondent/plaintiff's right and cause of action against the defendants. Thus, the issues have to be decided only after a full-fledged trial and more so, plea regarding Res Judicata and Estoppel is to be considered by way of complete adjudication.

4.The scope of Order VII Rule 11 of CPC has been considered by this Court in C.R.P. No.118 of 2023, dated 23.01.2023, which is also extracted hereunder:

6. 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



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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 which all are instituted 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.

7. 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."*

8. 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 Order VII Rule 11 by the Courts, then the plaintiff is entitled to institute a fresh suit by



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correcting the cause of action or the mistakes or otherwise, 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.

9.Careful reading of Order VII Rule 11 would reveal that the Courts are empowered to reject the plaint on certain specific circumstances. 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 states that *"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 natural 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.



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10. Order VII Rule 7 denotes relief to be specifically stated in the plaint. Accordingly, every plaint shall specifically state the relief which plaintiff claims, either simply or alternatively, and it shall not be necessary to ask for general or other relief which may always be given at 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.

11. Holistic reading of the Order VII would clarify that



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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.

12.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 ground 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.

5. In the present case, the issues are triable and therefore, this Court does not find any infirmity in respect of the findings of the Trial Court. The



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parties are at liberty to adjudicate the issues on merits and in accordance with law, and co-operate with the Trial Court for speedy disposal of the matter.

6. Accordingly, the Fair and Decretal Order dated 03.08.2022 in I.A.No.02 of 2021, re-numbered as I.A.No.03 of 2022, in O.SNo.256 of 2020, is confirmed. Thus, the Civil Revision Petition stands **dismissed**. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Speaking Order
Internet : Yes
Index: Yes



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S.M.SUBRAMANIAM, J.

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To:

1. Additional District Munsif Court, Pollachi.

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