



C.R.P.No.3809 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.3809 of 2022

and

C.M.P.No.20028 of 2022

Kanagavel

...

Petitioner

Vs

1.Raguraman

2.Sunitha Parvathy

3.Vishnu Priya

...

Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to allow the Civil Revision Petition, by setting aside, the fair and decretal order dated 13.06.2022, passed in I.A.No.3 of 2021 in O.S.No.182 of 2020, on the file of the Additional District Court, Namakkal.

For Petitioner : Mr.M.Prem Kumar

For Respondents : Mr.A.E.Ravichandran (for R1)

ORDER

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The Civil Revision Petition is filed against the Fair and Decretal Order dated 13.06.2022, passed in I.A.No.3 of 2021 in O.S. No.182 of 2020. The revision petitioner is the first defendant and respondents 1 and 2 instituted a suit for declaration and permanent injunction and for other directives.

2. During the pendency of the suit, the revision petitioner filed an Interlocutory Application in I.A.No.3 of 2021, in O.S.No.182 of 2020 for rejection of the plaint under Order VII Rule 11 of CPC. The said application was adjudicated with reference to the grounds raised between the parties and the Trial Court dismissed the application. Thus, the petitioner has chosen to file the present revision petition.

3. The learned counsel for the petitioner mainly contended that the plaint reveals that the revision petitioner is the maternal uncle of the first respondent herein and therefore, the sale deed registered in favour of the revision petitioner is falling within the definition of Benami transaction and thus, no suit is maintainable under Section 4 of the Prohibition of Benami



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Property Act 1988. The learned counsel for the revision petitioner drew the attention of this Court with reference to the definition for the Benami transaction and contended that the very averments in the plaint states that the first respondent invested his money through the revision petitioner, his maternal uncle, out of faith and thus, it is a Benami transaction and therefore, the plaint is to be rejected under Order VII Rule 11 of CPC.

4.The learned counsel for the petitioner further contended that going through the plaint would reveal that there is no other contention for the purpose of adjudication and therefore, the Trial Court has failed to consider the Prohibition of the Benami Property Transaction Act and thus, Civil Revision Petition is to be allowed.

5.The learned counsel for the respondent objected to the said contention by stating that the plaint contains several other allegations against the revision petitioner and more so, the first respondent who is an NRI, believed the revision petitioner, who is none other than his maternal uncle,



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and made him the Director of the Company in the year 2008. The respondents 1 and 2/ plaintiffs started a business in the name and style of Reveille Technologies Private limited with its Registered Office at Anna Nagar, Chennai.

6. In the said company, the revision petitioner is also a director, and the suit relief sought for would reveal that direction for submitting accounts are also made. That apart, several other statements in the plaint would reveal that other properties were also purchased from and out of the income of the respondents 1 and 2 and those transactions are also to be adjudicated for the purpose of establishing the case of the plaintiffs. The learned counsel for the respondent reiterated that the revision petitioner was appointed as a power of attorney holder of the second respondent/wife of the first respondent and all those facts are to be adjudicated on merits.

7. All suits are to be adjudicated on merits. The scope of Order VII Rule 11 of CPC cannot be expanded for the purpose of adjudication of issues on merits. Even if the plaint is rejected under Order VII Rule 11, there



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is a scope for institution of fresh suit by correcting the cause of action or mistakes in the plaint under Rule 13 of Order VII of CPC. Therefore, the purpose of Order VII Rule 11 is to ensure that the plaint are entertained with the correct cause of action. That apart to consider the petition under Order VII Rule 11, the plaint as a whole must be read and merely based on the cause of action paragraph or based on certain averments, the plaint need not be rejected by invoking Order VII Rule 11 of CPC

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 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



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on certain circumstances as contemplated under sub-clause (a) to (f) in Rule

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

11. Careful reading of Order VII Rule 11 would reveal that the Courts



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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 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.

12.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



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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.

14. This exactly is the reason why this Court has to emphasise that



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the power under Order VII Rule 11 has to be exercised sparingly and even if the complaint 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 complaint 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 case, plain reading of the complaint would reveal that several facts are still averted by the respondents 1 and 2 in the suit. All those disputed facts and issues are to be tried by way of full-fledged trial and merely based on the statement that the property was purchased by the first respondent in the name of the revision petitioner cannot be taken into consideration for the purpose of rejecting the complaint.

16. When there is a doubt with reference to the transaction, it is



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preferable to adjudicate the suit on merits. Those doubts or averments regarding the facts are to be adjudicated and thus, this Court is not inclined to interfere with the order passed by the Trial Court.

17. Accordingly, the fair and decretal order passed dated 13.06.2022 passed in I.A.No.3 of 2021 in O.S.No.182 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.The Judge, Additional District Court,
Namakkal

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