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C.R.P.No.3915 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.02.2023**

CORAM:

THE HON'BLE MR.JUSTICE S.M. SUBRAMANIAM

C.R.P.No.3915 of 2022

and

C.M.P.No.20488 of 2022

Vanitha Ramani

... Petitioner

Versus

1. T.Mahendran

2. B.Vijayakumar

... Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, seeking for the direction to set aside the impugned order dated 28.09.2022 passed in I.A.No.163 of 2022 in O.S.No.14 of 2022 on the file of the District Munsif Cum Judicial Magistrate Court, Cheyyur, reject the plaint in O.S.No.14 of 2022.

For Petitioner : Ms.S.Raghunathan
for Mr.S.L.Sudarsanam
For R1 : Mr.C.Sivanesan

ORDER

The civil revision petition is filed against the order dated 28.09.2022 passed in I.A.No.163 of 2022 in O.S.No.14 of 2022 on the file of the District Munsif Cum Judicial Magistrate Court, Cheyyur, rejecting the plaint in O.S.No.14 of 2022.



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2.The revision petitioner is the first defendant and the first defendant has instituted a suit for permanent injunction. The revision petitioner/first defendant filed an Interlocutory Application in I.A.No.163 of 2022 under Order VII Rule 11 of CPC to reject the plaint filed by the first respondent in O.S.No.14 of 2022. The Interlocutory Application was dismissed and thus, the revision petitioner has chosen to file the present civil revision petition before this Court.

3.The learned counsel appearing on behalf of the petitioner on the first instance contended that no opportunity was granted to the revision petitioner to argue the Interlocutory Application filed under Order VII Rule 11 of CPC and thus, the matter is to be remanded back to the Trial Court for re-consideration. In this context, the learned counsel for the revision petitioner drew attention of this Court with reference to the e-courts proceedings, where the Interlocutory Application was adjourned on several occasions. Again, it was posted finally on 28.09.2022, the revision petitioner/first defendant filed a petition under Order XVII Rule 1 of CPC seeking adjournment. The Trial Court recording the fact that the Interlocutory Application was adjourned on several occasions, dismissed



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the petition and thereafter, passed an order in the Interlocutory Application on merits on 28.09.2022.

4.Further, the learned counsel for the revision petitioner made a submission that the order in the Interlocutory Application was passed without hearing the arguments of the learned counsel for the revision petitioner. He also made a submission, on merits that there is no cause of action for institution of the suit for injunction and the said ground has not been considered by the Trial Court while passing orders under Order VII Rule 11 of CPC.

5.The learned counsel appearing for the first respondent objected the contentions raised on behalf of the revision petitioner by stating that right from the beginning, the revision petitioner/first defendant is attempting to drag on the proceedings one way or other. They have not filed any counter in the Interlocutory Application filed by the plaintiff and filed I.A.No.163 of 2022 under Order VII Rule 11 of CPC seeking adjournment on several occasions. Despite the fact that the Trial Court granted several opportunities to the parties to argue the matter, the



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revision petitioner/first defendant was going on filing petition for adjournment and finally, the Court passed an order and thus, the present Civil Revision Petition is to be rejected.

6.It is needless to state that the parties to the suit are bound to co-operate for the disposal of the Interlocutory Application or the suit as the case may be. Ill-motives of the litigants to prolong and protract the matters, at no circumstances, be encouraged by the Courts. If the Court forms an opinion that the parties are attempting to drag on the proceedings, then the Courts has no option, but to decide the issues on merits and in accordance with law. Under those circumstances, the parties cannot claim that the Courts has not elaborately heard the arguments of the parties. Despite the fact that the revision petitioner raised a ground that they have not advanced arguments before the Trial Court in the Interlocutory application filed under Order VII Rule 11 of CPC, this Court has given ample opportunities to present their case on merits with reference to the grounds raised in the Interlocutory Application.

7.The learned counsel for the revision petitioner mainly contended



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that there is no cause of action and the first respondent/plaintiff has not filed any documents to establish his right over the suit schedule property and thus, the plaint is to be rejected under Order VII Rule 11 of CPC.

8.A perusal of the order impugned reveals that the Trial Court considered the averments set out by the parties in the Interlocutory Applications and accordingly, found that the first respondent/plaintiff has set out a cause of action, which is to be tried by way of adjudication. The Trial Court found that it is premature to conclude that the plaint document No.1 is fabricated and the proceedings are vexatious. The plea of vexatious proceedings as mentioned by the revision petitioner are triable issues and which requires adjudication.

9.This Court is of the considered opinion that the suit is for permanent injunction and therefore, it is sufficient if the plaintiff establish that he is in possession of the suit schedule property. In respect of the documents filed along with the plaint, it requires an elaborate adjudication and it is for the parties to establish their respective cases through documents and evidences. Whether a particular document is



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fabricated or not to be adjudicated and the Trial Court cannot form an opinion at the first instance that the documents filed along with the plaint is fabricated. In the event of taking such a decision, it would cause prejudice to either of the parties to establish their case and the scope of Order VII Rule 11 of CPC cannot be expanded so as to adjudicate the issues on merits.

10.The bundle of facts set out in the plaint as well as in the cause of action would be taken into consideration while dealing with the application filed under Order VII Rule 11 of CPC. Merely based on the cause of action paragraph, plaint cannot be rejected.

11.The power under Order VII Rule 11 of CPC is to be exercised sparingly by the Courts. All the suits are to be tried on merits and in accordance with the law generally. Even there may be suits, which are all vexatious and if the Court found that some cause of action is set out in the plaint along with the facts as narrated, the suit is to be tried and to be disposed of on merits and in accordance with law. Conducting the trial is preferable, where there are certain doubts in respect of the cause of



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action. The plaint is to be rejected only if the grounds satisfy the ingredients contemplated under Order VII Rule 11 of CPC strictly.

12. 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 on certain circumstances as contemplated under sub-clause (a) to (f) in Rule 11.

13. 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.”*

14. 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



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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.

15.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 naturally entitled to set out the cause of action in a correct manner and institute a fresh suit as per Order



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VII Rule 13 of CPC. In this regard, Order VII as a whole must be considered by the Courts.

16. 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



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otherwise.

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17.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.

18.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.



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19. In the present case, the perusal of the plaint reveals that the first respondent/plaintiff claims that he is in possession of the suit schedule property and the cause of action column indicates that the cause of action for the suit arose at Cheyyur, where the suit property is situated at Door No.106 (West) Sannathi Street, Cheyyur, where the second defendant at the instigation of the first defendant and her henchmen i.e. the advocates mentioned above had trespassed into the suit property; where the plaintiff had lodged complaints every now and then till 2020, where the plaintiff had filed writ petition before the High Court, Madras to conduct enquiry to cancel the patta issued, where the Tahsildar, Cheyyur had sent a report dated 03.12.2020 to the plaintiff; where the plaintiff had issued lawyer's notice to the first defendant, which was received by the first defendant and all subsequent events that took place only at Cheyyur. With reference to the cause of action paragraph, the first respondent/plaintiff set out certain facts, which are all triable and to be adjudicated on merits.

20. In view of the fact that the revision petitioner has not established any one of the grounds under Order VII Rule 11 for the purpose of rejection of plaint, the arguments made by the learned counsel



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for the revision petitioner to remand the matter back to the Trial Court for re-hearing would become a futile exercise and thus, this Court is not inclined to consider the said request. However, the Trial Court shall adjudicate the issues independently and with reference to the documents and evidences presented by the respective parties to the suit in the suit proceedings.

21. Accordingly, the Civil Revision Petition stands **dismissed** and the fair and decretal order dated 28.09.2022 passed in I.A.No.163 of 2022 in O.S.No.14 of 2022 by the District Munsif Cum Judicial Magistrate Court, Cheyyur is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes
Speaking Order
Neutral Citation Case: Yes
sp

To

The District Munsif Cum Judicial Magistrate Court, Cheyyur.



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S.M. SUBRAMANIAM, J.,

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