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C.R.P.No.4140 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4140 of 2022 and
C.M.P.No.21577 of 2022

N.Durairaj .. Petitioner

vs

1. N.Gothandan
2. The District Collector
Vellore Collector Officer
Sathuvacheri, Vellore-9
Vellore District.

3. The Revenue Divisional Officer
Vellore Collector Office
Sathuvacheri, Vellore -9
Vellore District.

4. The Tahsildar
Katpadi Taluk Office
Katpadi Taluk, Vellore District.

5. The Village Administrative Officer
Latheri VAO Officer
Latheri Village, Katpadi Taluk
Vellore District.

.. Respondents



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Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India seeking to set aside the fair and decretal order dated 29.09.2022 dismissing the I.A.No.2 of 2020 in O.S.No.22 of 2019 by the District Munsif Court at Katpadi, Vellore District and consequently allow the same.

For Petitioner : Mr.G.Peranban

For Respondents : Mr.V.Jeevagiridharan
Additional Government Pleader
for respondents 2 to 5

ORDER

The civil revision petition is filed to set aside the fair and decretal order dated 29.09.2022 passed in I.A.No.2 of 2020 in O.S.No.22 of 2019.

2. The revision petitioner is the defendant in the suit instituted by the respondent for injunction. The revision petitioner filed an interlocutory application in I.A.No.2 of 2020 under Order VII Rule 11 to reject the plaint, more specifically on the ground under Rule 11(a) and (d). The Trial Court adjudicated the issues and made a finding that the respondent / plaintiff has made out a *prima facie* case and therefore, the plaint cannot be rejected under



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Order VII Rule 11. The findings of the Trial Court revealed that the plaintiff is in possession and paying tax to the local authority and as per paragraph six of the plaint, the cause of action has arisen when the plaintiff reliably came to know about the Patta No.402, which was issued in the name of the defendant. He had approached the competent authority in the year 2018 but in the meantime, the defendant urgently tried to alienate and make encumbrances over the suit schedule property.

3. Thus, the suit in the year 2019 was instituted for permanent injunction against the defendant. During such time, the Tahsildar, Katpadi Taluk passes an order in respect of the suit by the plaintiff. In respect of the limitations, the Trial Court found that it is a mixed question of law and the facts and the cause of action set out in the plaint requires adjudication, as it reflects bundle of facts, which is to be considered.

4. Learned counsel for the revision petitioner mainly contended that the earlier suit instituted between the parties were suppressed in the plaint.



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More so, the facts relating to the earlier suits, dealt with by the same Court, was not considered. These facts are to be adjudicated, since the present suit is instituted for grant of injunction.

5. The power under Order VII Rule 11 of CPC is to be exercised sparingly by the Courts. All the suit 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 Civil Procedure Code. There may be vexatious suits which all are instituted by the litigants. Be that as it may, 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 Civil Procedure Code enumerates rejection of plaint on certain circumstances as contemplated under Sub-clauses (a) to (f) in Rule 11.



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6. 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.”

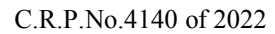
7. Holistic reading of Order VII Rule 11 and Rule 13 of Civil Procedure Code would reveal that Order VII Rule 11 is intended to reject the plaint more on technical grounds rather on merits. Thus, even in case, a plaint is rejected under Order VII Rule 11 by the Courts, then the plaintiff is entitled 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 for 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.



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8. 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 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 be entitled to set out the cause of action in a correct manner and institute a fresh suit under Order VII Rule 13 of CPC. In this regard, Order VII as a whole must be considered by the Courts.

9. 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



“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 words or ground on which the plaint was rejected under Rule 11 can be saved under Rule 13 if the suit was instituted a fresh, correcting the cause of action or mistakes or otherwise.

10. 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 Civil Procedure Code.



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11. This exactly is the reason why this Court has to emphasis 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 based on which the plaint was rejected, or otherwise. The intention of the Court is not to deprive any person to get relief by way of complete 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 Civil Procedure Code.

12. In view of the fact that the power under Order VII Rule 11 is to be invoked, considering the plaint as a whole. Even in case of mistake or otherwise the cause of action column is rectifiable and thus, the plaintiff is entitled to institute fresh suit under Order VII Rule 13 of the Civil Procedure Code. However, in the present case, the Trial Court found that the plaintiff



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has got a cause of action and the issues are triable and this being the factum, this Court is not inclined to interfere with the order impugned. Accordingly, the order dated 29.09.2022 passed in I.A.No.2 of 2020 in O.S.No.22 of 2019 stands confirmed.

13. In view of the above, the civil revision petition is dismissed. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Speaking Order/Non-Speaking Order.

23.01.2023

Internet : Yes/No.

Index: Yes/No.

Neutral Citation:Yes/No

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To

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