



C.R.P.(PD)No.802 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2023

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THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.802 of 2017 &
C.M.P.No.3969 of 2017

Kalaivanan

...Petitioner/Defendant

Vs.

K.Krishnaveni

...Respondent/Plaintiff

Prayer: Petition filed under Section 25 of the Article 227 of the Constitution of India against the fair and decreetal order dated 23.09.2016 made in I.A.No.8930 of 2016 in O.S.No.82872/2016 on the file of the learned XIII Assistant City Civil Court, Chennai.

For Petitioner : Mr.V.Parthiban,
for Mr.H.Nazirudeen

For Respondent : No appearance

ORDER

This revision arises against an order dismissing an application filed for rejection of plaint.

2. The petitioner is the defendant in the suit. O.S.No.2782 of 2016 was



C.R.P.(PD)No.802 of 2017

filed for bare injunction.

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3. For the sake of convenience, the parties are referred to as per their rank in the suit.

4. The claim of the plaintiff is that the property belonged to one E.Andal Ammal. On her death, the property succeeded to her sister Rajammal and the plaintiff claims to be the daughter of Rajammal. According to her, on the death of Rajammal, she succeeded to the estate of Andal Ammal. She also projected a Will said to have been executed by Andal Ammal, in which letters of administration was granted on 21.02.2003. She has further pleaded that the defendant has no right, title or interest over the property. Consequentially, she sought for the relief of permanent injunction restraining the defendant from interfering with the possession.

5. The defendant entered appearance and filed I.A.No.8930 of 2016 for rejection of plaint. In the said application, the following arguments were pleaded:

(1) that he had previously filed a suit in O.S.No.2583 of 2002 which was decreed in his favour on 28.10.2002 and therefore, the second suit



C.R.P.(PD)No.802 of 2017

seeking injunction is not maintainable.
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(2) Letters of administration which was granted in favour of Krishnaveni was revoked, pursuant to the order passed by this Court in O.S.A.No.37 of 2011 dated 01.07.2011 and

(3) Krishnaveni had sold the property, even prior to the presentation of the plaint, in and by way of a document dated 08.12.2011.

6. These arguments were rejected by the Trial Court, against which the present petition.

7. Heard Mr.V.Parthiban, learned counsel representing Mr.H.Nazirudeen, learned counsel for the petitioner/defendant. The respondent/plaintiff though served through paper publication, has not entered appearance.

8. Mr.V.Parthiban, learned counsel would urge the points, which have been pressed before the Trial Court. He would submit that the plaintiff having



C.R.P.(PD)No.802 of 2017

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sold the property does not have the cause of action to continue the plaint. He adds, the probate court had found, there are direct legal heirs for Andal Ammal and therefore, the plaintiff cannot succeed to the said estate and third, when the defendant has decree in his favour, Krishnaveni could not have filed a suit for injunction.

9. When it comes to rejection of plaint, the law is that the application under Order 7 Rule 11 being a plea of demurrer, the court has to take the averments made in the plaint to be true and cannot look beyond the plaint and documents.

10. The documents referred to by Mr.V.Parthiban are

- (i) the decree and judgment in O.S.No.2583 of 2002,
- (ii) the order of this Court in O.S.A.No.37 of 2011 and
- (iii) sale deed dated 08.02.2011

The aforesaid documents are unfortunately not spoken to in the plaint nor are they plaint documents. These are the documents which have been relied upon by the defendant in order to defeat the claim of the plaintiff. At the time of consideration of the rejection of the plaint, I cannot look into the defendant's



C.R.P.(PD)No.802 of 2017

documents.
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11. I have to reject the plaint only on the basis of the averments made therein. If the reading of the averments, taking it to be true, does not disclose a cause of action or is barred by any provision of law, certainly, I have to reject the plaint. Reading the plaint as a whole and taking it to be true, none of the defences that have been taken by the civil revision petitioner have been spoken to therein. It is possible that the defendant has a sterling defence to get the suit defeated, but at the time of consideration of Order 7 Rule 11 CPC, I am prevented from looking into the defence raised by the defendant.

12. I am confined to the plaint and plaint alone and I am not concerned with the defences, the defendant might take in his written statement. Such being the position, as all the three documents referred to by Mr.V.Parthiban are alien to the plaint & as they have not been spoken to by the plaintiff, I am unable to countenance his arguments.

13. A meaningful reading of the plaint discloses a cause of action and is not barred by any law. Consequentially, I am constrained to reject the arguments of Mr.V.Parthiban.

14. The Civil Revision Petition is dismissed and connected



C.R.P.(PD)No.802 of 2017

miscellaneous petition is closed. No costs.
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22.09.2023

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No

To

1.The XIII Assistant City Civil Court, Chennai.



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C.R.P.(PD)No.802 of 2017

V. LAKSHMINARAYANAN, J.

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C.R.P.(PD)No.802 of 2017

22.09.2023