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C.R.P.No.759 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.759 of 2021 and
C.M.P.No.6266 of 2021

Rukumani

... Petitioner

Vs.

S.Subramanian

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order of the learned Principal District Munsif, Chidambaram dated 23.01.2021 in I.A.No.210 of 2020 in O.S.No.45 of 2020.

For Petitioner
For Respondent

:Mr.T.M.Hariharan
: No appearance

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner/defendant seeking rejection of the plaint.



2. The respondent herein filed a suit for bare injunction against the petitioner. The petitioner and the respondent are husband and wife. It is the case of the respondent that suit property was purchased out of his own funds for his benefit in the name of the petitioner and hence, she was not entitled to interfere with his possession and enjoyment of the suit property .

3. The petitioner herein filed a petition under Order VII Rule 11 of CPC seeking rejection of the plaint. In the affidavit filed in support of the petition for rejection of the plaint, the petitioner herein raised following two points.

i) the respondent filed the present suit on the averment that petitioner and respondent were husband and wife by suppressing the decree for divorce obtained by petitioner on 18.07.2017. Therefore, the suit was filed by suppression of the material fact.

ii) the respondent herein is not at all in possession of the property and hence, he is not entitled to maintain a suit for injunction.



4. The respondent herein resisted the application by contending that when the suit property was purchased by him in the name of petitioner, there was husband and wife relationship between the parties and hence, the suit was maintainable. He also claimed possession over the suit property.

5. The Trial Court held that whether there was a relationship of husband and wife between the parties and whether the respondent was in possession of the property were all matters to be decided based on evidence at the time of final disposal and hence, dismissed the petition for rejection of the plaint. Aggrieved by the same, the petitioner is before this Court.

6. The learned counsel for the petitioner submitted that plea raised by respondent that suit property was purchased by him out of his own funds for his benefit in the name of the petitioner would amount to pleading benami and hence, in the absence of prayer for declaration of title based on benami, the suit for injunction is not maintainable. In support of his contentions, the learned counsel relied on following judgments:-

i) Anathula Sudhakar Vs P.Buchi Reddy (Dead) by LR's and Others



reported in (2008) 4 SCC 594.

ii) Kusum Ingots and Alloys Limited Vs Union of India and Another reported in (2004) 6 SCC 254.

iii).Minor Balamurugan, rep. by next friend and mother Baby Saroja Vs T.Selvaraj and Others reported in 2014 (2) MWN (Civil) 738.

7. In the affidavit filed in support of the petition for rejection of the plaint, the petitioner herein raised only two points namely suppression of divorce decree obtained by petitioner and dearth of evidence on the part of the respondent to establish his possession over the suit property. As rightly observed by the Trial Court, whether the respondent was in possession of the suit property on the date of filing of plaint is a matter to be decided at the time of final disposal of the suit based on evidence. The respondent specifically pleaded in his counter that even as per the admitted case of the petitioner, divorce was granted in her favour only on 18.07.2017 and when the property was purchased much earlier, there was a relationship of husband and wife between petitioner and respondent. Whether there was a husband and wife relationship between the parties at the time of purchase of the property and at



the time of construction of the building in the suit property etc., are all matters for evidence.

8. As far as the legal plea raised by the petitioner with regard to absence of prayer for declaration of title is concerned, even assuming that the petitioner is the owner of the property, still respondent is entitled to maintain a suit for injunction restraining the petitioner from evicting him from the suit property except by due process of law. At least, to that limited extent, the suit for injunction filed by the respondent is maintainable subject to proof of his possession on the date of plaint. Therefore, the present suit being a bare injunction suit, the respondent is required to prove his possession on the date of presentation of the plaint in order to succeed .

9. As far as plea regarding absence of declaration is concerned, the petitioner is at liberty to raise it at the time of final disposal of the suit. Merely because there is no prayer for declaration, the plaint filed by the respondent cannot be rejected at the threshold especially when he is entitled to maintain a suit for injunction restraining the petitioner from evicting him except by due



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process of law on the strength of his possession on the date of presentation of the plaint, if it is established. Therefore, we cannot say there is a failure of cause of action in this case entitling the petitioner to seek rejection of the plaint.

10. In view of the discussions made above, I do not find any reason to interfere with the order impugned in this revision. Accordingly, this Civil Revision Petition stands dismissed. It is made clear that petitioner is entitled to raise a plea regarding absence of prayer for declaration. If any such plea is raised, the same shall be decided on its own merits without being influenced by anything said in this order. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes
Internet : Yes
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To

The learned Principal District Munsif, Chidambaram

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S.SOUNTHAR, J.

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