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CRP.No.3590 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

CRP.No.3590 of 2022

and

CMP.No.19049 of 2022

M.Jayaprakasam

... Petitioner

Vs.

1.Saraswathi

2.P.Senthilkumar

3.C.Vijayalakshmi

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.07.2022 made in IA.No.1 of 2019 in O.S.No.554 of 2017 on the file of the First Additional District Munsif Court, Salem, by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Manoharan

For Respondents : Mr.K.Sathish Kumar

ORDER

This Civil Revision Petition has been preferred as against the order passed in IA.No.1 of 2019 in OS.No.554 of 2017, wherein the petitioner herein has filed a petition before the trial Court to reject the plaint under



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Order 7 Rule 11 of the Code of Civil Procedure. The said petition was dismissed by the trial Court.

2. The petitioner is the defendant in the main suit and the respondents are being the plaintiffs have filed a suit as against the petitioner for the relief of mandatory injunction directing the defendant to hand over the suit schedule documents with the plaintiffs and for costs. According to the petitioner, there is no cause of action for instituting the suit and the suit is vexatious and meritless and it does not disclose a clear cause to sue. The mandatory injunction which was claimed by the plaintiffs is barred under Section 41(d) (e) r/w Section 16 (b) of the Specific Relief Act and also barred under Order VII Rule 11 (iv) as there is a contract which has been made between the respondents 2 & 3/plaintiffs 2 & 3 and the petitioner/defendant. The first respondent/first plaintiff is no way connected with the contract between the respondents 2 & 3/plaintiffs 2 & 3 and the petitioner/defendant and her claim is barred by Section 41 (j) of Specific Relief Act. The Negotiable Instruments have been drawn by this petitioner/defendant only on payment of consideration. Instead of repaying the debts, these respondents 2



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& 3/plaintiffs 2 & 3 along with the first respondent/first plaintiff have instituted the vexatious suit. Therefore, the suit is liable to be rejected.

3. According to the respondents, they denied the averments made in the petition. In fact the petitioner is a practising Advocate in Erode District. This petitioner forcibly obtained the said documents, when they approached to sell the property. Now, based on the above said documents, they attempted to file a suit and thereby, they filed the suit. Already the petitioner filed a suit before the Principal Sub-Court, Erode, in O.S.No.727 of 2018 and filed a petition to attach the salary of the third plaintiff and the same was dismissed. Therefore, the suit is not barred by law as stated by the petitioner. Therefore, the petition is liable to be dismissed.

4. Before the trial Court, on the side of the petitioner, documents were marked as Ex.P1 to Ex.P8. No oral or documentary evidence was adduced on respondent side. The trial Court after hearing both sides dismissed the petition and hence, the present petition is filed.



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5. The learned counsel for the petitioner would contend that the petitioner is the defendant in the main suit and the respondents herein have filed the main suit for the relief of mandatory injunction to hand over the plaint mentioned documents. In fact the respondents have executed the documents after receipt of consideration. They obtained money from the petitioner and executed promissory notes and issued cheques. Based on those documents, the petitioner has taken steps for recovery of money. Now, the respondents have filed this suit for mandatory injunction to hand over those documents. Therefore, the suit is barred under the provisions of Specific Relief Act. Before the trial Court, the petitioner filed a petition to reject the plaint. The trial Court failed to consider the same and erroneously dismissed the petition. Therefore, the order passed by the trial Court is liable to be set aside.

6. The learned counsel for the respondents would contend that there is no grounds urged by the petitioner to invoke under Order VII Rule 11 of the Code of Civil Procedure and the plaint discloses the cause of action and at the time of invoking under Order VII Rule 11 of CPC, the Court has to see



only the plaint averments and the documents annexed with the plaint. As per the plaint averments and the documents, there is no grounds to reject the plaint by invoking Order VII Rule 11 of CPC. The grounds raised by the petitioner are all defence, which has to be raised by him in the main suit. The points raised by the petitioner has to be decided after framing issues and examining the witnesses after full trial. Therefore, the trial Court has passed a reasoned order and the same does not warrant interference. Therefore, the petition is liable to be dismissed.

7. This Court heard both sides and perused the records.

8. It is an admitted fact that the respondents herein have filed a suit for the relief of mandatory injunction to hand over the documents available with the petitioner herein. The petitioner also admitted that the respondents herein have executed a promissory note and produced the cheque leafs and he also filed suits for recovery of money based on those documents. According to the petitioner, since he filed the suit based on the documents executed by the respondents, they cannot curtail the rights of the petitioner by



filing this suit. Thereby, the present suit is barred by law and the same is liable to be rejected on the ground that the suit is barred under the provisions of Specific Relief Act.

9. Before the trial Court on the side of the petitioner marked Ex.P1 to Ex.P8. It is well settled law that while deciding petition under Order VII Rule 11 of CPC, the Court has to see only the plaint averments and the documents annexed with the plaint and it cannot look into the documents filed by the opposite party. But however, the petitioner has marked the documents before the trial Court and the trial Court also discussed about the documents filed by the petitioner and failed to follow the legal aspect. Only the plaint averments and the documents annexed with the plaint alone can be looked into.

10. The trial Court also after elaborate discussion dismissed the petition by holding that the plaint is having a bundle of mixed question of facts and law which is inseparable and the plaint should be placed on the trial in order to elucidate the fact that whether the suit property was parted by the



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plaintiffs earlier for alleged loan amount as a security as claimed by the defendant or the suit property was given as a security in the transaction of filing a partition suit by the defendant in the capacity of Advocate for the plaintiffs as a capacity of clients. The Trial Court cannot look into the petition documents and only can look into the plaint averments, however dismissed the petition.

11. On a perusal of records, it is seen that the petitioner is none other than a practising Advocate at Erode District and according to the respondents, they produced the documents for filing partition suit and the same have to be returned to them. There are triable issues in this case and none of the grounds attracted as per Order VII Rule 11 of CPC and the case needs elaborate trial. The grounds raised by the petitioner are all nothing but defence to be taken before the trial Court. Therefore, the petitioner is at liberty to raise all the defence before the trial Court and not through this application. Therefore, the trial Court order need not be set aside.



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12. In view of the above said discussions, this Court is of the opinion that the Civil Revision Petition has no merits and deserves to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
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To

The First Additional District Munsif Court, Salem.

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