



CRP. NPD.No.271 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.11.2024

Pronounced on:15.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. PD. No.271 of 2023
and CMP. No.2265 of 2023

1.Nagarajan
2.Marudambal
3.Indhirani

... Petitioners

Vs

1.Jayalakshmi
2.Sakthivel
3.Subramanian @ Balasubramaniam
4.Sumathi @ Kolanchi
5.The Tahsildar, Perambalur,
Perambalur District.
6.The State of Tamil Nadu Rep. by
The District Collector, Perambalur.

... Respondents

Prayer: The Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order in I.A. No.5 of 2021 in O.S. No.57 of 2021, dated 12.08.2022 passed by the Principal District Munsif Court Judge, Perambalur.

For Petitioner : Mr.S.T.Bharath Gowtham for
Mr.T.R.Rajaraman

For Respondents : Mr.V.Ragavachari,
Senior Counsel for



CRP. NPD.No.271 of 2023

Mrs.V.Srimathi R1 to R4
Mr.A.M.Ayyadurai,
Government Advocate
for R5 & R6.

ORDER

The unsuccessful petitioners/defendants in an Application seeking rejection of the plaint under Order VII Rule 11 of the Civil Procedure Code, 1908 (CPC) in I.A. No.5 of 2021 in O.S. No.57 of 2021 are the revision petitioners in the above Civil Revision Petition.

2. Heard Mr.S.T.Bharath Gowtham, learned counsel for Mr.T.R.Rajaraman, learned counsel for the revision petitioners and Ms.V.Ragavachari, learned Senior Counsel for Mrs.V.Srimathi, learned counsel for R1 to R4 Mr.A.M.Ayyadurai, learned Government Advocate for R5 & R6.

3. The learned counsel for the revision petitioners Mr.S.T.Bharath Gowtham, would submit that the revision petitioners are successful plaintiffs in a suit for specific performance, who have not only got a decree of specific performance in their favour but have also got a sale deed executed and registered in their favour and have also been put in



possession of the suit property. He would also submit that there was an earlier suit in O.S. No.86 of 2019 between the very same parties, where the present respondents set up another agreement of sale to defeat the rights of the revision petitioners and in the said suit, an Application under Order VII Rule 11 CPC had been filed by the revision petitioners herein and this Court in revision, setting aside the order of the Trial Court dismissing the Application to reject the plaint, dismissed the suit, holding that it was a clear abuse of Court and also directed a payment of costs of Rs.1,00,000/-.

4. Relying on the said decision, the learned counsel for the revision petitioners would submit that the present suit seeking a relief of declaration that the Death Certificate issued by the Tahsildar, Perambalur District in respect of death of Ramalingam is false and for a mandatory injunction to direct the statutory authorities to enquire into the death of Ramalingam and find the correct date of death, is wholly unsustainable and a clear abuse of process. He would therefore pray for the revision being allowed.

5. Per contra, the learned Senior Counsel Mr.V.Ragavachari,



appearing for the respondents, would submit that in the first round of litigation, viz., the suit for specific performance between the revision petitioners and the respondents, the matter came up to this Court in S.A. No.595 of 2003. It is the specific case of the respondents herein that the said Ramalingam, who had filed the suit for specific performance was not alive on the date of confirmation of the decree for specific performance by this Court in the Second Appeal and that he had died much earlier and therefore, the proceedings were a nullity. Only under such circumstances, the suit has been filed to not only declare the death certificate of Ramalingam as false but also seeking for an enquiry to find out the correct date of death. He would further submit that it was always open for the respondents to amend the plaint and seek further reliefs or to take further action depending on the authorities ascertaining the correct date of death of Ramalingam. He would therefore contend that there is no error committed by the Trial Court in dismissing the Application under Order VII Rule 11 CPC.

6. I have carefully considered the averments advanced by the learned counsel on either side.



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7. One Mr.Ramalingam under whom the present revision petitioners are claiming, had filed O.S No.210 of 1994 before the Sub Court of Ariyalur, for a specific performance of agreement of sale dated 03.04.1994. On contest, the suit was decreed and the appeal preferred by the defendants viz., the respondents herein came to be dismissed and in S.A. No.595 of 2003, the concurrent findings were affirmed by this Court on 19.12.2009. It is the specific case of the respondents as plaintiffs in the suit in O.S. No.57 of 2021 that Ramalingam had died even in the year 2002 and that suppressing his death, the revision petitioners herein had conducted the Appeal proceedings as well as the Second Appeal proceedings and also managed to file Execution Proceedings and obtained a sale deed and also took possession. According to the plaintiffs, they came to know about the suppression of the actual date of death of Ramalingam only in the month of August 2019, which according to the learned Senior Counsel, is the cause of action for the present suit. Admittedly, the suit has been filed on the strength of the aforesaid averments. In the light of the averments and allegations alone, the Application under Order VII Rule 11 CPC can be decided.

8. In the Application to reject the plaint, it is the case of the



CRP. NPD.No.271 of 2023

petitioners herein that the cause of action pleaded by the respondents is false and that the Death Certificate of their father, Ramalingam is true.

This is a matter for evidence and cannot be decided based on the averments made in the plaint. From a reading of the plaint averments and allegations, it is clear that the dispute with regard to the actual date of death of Ramalingam is certainly a question of fact and can be determined only upon the parties leading evidence before the Trial Court. It is not a case for summary rejection of the plaint. None of the grounds available under Order VII Rule 11 CPC are available to be invoked in the facts and circumstances of the present case. The Trial Court has rightly dismissed the Application under Order VII Rule 11 CPC seeking rejection of the plaint. I do not find any infirmity in the findings available on record.

9. In fine, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs

15.11.2024

Index: Yes/No
Speaking order/Non-speaking order
rkp



CRP. NPD.No.271 of 2023

To

1. The Principal District Munsif Court Judge, Perambalur.
2. The Tahsildar, Perambalur,
Perambalur District.
3. The District Collector, Perambalur.
4. The Section Officer, VR Section,
Madras High Court, Chennai.



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CRP. NPD.No.271 of 2023

P.B.BALAJI, J.

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**Pre-Delivery Order in
CRP. NPD. No.271 of 2023
and CMP. No.2265 of 2023**

15.11.2024