Reserved on: 13.06.2024	Pronounced on:06.09.2024

A. No.6625 of 2023
in
C.S.No.63 of 2010

P.B.BALAJI, J.

The defendants 1 to 4, 6 and 7 in the suit have taken out the present application to reject the plaint in C.S.No.63 of 2010, invoking Order VII Rule 11 of the Code of Civil Procedure, 1908.

2.I have heard Mrs.G.Daisy John, learned counsel for the applicants and Mr.T.S.Baskaran, learned counsel for the respondents. I have also heard Mr.P.S.Raman, learned Advocate General with regard to the Applicability of ***G.O.Ms.No.363 (Home)*** dated ***09.04.2010.***

3.The learned counsel for the applicants would submit that the suit has been filed by the Managing Trustee without any authority whatsoever and further, the suit is also barred by limitation. She would also content that the suit is liable to be dismissed on the ground of non-joinder of proper and necessary parties, namely the HR&CE department and the Collector of Chennai. She would further submit that the plaint does not disclose a clear right to sue in the name of the plaintiff as there is a sub temple to the main temple and the plaint does not clearly establish whose right is sought to be espoused. She would also rely on ***G.O.Ms.No.363 (Home)*** dated ***09.04.2010*** and contend that improper Court fees have been paid. On all these grounds, she would submit that the plaint is liable to be rejected.

4.Per contra, the learned counsel for the respondent would submit that the grounds raised in the present affidavit have all been set out in the written statement and absolutely no ground has been made out for rejection of the plaint. He would also contend that the suit property belongs to the temple and the question of limitation does not arise in view of Section 109 of HR&CE Act, 1959. Insofar as the non-joinder of the HR&CE department and the Collector of Chennai is concerned, he would submit that it is not a ground for rejection of plaint under Order VII Rule 11 of Code of Civil Procedure, under any of the Sub Rules (a to d) of the Code of Civil Procedure, 1908. Similarly, with regard to the authority of the hereditary trustee, he would submit that the hereditary trustee has been appointed in terms of Section 54 of HR&CE Act, 1959, and in fact, even in the year 2009, it was only the Managing Trustee who prevented unlawful attempts made by the defendants 1 to 3 to deal with the suit property by obtaining orders from the competent Court. Insofar as undervaluation is concerned, the learned counsel for the respondent would submit that the plaintiff temple has got exemption from payment of Court Fee and as per the relevant G.O, Rs.15/- has been paid and nothing more remains to be paid. He would therefore pray for dismissal of the reject the plaint Application.

5.I have carefully considered the submissions advanced by the learned counsel on either side.

6.Straightaway, insofar as the rejection of the plaint on the ground of the non-joinder of the HR&CE department and the Collector of Chennai is concerned, the applicants are not entitled to seek rejection of the plaint. None of the Sub Rules (a) to (d) of Rule 11 of Order VII of the Code of Civil Procedure, 1908, entitles rejection of the plaint on the ground of non-joinder of proper and necessary parties. Therefore, the applicants are not entitled to succeed on this ground.

7.Coming to the ground of limitation, limitation is a mixed question of fact and law and moreso, when the plaintiffs, being a temple, claims exemption from limitation in view of Section 109 of HR&CE Act, 1959, this issue cannot be decided at this juncture without evidence and it can also be an issue in the suit and decided along with the other issues. Therefore, limitation is also not available to the applicants to be canvassed as a ground to reject the plaint.

8.Coming to the authority of the Managing Trustee, this again requires evidence to be let in and it is for the respondents/plaintiffs to satisfy the Court regarding that authority of the Managing Trustee to represent the plaintif' temple and file the suit, besides also clarifying the issues regarding the main temple and sub temple while leading evidence in the witness box. Therefore, I do not see this also as a ground to reject the plaint.

9.Coming to the question of non-payment of proper Court Fee, the plaintiffs' temple has sought for the relief of declaration. In fact, the relief of declaration has been prayed for along with the consequential relief of permanent injunction. There is no relief insofar as recovery of possession is concerned, since it is the case of the plaintiffs that the plaintiffs are in possession and they only seek for their title to be declared.

10.With regard to ***G.O.Ms.No.1574*** dated ***12.06.1972***, the remission of fee is only in respect of suits for recovery of possession alone, in which cases, it is sufficient for the plaintiff temple to pay Rs.15/- as Court Fees, irrespective of the value of the property. However, in the present case, admittedly, the relief is not in respect of possession but declaration of title and consequential injunction, which requires payment of Court Fee under Section 25(b) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

11.I have gone through the ***G.O.Ms.No.363 (Home)*** dated ***09.04.2010***, which has been brought to my notice by the learned counsel for the applicants. In and by the said G.O, the Government has reduced the Court Fee payable to a maximum sum of Rs.100/- in respect of suits by Religious Institutions seeking declaration of title over immovable properties by temples under the control of the HR&CE department.

12. The learned Senior Counsel Mrs.Chitra Sampath, appearing for the respondent/plaintiff would submit that the Government Order is to be held retrospective and in this connection, she would place reliance on a news item in The Hindu Edition dated 21.04.2010, where the Commissioner, Hindu Religious and Charitable Endowment Department has stated that the said Government Order would be applicable to cases already pending before Courts. In order to get the stand of the Government, I requested the learned Advocate General, Mr.P.S.Raman to assist the Court. The learned Advocate General after holding deliberations with the concerned Government Officials reported to the Court that ***G.O.Ms.No.363 (Home)*** dated ***09.04.2010*** was only prospective in nature and the statement of the Commissioner, Hindu Religious and Charitable Endowment if at all made earlier to the contra, is not correct.

13. The above suit has been filed only on 18.01.2010. ***G.O.Ms.No.363 (Home)*** has come into effect only on 09.04.2010 reducing the Court Fees to a maximum sum of Rs.100/-. Therefore, the remission in and by ***G.O.Ms.No.363 (Home)*** dated 09.04.2010 cannot be

taken advantage of by the 1st respondent/plaintiff. The Court Fee in respect of the suit for declaration of title and consequential injunction, is payable in terms of Section 25(b) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, on the market value of the suit property. Hence, the Court Fee paid at Rs.15/- is certainly incorrect and the 1st respondent/plaintiff is liable to make up the deficit Court Fee payable.

14.Admittedly, Section 12 of Tamil Nadu Court Fees and Suit Valuation Act, 1955, is not applicable to the High Court. Insofar as the suits in the High Court are concerned, it is only Section 11 of Tamil Nadu Court Fees and Suit Valuation Act, 1955, which is relevant. The Taxing Officer is the competent person to decide the proper Court Fee payable. Therefore, the Taxing officer (Assistant Registrar I) shall determine the proper Court Fee payable in light of the valuation set out in the plaint and the deficit Court Fee, after deducting the Court Fee of Rs.15/- already paid on the plaint shall be made good by the plaintiffs within a period of eight (8) weeks from the date of determination of the proper Court Fee payable by the Taxing Officer (Assistant Registrar I). It is needless to state that if the proper Court Fee is not paid by the plaintiff, then it is open to the applicants to move this Court seeking dismissal of the suit.

15.In the result, this Application is dismissed with a direction to the Taxing Officer (Assistant Registrar I) to arrive at the deficit Court Fee payable by the 1st respondent/plaintiff, which shall be made good within a period of eight (8) weeks from the date of adjudication by the Taxing Officer.

06.09.2024

ata/rkp

P.B.BALAJI, J,

ata/rkp

Pre-delivery order made in
A. No.6625 of 2023
in C.S.No.63 of 2010

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