



C.R.P.(PD)(MD) No.34 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 21.02.2024

ORDERS PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD) No.34 of 2021

and

C.M.P.(MD) No.376 of 2021

1.P.Ramasamy

2.P.Suresh Kumar

... Petitioners/Petitioners/
Defendants

Vs.

M.Anandhi

... Respondent/Respondent/
Plaintiff

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 13.10.2020 passed in I.A.No.218 of 2018 in O.S.No.261 of 2015 on the file of the Court of Principal District Munsif, Tenkasi.

For Petitioners : Mr.K.N.Thampi

For Respondent : Mr.D.Srinivasa Ragavan



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JUDGMENT

This civil revision petition is directed against an order dated 13th October, 2020 passed in I.A.No.218 of 2018 in O.S.No.261 of 2015 on the file of the Court of the Principal District Munsif, Tenkasi.

2. The said application was filed by the petitioners under Order VII Rule 11 read with Section 151 of Civil Procedure Code seeking rejection of the plaint on the ground that no cause of action was disclosed in the plaint and also on the ground of limitation. The said application was dismissed by the learned trial Court on the ground that *prima facie* the suit was within limitation by taking into consideration the averments made in the plaint and also on arriving at a conclusion that there is cause of action for filing of the suit duly disclosed in the plaint.

3. Yet another ground on which the application was dismissed is that on an earlier occasion, the very same petitioners filed I.A.No.1463 of 2015 under Order VII Rule 11 seeking the very same relief and the said



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application was closed by the learned trial Court by order dated 29.06.2016.

But the petitioners instead of seeking re-opening of the said petition, filed a fresh application and as such, the same is not maintainable.

4. Learned counsel appearing for the petitioners contended that the plaintiffs, claimed to have acquired the suit property through Thiraviam Nadar, who in turn, stated to have purchased the property from Madathiyammal under registered Sale Deed dated 09.02.1966. It is further contended that as pleaded in Paragraph No.6 of the plaint, the respondent purchased the property under a registered Sale Deed dated 20.04.2015 *vide* Document No.2046/2015 executed by the sons of Thiraviam Nadar, represented by their Power of Attorney *vide* Document No.1996/2015, dated 17.04.2015. But the said Power of Attorney dated 17.04.2015 is not annexed to the plaint. Therefore, there is no link between the sons of Thiraviam Nadar and the Power of Attorney holder and therefore, the question of the respondent/plaintiff acquiring the title over the suit property does not arise. Thus, he contended that in the absence of the Power of Attorney, dated 17.04.2015, being placed before the Court, the entire suit is



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bound to fail and therefore, the petitioners/defendants herein cannot be subjected to prolonged trial by continuing the suit and therefore, the plaint is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure. Thus, in nutshell, it is the contention of the learned counsel for the petitioners that in the absence of filing the Power of Attorney, dated 17.04.2015, which is the link between the sons of Thiraviam Nadar and the respondent/plaintiff, being placed on record, the respondent/plaintiff is bound to fail and therefore, the entire plaint should be thrown out at this stage itself without subjecting the petitioners herein to prolonged trial.

5. In support of his contention, the learned counsel for the petitioners also placed reliance on various decisions of the Hon'ble Apex Court as well as this Court in (i) ***Surya Dev Rai vs. Ram Chander Rai and others*** reported in (2003) 6 SCC 675; (ii) ***Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and others*** reported in (2020) 7 SCC 366; (iii) ***Rajendra Bajoria and others vs. Hemant Kumar Jalan*** reported in 2022 (1) CTC 685; (iv) ***Frost International Limited vs. Milan Developers and Builders Private Limited***



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and another reported in ***(2022) 8 SCC 633***; (v) ***Hindustan Photo Films Manufacturing Co. Ltd., vs. R.Lakshmanan reported in 1998 (II) CTC 474***; and (vi) ***S.R.Nanda Kishore vs. The Body of Villagers of No.29 and others*** reported in ***2013 (3) MWN (Civil) 702***.

6. The ground raised by the learned counsel for the petitioners was not raised before the learned trial Court. Before the learned trial Court and in the affidavit filed in support of the application under Order VII Rule 11, the petitioners have contended that the predecessors in title of the respondent/plaintiff have not chosen to question the Sale Deed of the year 1983 under which the petitioners herein are claiming title over the suit property and therefore, the respondent/plaintiff is not entitled for any relief in the suit. The other ground raised before the learned trial Court is about the limitation. Both the grounds that were raised before the learned trial Court are not argued before this Court. Therefore, this Court is proceeding to consider only the ground raised before this Court.



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7. The scope of Order VII Rule 11 has come up for consideration before this Court as well as before the Hon'ble Apex Court in number of decisions and the legal position in this regard is well settled. In case, if the averments made in the plaint are construed as true also or in case, no cause of action is made out, then such a plaint is bound to be rejected in exercise of power under Order VII Rule 11 of Civil Procedure Code, if the relief sought for in the suit cannot be granted,. Yet another circumstance under which the power under Order VII Rule 11 can be exercised is in case, if the relief sought in the suit is barred by any law. In the considered view of this Court, both the circumstances do not arise in the facts of the present case, and the reasons for the same are as under.

8. In Paragraph No.6 of the plaint, it is stated that the Sale Deed under which the plaintiff acquired title over the suit property was executed by the Principals represented by their Power of Attorney holder and that the said Power of Attorney is also stated to be a registered document and the description of the said document is also furnished in the said paragraph. However, a copy of the said Power of Attorney is not filed.



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9. Learned counsel for the petitioners is finding fault with the said averment on the ground that the said Power of Attorney holder referred to in Paragraph No.6 was not filed along with the plaint. Therefore, the plaint is liable to be rejected under Order VII Rule 11 at the threshold.

10. As already noted above, if the averments contained in the plaint are treated as true also, if no relief can be granted, then such a plaint should be thrown out at the threshold. In the instant case, admittedly there is an averment about the Power of Attorney in question and the contention of the learned counsel for the petitioners is only on the ground that such a copy of the Power of Attorney is not filed. His contention that the plaint averments are to be read in conjunction with the documents by placing reliance on the observations made in the various decisions is in the context of finding out as to whether there is any cause of action or not by reading the plaint averments in conjunction or together with the documents filed along with the plaint. But that does not mean that plaint averments are bound to be supported by the documents and it is only when the supporting



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documents are also enclosed along with the plaint, the cause of action would be complete. It is only when the cause of action could not be culled out on reading of the plaint averments, then the documents filed along with the plaint are also to be taken into consideration as part of the plaint. That is the context in which the Courts have held time and again holding that the plaint averments have to be read in conjunction with the documents filed along with the plaint.

11. The Hon'ble Apex Court in ***Liverpool & London S.P. & I Association Ltd. vs. M.V.Sea Success I and another*** reported in (2004) 9 SCC 512, held as under:

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”



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12. In the light of the above decision, if the averments made in Paragraph No.6 of the plaint are treated as correct, the entire argument advanced by the learned counsel for the petitioners falls to the ground. Insofar as various decisions relied upon by the learned counsel for the petitioners are concerned, there is no quarrel with the law laid down in the said decisions. But the same have no application to the facts of the case on hand, in the light of the discussion already made hereinabove.

13. In the light of the above, this Court is of the considered view that the learned trial Court has rightly dismissed the application and the civil revision petition is liable to be dismissed. As the petitioners have raised a frivolous ground contrary to the settled legal position wasting the valuable time of this Court, this Court is of the view that it is a fit case to impose cost on the petitioner.

14. Accordingly, this Civil Revision Petition is dismissed with costs of Rs.5,000/- (Rupees Five Thousand only) payable within a period of four weeks from the date of receipt of a copy of this order to the



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Environmental Committee operated by the Registrar (Judicial) [Account No. 7633863037; MICR Code: 625019020, CIF No: 30602376727, IFSC Code: IDIB000H040, High Court Branch, Madurai]. Consequently, connected miscellaneous petition is closed.

15. Taking into consideration the fact that the suit is of the year 2015, the learned trial Court is directed to dispose of the suit as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this order.

26.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

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To

The Principal District Munsif,
Tenkasi.



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MUMMINENI SUDHEER KUMAR, J.

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Pre-delivery Order made in
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26.03.2024