



CRP(PD)(MD).No.650 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.11.2024

DELIVERED ON : 11.11.2024

CORAM:

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

CRP(PD)(MD).No.650 of 2022 and
CMP(MD).No.2642 of 2022

S.Gomathi

... Revision petitioner / defendant

Vs.

D.Sakratees

... Respondent / plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 31.01.2022 in I.A.No. 1/2019 in O.S.No.376 of 2018 on the file of the Additional District Munsif, Lalgudi.

For petitioner : Mr.R.Vigneswaran

For respondent : Mr.S. Jayavel



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ORDER

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This Civil revision petition is filed against the fair and decreetal order, dated 31.01.2022 made in I.A.No.1 of 2019 in O.S.No.376 of 2018 on the file of Additional District Munsif, Lalgudi.

2. The revision petitioner is the defendant and the respondent is the plaintiff in O.S.No.376 of 2018 on the file of Additional District Munsif, Lalgudi. The respondent as plaintiff filed the above suit in O.S.No.376 of 2018 for the following reliefs:

(i) To declare the title over the suit property in favour of the plaintiff and consequently restraining the 1st defendant their man and agents and anybody calling under them from in any manner interfering with the suit property by means of an order of permanent injunction;

(ii) By an order of mandatory injunction directing the 2nd defendant to cancel the document standing in the name of the defendant in Document No.3219 of 1994, dated 01.09.1994;

(iii) To award the cost of the suit to the plaintiff.

(iv) Such other and further reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case and thus render justice.

3. The case of the plaintiff in the above suit is that, the plaintiff and



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the defendant are husband and wife and due to matrimonial discord, they are living separately and several litigations are initiated and pending between them. It is a specific case of the plaintiff that he had purchased the suit property in the name of his wife / defendant / respondent herein out of love and affection. While so, due to ill feeling, the defendant, wife is threatening the plaintiff that she would alienate the suit property to third parties. The plaintiff is in possession and enjoyment of the suit property and therefore, he is constrained to file the above suit.

4. The above suit is resisted by the defendant by way of filing written statement in which it is stated that the suit is liable to be dismissed on the ground that no application was made under Section 80 CPC, though Sub Registrar, Mannachanallur was made as a party in the above suit. It is also stated that the defendant is the absolute owner of the suit property and the sale deed stood in the name of the defendant and the plaintiff cannot make any claim over the same. Her further contention is that there is no cause of action for filing the suit. Hence, the suit is liable to be dismissed. During the pendency of the above suit, the defendant took out an application in I.A.No.1 of 2019 in O.S.No.376 of 2018 under Order 7 Rule 11 of CPC to



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reject the plaint.

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5. According to the petitioner / defendant the above suit is filed without issuing any notice under Section 80 of C.P.C., which is condition precedent for the institution of the suit against the Government or public office. Therefore, the plaint is liable to be rejected. The other ground urged by the petitioner is that the suit is barred by limitation and therefore, the plaint is liable to be rejected on the said ground also.

6. The trial Court however, dismissed the said application by stating that, mere non filing of a petition under Section 80(2) C.P.C., alone, a plaint cannot be rejected.

7. Aggrieved by this, the present revision petition is preferred by the revision petitioner / defendant.

8. The learned counsel appearing for the revision petitioner contended that the impugned order of the learned Judge is contrary to the provisions of Order 7 Rule 11 CPC. The learned Judge failed to consider that the present



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suit is barred by limitation and the suit is also liable to be rejected on the ground of non issuance of notice under Section 80 C.P.C., The next ground is that there is no cause of action for the suit. In support of his contention that non filing of an application under Section 80 C.P.C., the plaint can be rejected, the learned counsel has relied upon the Judgment of the Hon'ble Supreme Court in **Civil Appeal No.446 of 2007** in the case of **Prem Lala Nahata Vs. Chandi Prasad Sikaria** in which it is held as follows :

14. Order VII Rule 11(d) speaks of the suit being “ barred by any law”. According to the Black's Law Dictionary, bar means, a plea arresting of law suit or legal claim. It means as a verb, to prevent by legal objection. According to Ramanatha Aiyer's Law Lexicon, “bar” is that which obstructs entry or egress; to exclude from consideration.

In a case not covered by Sub Section(2) of Section 80, it is provided in Sub Section(1) of Section 80 that “no suit shall be instituted”. This is therefore a bar to the institution of the suit and that is why courts have taken the view that in a case where notice under Section 80 of Code is mandatory, if the averments in the plaint indicate the absence of the notice, the plaint is liable to be rejected. For, in that case the entertaining of the suit would be barred by Section 80 of the Code.”

In the above cited case, the facts are different. In the present case only



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consequential relief is sought against the Government. It is a dispute between a husband and wife with regard to an immovable property. However, the same can be raised at the time of trial by framing an issue in this regard.

9. On the point of limitation, the Hon'ble Supreme Court made in the case of ***Shakthi Bhog Food Industries Limited Vs. Central Bank of India and another*** reported in ***2020 (5) MLJ 502 SC*** had an occasion to deal with the scope of the order Order 7 Rule 11 CPC, particularly with reference to Sub Rule (d) of Order 7 Rule 11 CPC. When a petition is filed under Order 7 Rule 11 CPC on the ground that the suit is barred by law of limitation, the Hon'ble Supreme Court held that the issue should be considered purely on the basis of what is stated in the plaint and not on the basis of the information furnished by the defendant either in the written statement or in the application filed under Order 7 Rule 11 CPC. Further, it is reiterated that the plea of limitation is mixed question of fact and law and that the Court cannot consider the plea of limitation in a petition filed under Order 7 Rule 11 CPC. Therefore, the issue of limitation has to be determined only after the trial.



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10. With regard to cause of action, keeping in mind the averments made in the plaint, it is not prima facie discernible from the plaint that it lacks any cause of action or it is barred by any law. Therefore, for the purpose of adjudicating the application, the averments made in the plaint alone should be considered and that the allegations by the defendant cannot be gone into at the stage of deciding the application under Order 7 Rule 11 CPC. Therefore, no infirmity or perversity found in the order passed by the Trial Court. Considering the fact that the suit is of the year 2018, the trial Court is directed to expedite the trial and dispose of the suit within a period of six months from the date of receipt of a copy of this order.

11. With the above said direction, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

11.11.2024

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

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The Additional District Munsif, Lalgudi.



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K. GOVINDARAJAN THILAKAVADI, J.,

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Pre-delivery Order made in
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