



CRP(MD)No.1418 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 08.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1418 of 2024
and
C.M.P.(MD)No.8410 of 2024

M.Vijayaraman

... Petitioner / Petitioner / 4th Defendant

Vs.

1.Petchiammal @ Jegatha

2.Gnanasundaram

3.Kottudurai @ Arumuga Kadavul ... Respondents / Respondents / Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 02.02.2024 passed in I.A.No.160 of 2022 in O.S.No.105 of 2021 on the file of the Principal District Munsif, Thirumangalam, Madurai District and allow this Civil Revision Petition.

For Petitioner : Mr.T.S.R.Venkat Ramana, Senior Counsel
for Ms.V.Janaki Devi

For Respondents : Mrs.K.Hemakarthiskeyan



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ORDER

“Made out” is one thing, “made up” is another. Oxford Advanced Learner's Dictionary defines “made up” as “not true or real ; invented”. “Made out” has not been defined in standard dictionaries. But in legal parlance, it means “established” or “proved”.

2.To maintain a suit, the plaint must disclose cause of action. Order 7 Rule 11(a) of CPC provides for rejection of plaint if it does not disclose a cause of action. In ***Dahiben v. Aravindbhai Kalyanji Bhanusaliji (2020) 7 SCC 366***, it was held that while considering an application under Order 7 Rule 11 CPC, what is required to be decided is whether the plaint discloses a real cause of action or something purely illusory. What is required is that a clear right must be made out in the plaint. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The court must be vigilant against any camouflage or suppression and determine whether the litigation is utterly vexatious and an abuse of the process of the court.

3.In the case on hand, the cause of action has been “made up” and not “made out”.



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4.The suit property belonged to Karuppanna Thevar, the maternal grandfather of the plaintiffs. After his demise, it devolved on Sindhamani @ Karupayee, the mother of the plaintiffs and the second defendant. She sold the suit property in favour of the third defendant vide registered sale deed dated 23.05.2012. This transaction was attested by the second defendant. Subsequently, the third defendant sold the suit property in favour of the fourth defendant vide registered sale deed dated 09.04.2015. While so, in the year 2021, the plaintiffs filed O.S No.105 of 2021 on the file of the Principal District Munsif Court, Thirumangalam seeking partition and allotment of 3/5th share in the suit property and for permanent injunction and for declaration that the registered sale deeds dated 23.05.2012 and 09.04.2015 are null and void.

5.When the fourth defendant filed I.A No.160 of 2022 for rejection of plaint under Order 7 Rule 11 of CPC, the court below dismissed the same on the ground that one should go only by the plaint averments at this stage and that since they disclosed cause of action, the issues have to be adjudicated only in a full-fledged trial.

6.As rightly submitted by the learned Senior Counsel appearing for the revision petitioner, when the property devolved on the first defendant



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following the demise of her father Karuppanna Thevar, she took the property absolutely. Section 14 of the Hindu Succession Act, 1956 states that any property possessed by a female Hindu whether acquired before or after the commencement of the Act shall be held by her as full owner thereof. In other words, the Section declares that such property shall be her absolute property. The sons of the first defendant by virtue of their birth would not get any share in the property inherited by their mother during her lifetime. In ***Shub Karan Bubna vs. Sita Saran Bubna (2009) 9 SCC 689***, it was held that in a suit for partition or separation of a share, the court at the first stage decides whether the plaintiff has a share in the suit property and whether is entitled to division and separate possession. In other words, a partition of property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. In this case, the plaintiffs never had any joint right or interest in the property which was the absolute property of their mother. The mother is still alive. During her lifetime, she had already dealt with the property. In these circumstances, the question of partition does not arise at all. Merely because in the plaint, it has been averred that the property is ancestral in nature and that each of the plaintiffs are entitled to 1/5th share therein, that cannot mean that cause of action is “made out”. It is an instance of clever drafting. In ***Ramisetty***



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Venkatanna v. Nasyam Jamal Saheb 2023 (5) SCR 589, it was held that such
plaints deserve to be rejected under Order 7 Rule 11 of CPC.

7. In this view of the matter, the order impugned in the revision petition is set aside. The suit is struck off the file of the court below. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2024

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

To:

The Principal District Munsif, Thirumangalam,
Madurai District.



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G.R.SWAMINATHAN, J.

SKM

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