



AS.No.239 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2025

CORAM

THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

AS.No.239 of 2019

1. S.Premanand
2.K.Harimoorthy
3.V.Suresh Kumar

... appellants / plaintiffs

V.

1.V.Muthu (alias) V.Veyilmuthu
2.Kanthamari

... respondents / defendants

Prayer : This First Appeal is filed under Section 96 r/w.Order 41

Rule 1 Code of Civil Procedure 1908 against the judgment and decree dated 18.08.2017 in IA.No.108 of 2017 in OS.No.144 of 2016 on the file of the III Additional District Judge, Thiruvallur at Poonamallee.

For appellants : Mr.M.V.Seshachari
For Respondents : Mr.D.Ferdinand

J U D G M E N T

The unsuccessful plaintiffs have preferred the first appeal against the order passed in IA.No.108 of 2017 in OS.No.144 of 2016 for rejection of the plaint in OS.No.144 of 2016. The parties herein are referred to according to their litigative status before the trial Court.



AS.No.239 of 2019

WEB COPY

2. The plaintiffs - S.Premanand, K.Harimoorthy & V.Suresh Kumar filed the suit in OS.No.144 of 2016 on the file of the III Additional District Judge, Thiruvallur at Poonamallee against the defendants viz., Mr.V.Muthu @ V.Veiyil Muthu and Mrs.Kanthamari. The suit has been filed for declaration of plaintiff's title to the suit property and for recovery of vacant possession of the suit property after ejecting the defendants there from and after removing the superstructure put up by them over the suit property.

3. The brief case of the plaintiffs is as follows :-

The suit property was originally owned and possessed by the plaintiff's vendor / Saravanan. The said Saravanan has appointed one J.Jebasingh as his Power of Attorney agent, as per the power of attorney deed dated 18.09.1996. The plaintiffs are individually purchased the undivided 1/3rd share of the suit property under three separate registered sale deeds dated 11.10.2000.

3(i)The first defendant/V.Muthu @ Veiyil Muthu filed the suit in

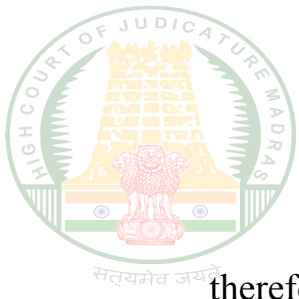


AS.No.239 of 2019

WEB COPY

Os.No.311 of 2006 against the power of attorney agent/J.Jebasingh and 4 others seeking for permanent injunction. The plaintiffs/V.Suresh Kumar and Harimoorthy have filed a suit in OS.No.389 of 2006 against the first defendant/V.Muthu @ Veiyil Muthu and one Devaraj on the file of the Principal District Munsif, Poonamallee. Both the suits were tried together and suit in OS.No.311 of 2006 was decreed in favour of the first defendant/V.Muthu @ Veiyil Muthu and the suit in OS.No.389 of 2006 was dismissed by the Principal District Munsif, Poonamallee on 29.11.2012. The first defendant/V.Muhtu @ Veiyil Muthu, after disposal of the suit had executed a registered deed of settlement dated 28.02.2013 in favour of the 2nd defendant/Kanthamari. The first defendant is claiming title by virtue of the sale deed alleged to have been executed by E.V.Perumalsamy Reddy through power of agent/Devaraj.

3(ii) The first defendant/V.Muthu @ Veiyil Muthu managed to obtain patta, pursuant to the sale deed. The plaintiffs alone were in possession and enjoyment of the suit property, but the Principal District Munsif Court, Poonamallee took a different view and found that the first defendant/V.Muthu is in possession and enjoyment of the property and



AS.No.239 of 2019

WEB COPY

therefore decreed the suit in his favour. Since, there is a finding by the Principal District Munsif, Poonamallee that the first defendant/Muthu @ Veiyil Muthu is in possession of the suit property and since the first defendant has settled the suit property in favour of the 2nd defendant/Kanthamani, the plaintiffs are constrained to file the suit seeking declaration of their title and for recovery of vacant possession.

3(iii)The cause of action for the suit arose on 11.10.2000, when the plaintiffs purchased the suit property, on 29.11.2012, when the Principal District Munsif, Poonamalle decreed the suit filed by the first defendant and dismissed the suit filed by the plaintiffs 2 and 3, thereby gave a findings that the plaintiffs are out of possession of the suit property.

4. During the pendency of the suit, the defendants have filed an application under Order 7 Rule 11(a) CPC in IA.No.108 of 2017 in OS.No.144 of 2016 to reject the plaint in OS.No.144 of 2016.

5. The brief averments stated in the petition in IA.No.108 of 2017 in OS.No.144 of 2016 is as follows :-



AS.No.239 of 2019

WEB COPY

The respondents/plaintiffs stated in their plaint that they had purchased 1/3rd share of the suit property from Saravanan through his power of attorney/J.Jebasingh under sale deeds dated 11.10.2000. After purchase they had put up fencing and they were in possession and enjoyment of the suit property. Now the present suit has been filed by the respondents/plaintiffs, since, there is a finding by the Court in the earlier suit that the first defendant alone is in possession and enjoyment of the suit property. Based on the earlier findings, the plaintiffs filed the present suit. Even prior to purchase of the respondents, the first defendant's vendor/E.V.Perumalsamy Reddy purchased the suit property through Saravanan through Power of Attorney/Jebasingh under sale deed dated 31.03.1999. Thereafter, the first defendant purchased the suit property under sale deed dated 08.06.2006. Ever since, the date of purchase the first defendant is in possession and enjoyment of the suit property and fixed cement posts around the suit property. In the year 2006, Jebasingh and others attempted to interfere with the first defendant possession and enjoyment of the property. Hence, the first defendant filed OS.No.311 of 2006 for permanent injunction against them. By suppressing the said suit, the plaintiffs 2 and 3 have filed another suit in



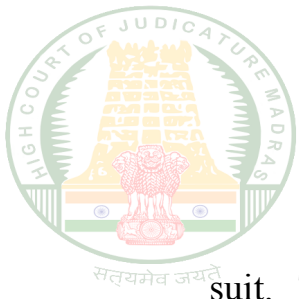
AS.No.239 of 2019

OS.No.389 of 2006 for permanent injunction against the first defendant.

WEB COPY

Both the suits were tried jointly and it is found that the first defendant is in possession of the suit property even before filing the above said suit. The plaintiffs did not plead in the plaint in clear terms as to when the cause of action in the present suit arose, they merely alleged that since the Court gave findings that the first defendant is in possession of the property they filed the present suit. If they accept the said findings, they ought to have prayed the relief of declaration and recovery of possession in the earlier suit itself. The present suit is hit by Order 2 Rule 2 CPC. The plaintiffs is bereft of cause of action, since the plaint itself is not maintainable and the same is to be rejected.

6. In the counter affidavit filed by the plaintiffs, wherein it is stated that the plaintiffs alone are having valid title to the suit property. The purchase by the first defendant and subsequently executed settlement deed in favour of the 2nd defendant are not valid. The plaintiffs contested the earlier suit on the ground that the possession follows title. The Principal District Munsif Court, Poonamalle found that the first defendant is in possession of the suit property and therefore decreed the



AS.No.239 of 2019

WEB COPY

suit. This only gave cause of action for the present plaintiffs to file the suit seeking declaration of their title and for recovery of vacant possession. Earlier suit were filed for bare injunction only. The relief claimed in the earlier suit and in the present suit are entirely different. There is no need for the plaintiffs to plead as to when the superstructure was put up in the suit property and when they lost their possession. In the plaint, it has been stated clearly that dismissal of their earlier suit and decree passed in favour of the first defendant give raise to cause of action. The trial Court finds that the cause of action for the previous suits in OS.No.311 of 2006 and OS.No.389 of 2006 are different from the cause of action from the present suit and finds that the suit is barred under Order 2 Rule 2 of CPC is found to be unacceptable.

7. On the side of the defendants, Ex.P1-Certified copy of the Common Judgment passed in OS.Nos.311 of 2006 and 389 of 2006 by the Principal District Munsif, Poonamallee has been marked. On the side of the plaintiffs no documents have been marked. No witness have been examined on either side.



AS.No.239 of 2019

WEB COPY

Findings of the Trial Court :-

8. The trial Court finds that while deciding the earlier suits, the Principal District Munsif, Poonamallee had incidentally gone into the title of the suit property. Since, the suit property in respect of which permanent injunction was sought for was admittedly a vacant site and when the defendants established the title to the suit property, then in such case, the present suit for declaration of title and recovery of possession in respect of the same suit property is found to be a second round of litigation. It is also finds that when the permanent injunction to protect the possession of the first defendant was granted in OS.No.311 of 2006, then in such case unless the said judgment and decree is set aside a contra relief for recovery of possession cannot be sought for and also finds that when the present suit in OS.No.144 of 2016 is nothing but abuse of process of law and such vexatious litigation cannot be permitted to consume the time of the Court and found that the plaint is liable to be rejected. Aggrieved over the same, the plaintiffs have preferred the present first appeal.

9. The points for determination arises in this appeal is whether the



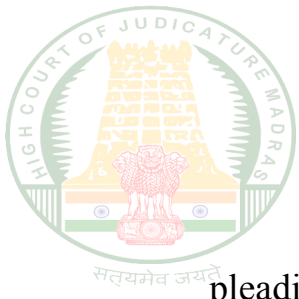
AS.No.239 of 2019

WEB COPY

petition filed under Order 7 Rule 11(a) of Code of Civil Procedure in

IA.No.108 of 2017 in OS.No,144 of 2016 is to be allowed?

10. The learned counsel appearing for the appellants/plaintiffs would submit that the earlier suit filed by the appellants/plaintiffs in OS.No.389 of 2006 is only for the relief of permanent injunction. Therefore, the same is not a bar for the present suit, seeking relief of declaration of title and recovery of possession. The appellants/plaintiffs are not a party to the suit in OS.No.311 of 2006 though they had purchased the suit property in the year 2000 itself. The suit in OS.No.311 of 2006 has been filed as against the power of attorney agent and four others and the suit against the power of attorney agent alone is not maintainable, when the principle have been disclosed. The learned counsel would further submit that the decree passed in OS.No.311 of 2006 is not binding upon the appellants/plaintiffs. The trial Court ought to have seen that in a suit for permanent injunction, the question of title is decided incidentally and therefore it is not a bar for filing the present suit. The appellant/plaintiff have not suppressed any fact and duly disclosed the particulars of the previous suits between the parties in the



AS.No.239 of 2019

WEB COPY

pleadings and also filed the copies of the judgment and decree along with the plaint.

11. Per contra, the learned counsel for the respondents/defendants would submit that even prior to purchase of the plaintiffs, the first defendant's vendor E.V.Perumalsamy Reddy purchased the suit property from Saravanan through power of attorney/Jebasingh under the registered sale deed dated 31.03.1999. Thereafter, the first defendant purchased the suit property from the said E.V.Perumalsamy Reddy through power of attorney/Devaraj under sale deed dated 08.06.2006. In the year 2006, the said Jebasingh and others attempted to interfere with the possession and enjoyment of the first defendant, he has chosen to file the suit in OS.No.311 of 2006 for permanent injunction against them. The plaintiffs 2 and 3 had filed another suit in OS.No.389 of 2006 against the first defendant for permanent injunction. The learned counsel would further submit that both the suits were tried jointly and it was found that the first defendant is in possession and enjoyment of the suit property. The plaintiffs did not plead in the plaint in the clear terms as to when the cause of action arose for the present suit.

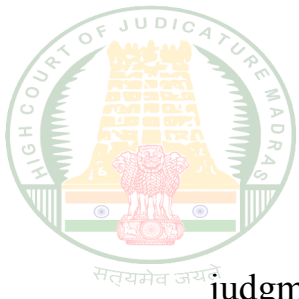


AS.No.239 of 2019

WEB COPY

12. This Court has considered the submissions made on either side and perused the materials available on record.

13. It is seen from the records that the suit property is a vacant site, further it is seen that the appellants/plaintiffs – V.Suresh Kumar and Harikumar have already filed the suit in OS.No.389 of 2006 for the relief of permanent injunction as against the first defendant/Muthu @ Veiyil Muthu and likewise, the first defendant/Muthu @ Veyil Muthu has filed the suit in OS.No.311 of 2006 for permanent injunction, with regard to the present suit schedule property. Further, it is seen from records, as per the common judgment and decree passed in OS.Nos.311 of 2006 and 389 of 2006 on the file of the Principal District Munsif, Poonamalle, the trial Court had incidentally gone into the title of the suit property and finds that the first defendant/Muthu @ Veiyil Muthu is in possession and enjoyment of the suit property and decreed the suit in OS.No.311 of 2006 against the plaintiff's vendor's power agent one Mr.Jebasingh and others namely A.Prakash, Dawood, S.Raja and Mani and the suit filed by the plaintiffs herein in OS.No.389 of 2006 was dismissed vide common



AS.No.239 of 2019

judgment dated 29.11.2012.

WEB COPY

14. The defendants before the trial Court had filed an application under Order VII Rule 11(a) of the Code of Civil Procedure for rejection of the plaint on the ground that it does not show any cause of action. At this juncture, it is useful to refer the relevant provision of Code of Civil Procedure -

“11. Rejection of plaint.-

The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a*



time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;]

(f) where the plaintiff fails to comply with the provisions of rule 9:]

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

15. It is settled proposition that, where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not



AS.No.239 of 2019

WEB COPY

rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same.

16. It is pertinent to mention that power under Order VII, Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial. This position was explained by the Hon'ble Apex Court in *Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557*, in which, while considering Order VII, Rule 11 of the Code, it was held as under:-

"9. A perusal of Order VII, Rule 11, CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII, Rule 11 CPC at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the



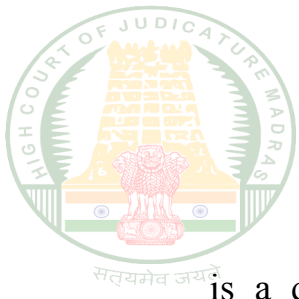
WEB COPY



AS.No.239 of 2019

conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII, CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII, Rule 11, CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court?."

17. It is also pertinent to mention that it is an apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII, Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action,



AS.No.239 of 2019

WEB COPY

is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Court, the plaintiff may not succeed cannot be a ground for rejection of the plaint.

18. In the present case on hand, a perusal of the averments made in the plaint, discloses the cause of action. The order of the trial Court dated 18.08.2017 is self contradictory, having held that the cause of action in the present suit in OS.No.144 of 2016 is different from the cause of action in the earlier suit in OS.No.389 of 2006. It is not open to subsequently held that the present suit is relitigation and abuse of process of law. None of the provisions of Order 7 Rule 11 of CPC had been made out by the respondents/plaintiffs. The decree of permanent injunction granted in OS.No.311 of 2006 is not a bar for filing the present suit for declaration of title and recovery of possession. In the suit



AS.No.239 of 2019

WEB COPY

for permanent injunction, the question of title has been discussed incidentally and therefore the same is not bar for filing the present suit.

The appellants/plaintiffs have not suppressed about the previous suits between the parties in the pleadings and also filed the copies of the judgment and decree of the earlier suits along with the plaint. There are merits in this appeal and the judgment and decree passed in IA.No.108 of 2017 in OS.No.144 of 2016 dated 18.08.2017 is liable to be set aside. In view of the above discussions, this Court is inclined to allow the first appeal. The point is answered accordingly.

19. In the result, the first appeal is allowed and the judgment and decree passed in IA.No.108 of 2017 in OS.No.144 of 2016 dated 18.08.2017 on the file of III Additional District Court, Tiruvallur at Poonamallee is hereby set aside. The III Additional District Court, Tiruvallur at Poonamallee is hereby directed to re-admit the suit and proceed in accordance with law. No costs.

06.06.2025

Index : Yes/No
Internet : Yes/No



AS.No.239 of 2019

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

1. The III Additional District Judge, Thiruvallur at Poonamallee
2. The Principal District Munsif, Poonamallee



WEB COPY



AS.No.239 of 2019

M. JOTHIRAMAN, J.

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AS.No.239 of 2019

06.06.2025