



CRP NO. 3345 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-02-2025

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CRP NO. 3345 of 2023

K.O. Basheer Ahmed

Petitioner(s)

Vs

1. Gudiyattam Coconut Growers and Sellers
Association,
Rep by its President M.B. Thirumal,
S/o. Balasubramaniam,
Having office at:
249, R.S. Road,
Kondasamuthiram,
Gudiyattam, Vellore Dt.
Residing at Perumbadi Village,
Agravaram Post,
Gudiyattam Taluk,
Vellore District.

2. P.K.G. Manogaran
3. G. Ganesan
4. N. Vadivel

5. D. Mahalingam

Respondent(s)

PRAYER: Civil Revision Petition filed under 227 Constitution of India, praying to set aside the fair and decreetal order dated 08.07.2022 passed in I.A.No.1 of 2020 in O.S.No.147 of 2019 on the file of the I Additional District and Sessions Court, Vellore.

For Petitioner(s):

Mr. K. Govi Ganesan

For Respondents: Mr.K.A.Ravindran, For R1



Mr. N.Nithianandam, For R 2 To 5



WEB COPY

The present revision petition is filed as against the fair and decreetal order passed in I.A.No.1 of 2020 in O.S.No.147 of 2019 on the file of the I Additional District Judge, Vellore,

2. The defendant filed an application under Order 7 Rule 11 read with Section 151 of CPC to reject the plaint by contending that the similar suit has been filed by the plaintiff and the same is pending in O.S.No.79 of 2013 before the District Munsif Court, Gudiyatham.

3. Learned counsel for the revision petitioner contended that when a similar suit is filed and pending, the suit filed by the defendant in O.S.No. 147 of 2019 is abuse of process of law.

4. Per contra, learned counsel for the respondent contended that the suit in O.S.No.79 of 2013 is nothing to do with the present petition and even assuming for a moment, the suit in O.S.No.79 of 2013 and the present suit in O.S.No.147 of 2019 has been adjudicated before the trial Court.



5. Learned counsel for the revision petitioner would rely upon the judgment of this Court in the case of ***S.Thiyagarajan vs. Supreme Pipe Syndicate*** reported in **2017 (6) CTC 723**, in

WEB COPY

which paragraph Nos. 13 to 16 is extracted hereunder:

“13. In the plaint, there is no averments that the plaintiff partnership firm is a registered firm. In the absence of firm registration certificate and in the absence of tenancy agreement, without ascertaining the existence of privity of contract, the trial Court has taken the plaint on file giving a go by to [Section 69\(2\)](#) of the Partnership Act, which bars the suit by unregistered partnership firm against the third party. The trial Court has failed to exercise even a minimum required scrutiny of pleading, relief sought and maintainability of the suit before taking the plaint on file.

14. The non-disclosure of material fact relevant for cause of action is singularly suffice to reject the plaint under [Order 7, Rule 11 of the Code of Civil Procedure](#), however the ancillary proceedings and abuse of court process, force this Court to interfere under [Article 227](#) of the Constitution of India to allow the revision petition, without resorting to the alternate remedy. Since it will be unjust to ask, a senior citizen aged about 71 years to defend a suit, which is per se barred in law and filed with material suppression of fact.

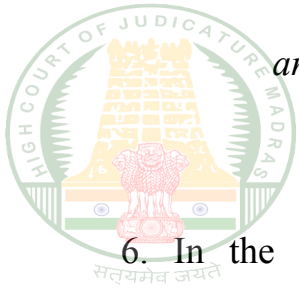


WEB COPY



15. The said S. Rahmathullah claims himself as a partner in M/s Supreme Pipe Syndicate. In the plaint, he has not whispered about the date of his induction into the partnership firm. Now, before this Court, an unregistered partnership deed dated 02.03.2015 between S. Rahmathullah and Smt.Sajarath Thaiyaba has been produced. This partnership deed is after issuance of legal notice by the landlord to Smt.Sajarath Thaiyaba. The RCOP proceedings is filed on 20.04.2015 in the name of Smt.Sajarath Thaiyaba. In that petition, there is no mentioning about S.Rahmathullah as its partner. Smt.Sajarath Thaiyaba has filed memo dated 02.01.2017 informing the Tribunal that she has vacated the premises, after receiving the advance amount and sought for dismissal of R.C.O.P.No.215 of 2015 as not pressed. She has also filed a memo in O.S.No.690 of 2016, which is the subject matter of the revision petition stating that S. Rahmathullah is no way connected with the suit property. She has vacated the property and handed over the vacant possession to the landlord. She has filed a detailed affidavit and petition to implead herself in W.P.(MD)No.24398/2016 filed by Rahmathullah, wherein she has categorically stated that Rahmathullah is not a partner of Supreme Pipe Syndicate. She has alleged that taking advantage of the husband's demise, Rahmathullah is trying to grab the business.

16. From the pleadings and documents, it is clear that, Rahmathullah has no privity of contract with the revision petitioner/ landlord. He has not placed any document to show, the landlord let out the premise to Supreme Pipe Syndicate, a partnership firm and in which, in he is a partner. Contrarily, the person with whom the landlord has entered into agreement has filed memo



and affidavit denying the claim of Rahmathullah.”



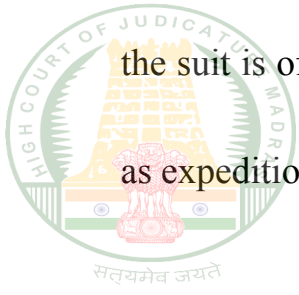
WEB COPY

6. In the above said case, it is the case of relationship between the plaintiff and landlord/defendant. The Hon'ble Supreme Court while considering the facts and circumstances of the case under Order VII Rule 11, held that that the abuse of Court process can be interfered under Article 227 of Constitution of India. It is also held that when the facts are not disputed by the other side with regard to the nature of allegation, the application under Order 7 Rule 11 cannot be interfered by this Court.

7. Admittedly, the 1st defendant had not filed any documents to prove his case in O.S.No. 79 of 2013 which was dismissed for default. Though it is contended that the relief sought for in the present suit in O.S.No. 147 of 2019 for different cause of action, and it is not hit by re-judicata, it has to be decided by the trial Court after adducing evidence

. 8. The trial Court has rightly considered the above facts and dismissed the interim application filed by the revision petitioner/1st defendant.

9. Accordingly, the Civil Revision Petition is dismissed. No costs. Considering the fact that



the suit is of the year 2019 and ready for trial, the trial Court is directed to dispose the suit as expeditiously as possible.



WEB COPY

14-02-2025

msv

Index: Yes/No

Internet: Yes/No

Speaking order: Non-speaking order

Neutral Citation: Yes/No

To

I Additional District and Sessions Court, Vellore.



WEB COPY



N.SENTHILKUMAR,J.

Msv

CRP NO. 3345 of 2023



WEB COPY

14-0

