

C.R.P.(PD)(MD).No.187 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 12.03.2025

DELIVERED ON: 18 .03.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(PD)(MD).No.187 of 2024
and CMP(MD).No.795 of 2024**

1.S.Annamalai

2.A.Sivasubramanian

....Petitioners/Petitioners

Vs

1.Minor A.Rajalakshmi

2.Minor A.Kanishka

3.Minor.A.Sivakathiresan

....Respondents/Respondents

(Minors 1 to 3 represented through
their maternal grandfather and next friend
Mr.N.Vidhyadharan)

PRAYE: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the fair and executable order passed in I.A.No.3 of 2023 in O.S.No.218 of 2023 by the learned VI Additional District Judge, Madurai dated 09.10.2023.



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For Petitioners : Mr.M.Rajaraman

For Respondents :Mr.V.Ramakrishnan

ORDER

The defendants 1 and 3 in O.S.No.218 of 2023 on the file of the VI Additional District Court, Madurai have filed the present revision petition challenging the rejection of their application filed under Order 7 Rule 11 of C.P.C.

2.A perusal of the plaint reveals that three minor children of the defendants 1 and 2 have filed the said suit for the relief of declaration that the suit schedule properties are joint family properties with ancestral nucleus with right of the plaintiffs as coparceners in them. The plaintiffs have further prayed for consequential relief of mandatory injunction directing the defendants to honour the family arrangement dated 14.03.2022. The plaintiffs have further prayed for a decree for permanent injunction restraining the defendants in any way alienating the suit schedule properties and for other prayers.

3.The minor plaintiffs in the said suit are represented by their maternal grandfather. The defendants 1 and 3 who are the father and



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grandfather of the minor plaintiffs respectively have filed I.A.No.3 of 2023 under Order 7 Rule 11 of C.P.C to reject the plaint.

4.A perusal of the averments in the said affidavit reveals that the said application has been filed primarily on the ground that the minor plaintiffs' father and mother are alive and they are also arrayed as defendants 1 and 2 in the said suit. When the natural guardian of the minor plaintiffs are alive, the maternal grandfather cannot represent the minor plaintiffs. It is further contended that the maternal grandfather do not have any locustandi whatsoever to represent the minor plaintiffs when the parents are alive. It was also contended that the minor plaintiffs are in the custody of their mother namely the second defendant and in such circumstances, the maternal grandfather cannot represent the minor children as if they are in his custody.

5.It was further contended that some of the suit schedule properties are self-acquired properties. The family properties have already been partitioned under registered deed dated 14.03.2022 has not been challenged by the plaintiffs. It is also contended that the properties that were not covered under the registered family partition were the subject matter of an agreement of an understanding dated 14.03.2022.

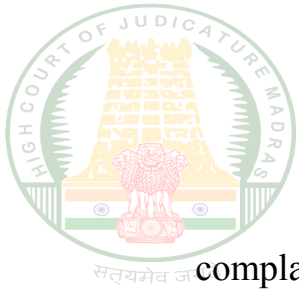


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6.As far as the agreement of understanding is concerned, it covered the self-acquired and ancestral properties of the first defendant. Some of the properties stands in the name of the third defendant who is the grandfather of the plaintiffs. When the father and grandfather of the minor plaintiffs are alive, the grandchildren will not get any right over the suit schedule properties. The cause of action pleaded in the suit is illusory in nature and therefore, the plaint is liable to be rejected.

7.The trial Court after considering the submissions made on either side, has found that that there is pleading to the effect that the parents of the minor plaintiffs namely defendants 1 and 2 are acting adverse to the right and interest of the plaintiffs. In such circumstances, the plaint averments alone can be relied upon.

8.The trial Court further found that the defendants 1 and 2 who are the parents of the plaintiffs have acted adverse to the rights of the plaintiffs by entering into a registered partition deed and the left out properties are the subject matter of an agreement of understanding. The Court further found that the mother of the plaintiffs is quarrelling with her father-in-law with regard to certain jewellery and she had lodged a



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complaint and therefore, both the parents have not evinced any interest for the minors. In such circumstances, the trial Court had proceeded to hold that the cause of action pleaded in the plaint cannot be considered to be illusory and has proceeded to dismiss under Order 7 Rule 11 C.P.C application. Challenging the same, the present civil revision petition has been filed.

9. According to the learned counsel for the revision petitioner, whatever property that was allotted in favour of the first defendant (father of the minor plaintiffs) has been settled by the father in favour of the minor plaintiffs. On 05.04.2022, some of the properties which are to be retained as joint family properties are the subject matter of the agreement of understanding dated 14.03.2022. Therefore, the contention of the plaintiffs that there is a likelihood of alienation of properties or their right going to be effected is clearly illusory in nature. He had further contended that the father, being the Kartha is entitled to alienate the property and in such circumstances, the plaintiffs cannot take away the right of Kartha by filing the present suit. When law permits the Kartha for alienating the property for legal necessity, by way of filing the present suit, the right of Kartha cannot be taken away.



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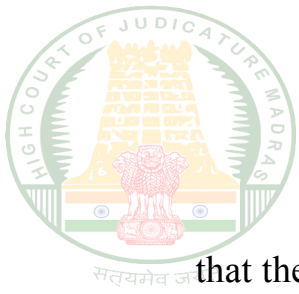
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10.The learned counsel for the petitioners had further contended that there is no reference whatsoever about the plaintiffs in the agreement of understanding dated 14.03.2022 which would confer any right upon them. The plaintiffs have filed the present suit on being instigated by the maternal grandfather and their mother. Therefore, the cause of action challenged is illusory.

11.The learned counsel for the petitioners had further contended that all the three minor children are in the custody of the second defendant. Therefore, the minor children cannot be represented through their maternal grandfather who has no locustandi whatsoever to represent the minor children when the father who is the natural guardian is live. He had further contended that there are no pleadings whatsoever to the effect that the father is acting adversary to the interest of the minor plaintiffs.

12.The learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court was pleased to hold that due to clever drafting whenever illusory cause of action is pleaded, the plaint is liable to be rejected.

13.Per contra, the learned counsel for the respondents/plaintiffs had contended that the specific allegations have been raised in the plaint



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that the father and mother of the plaintiffs are acting adverse to the interest of the minors. Even in Order 7 Rule 11 of C.P.C application, the defendants have pleaded that they have got a right of alienation in view of the fact that he is a Kartha. Therefore, it is clear that there is an attempt on their part to alienate the suit schedule properties ignoring the rights of the minor plaintiffs. In such circumstances, the cause of action pleaded in the suit cannot be considered to be illusory.

14.The learned counsel for the respondents had further contended that when there is a specific pleading with regard to the adverse activities of the father and mother as against the plaintiffs, it is quite but natural that the maternal grandfather has taken up the case and filed the present suit representing the minors as their next friend. In such circumstances, the locustandi of the maternal grandfather cannot be questioned.

15.I have considered the submissions made on either side and perused the material records.

16.It is settled position of law, as far as the rejection of plaint is concerned, the Court is entitled to look into the plaint averments and the documents annexed to the plaint alone. In the present case, in paragraph



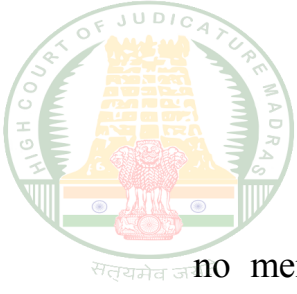
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No.7 of the plaint, there is a specific allegation that the father and mother of the plaintiffs are not interested in protecting the right and interest of the plaintiffs and therefore, they are represented by their maternal grandfather. In such circumstances, this Court is of the considered opinion that the suit filed by the maternal grandfather as a next friend of the minor plaintiffs cannot be found fault with.

17.As per the plaint averments, some of the properties are self-acquired properties of the third defendant who is their grandfather. The other properties are the ancestral properties, in the hands of the third defendant. In such circumstances, the plaintiffs have prayed for declaration that the suit schedule properties are the joint family properties with ancestral nucleus. The character of the suit schedule properties cannot be decided in the present application. It can be found out only during the trial after considering the oral and documentary evidence, In such circumstances, the cause of action pleaded in the plaint cannot be considered to be illusory at this point of time.

18.The trial Court has rightly arrived at a conclusion that the plaint cannot be dismissed under Order 7 Rule 11 of C.P.C. This Court does not find any error or illegality in the order of the trial Court. There are



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no merits in the revision petition. This Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.03.2025

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

1. The VI Additional District Judge, Madurai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
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