

IN THE I ADDITIONAL DISTRICT & SESSIONS COURT

AT CUDDALORE

Present: Thiru. **S. Prakash**, B.Sc., B.L., LL.M.,
I Additional District & Sessions Judge,

Monday, the 20th day of March, 2023

I.A.No. 422 of 2022

in

O.S. No.316 of 2020

(CNR No. TNCD01 - 010020 - 2022)

1. Najeer Mohamed

2. Amanulla

-Petitioners/ Defendants 2 and 3

-Vs-

1. Abdul Nazar

2. Zerina Begam

-Respondents / Plaintiffs

This application is came before this Court for final hearing on 02.03.2023 in the presence of M/s. P.Baskar, Counsels for the Petitioner/ Defendants 2 and 3; and of Mr. T.Kathirvel, Counsels for the respondents / plaintiffs ; and upon perusal of case records, after hearing the both sides arguments and having stood over for consideration till this date, this Court delivers the following;

ORDER

1. The instant petition was filed under order VII Rule 11 (a) and (d) of CPC R/w. under section 151 of CPC to Reject the plaint in O.S.No. 316 of 2020.

Pleadings and Submissions of the Litigants :

2. The petitioners submit that the present suit filed by the plaintiffs for partition claiming 1/4th share in the suit property is untenable and barred by Mohammedan Law. The entire claim of the plaintiff based on concept of joint family, co-parcenary right, joint family property and other connected aspects. The parties are governed by Mohammedan Law and as such the said concept of joint family and co-parcenary right are alien and unknown to the Muslim Law. Section 52 of Principles of Mohammedan Law never recognized right by birth, thereby the entire claim of plaintiffs is nonest under law. The plaintiff failed to disclose proper cause of action for the suit for partition. Since the first defendant had executed five sale deeds infavour of Defendant No.2 on 01.02.2018 and 07.05.2018, as such the present claim of plaintiffs for share over the suit properties is not maintainable. The learned counsel appearing for the petitioners submits that the plaintiffs filed the present suit based on the concepts which are all not recognized by Mohammedan Law and thereby the present suit is specifically barred and liable to be rejected. Thus, he prays to allow the petition. To fortify his contention, the learned counsel for the petitioners / plaintiffs relied the following precedents to support his contention,

(i) *S.Ajija Begum V/S S.Aisha Bevi (Died), 2017 CJ (Mad) 379,*

(ii) Mukhtar ahmad,; Eqbal Ahmad and Aftab Ahmad V/S Mahmudi Khatoon and Ors., 2010 CJ (Jhar) 2475,

(iii) Mohd Nadeem Vs. Mohd Rafi on 22 December, 2020, RSA 72/2020 & CM Appls.34101 - 03/2020, Delhi High Court.

3. Per contra, it is the specific case of the Respondents / Plaintiffs that the present petition was filed with an intention to drag the matter and as such it was filed at the stage of trial. Without understanding the plaint averments in a proper prospective, the defendants 2 and 3 filed this frivolous petition to reject the plaint. The plaintiffs' father gave oral gift which is permissible under Mohammedan Law and thereby the petition is liable to be rejected. The petitioners / defendants 2 and 3 purposely suppressed to the fact relating to O.S.No.212/2020 and filed this petition for rejection of plaint with oblique reasons. The learned counsel appearing for the plaintiffs submits that the right and entitlement of plaintiffs will be decided only after adjudication of trial and their rights cannot be decided at the stage of rejection of plaint. Thus, he prays to dismiss the petition.

Points for consideration :

4. Whether this application filed under order VII Rule 11 (a) and (d) of CPC R/w. Section 151 of CPC by the petitioner is maintainable ?

On the Points :

5. Heard both sides. Petition, Counters and case materials are carefully perused and considered, in the light of arguments advanced by the learned counsels appearing for the litigants as well as precedents circulated by the litigants.

6. The scope of Rule 11 of Order VII CPC has been explained in various decisions and the legal principles deducible are that, if the Plaint does not disclose the cause of action or is barred by law; can be rejected. Further, where the litigation was utterly vexatious and abuse of process of Court; if any one of the conditions mentioned under the Rule were found to exist, thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation, the Court can invoke Order VII Rule 11 CPC to avoid miscarriage of justice. Thus, the provision of Order VII Rule 11 CPC being procedural is designed and aimed to prevent vexatious and frivolous litigation. It is trite law that to consider and appreciate the plea of Rejection of Plaint under Order VII Rule 11 of CPC, the plaint and the plaint documents are germane, no external material facts can be looked into. There may not be any mini trial in the form of Rejection of Plaint to adjudicate upon the right and claim of litigants. The court cannot conduct a roving enquiry to find out whether the

averments made in the plaint are true or false, at the stage of Order VII Rule 11 CPC.

7. On perusal of case records, it is noted that the Petitioners mainly focused on the concepts of Mohammedan Law in respect of joint family property and co-parcenary property with reference to suit schedule property, to decide the claim of rejection of plaint. This Court has no quarrel on the settled legal prepositions in respect of Mohammedan Law of Inheritance. On further scrutiny, it is noted that the plaintiffs set out various aspects about their alleged devolution of suit property in the plaint. As mentioned above the Defendants by relying principle of Mohammedan law of inheritance with reference to birth right, they have filed their Written statement and the present petition to reject the plaint. The suit stands for Trial. As discussed above, the plaintiffs are not only claimed right over the suit property based on the inheritance and they have also claiming right as per alleged Oral gift. In such circumstances, only after completion of a lawful trial, the alleged rights and claim of the litigants can be adjudicated in a proper manner, and it cannot be demonstrated at the stage of rejection of plaint. It is also noted that the plaintiffs categorically set out the cause of action in para No.IV of the plaint. The plaintiffs and defendants are claiming two different devolution based on the Oral gift in one side as well as based on the sale deeds on 01.12.2008 and 07.12.2008 in another side.

The rights and liabilities of the litigants cannot be decided at the stage of rejection of plaint. The grounds raised in this petition are not fit in with Order VII Rule 11 CPC. Thus, the present petition for rejection of Plaint is deserves to meet the fate of dismissal.

Conclusion :

8. In the result, the petition to reject the plaint is hereby dismissed. No costs.

//Dictated by me to steno-typist, and computerized by her, corrected by me in my Official Laptop, and pronounced by me in the open court on this the 20th day of March, 2023//

Sd/- **S. Prakash**, B.Sc., B.L., LL.M.,
I Additional District & Sessions Judge,
Cuddalore.

Both sides Exhibits & Witnesses :- Nil

Sd/- **S. Prakash**, B.Sc., B.L., LL.M.,
I Additional District & Sessions Judge,
Cuddalore.

Draft / Fair Order in
I.A.422/2022 in O.S.316/2020
20.03.2023.