

IN THE II ADDITIONAL CITY CIVIL COURT, CHENNAI

Present: Tmt.S.Tasneem, M.L.,

II Additional Judge

City Civil Court, Chennai

Wednesday the 5th day of March, 2025

I.A.No. 7 of 2024

in

O.S.No.5283 of 2023

CNR No.TNCH01-033144-2023

P.Jeganathan, S/o.Poolpandi, residing at No.18A, Puliyanthoppu North Street,
Meenakshipuram, Tirunelveli-627859.Petitioner/4th defendant

//Vs//

1.P.Venkateswaran, S/o. Palanisamy, residing at No.15, J Parvathipuram Muthureddy
Street, Parvathipuram, Vadalur, Cuddalore District 607 303.

....1st Respondent/Plaintiff

2.S.Vinoth, S/o. Sankarapandian, Residing at No.24A, Sammanthar Street,
Tirunelveli Town, Pincode-627006.

3.S.Muthuganesh, S/o. Sankarapandian, Residing at No.24A, Sammanthar Street,
Tirunelveli Town, Pincode-627006.

4.M.Saravanan, S/o. Murugan, Residing at No.7, Amaravathi Nagar, Palaiya Pettai,
Sarathapuram North Street, Pettai, Thirunelveli

.....Respondents 2 to 4/ defendants 1 to 3

This petition came up on 19.02.2025 for final hearing before this Court in the
presence of and M/s.N.Sivaprakash, N.Manikandan, K.Sudha and
K.Su.Kunjalambikai, Counsel for Petitioner/4th defendant and M/s. S.Sumathi,
N.Sivakumar, K.Ganeshkumar and M.Ashok, Counsel for 1st respondent/plaintiff and
M/s.C.Vigneswaran, T.Srivadivu, Counsels for the 2nd Respondent/1st defendant and
M/s.P.Manojkumar, Vasantha Kumar and S.Suganrajan, Counsels for 3rd

respondent/2nd defendant, M/s. J.Povas, M.Muthuseran and E.Venmani, Counsels for 4th respondent/3rd defendant, and upon perusing the petition, and connected records and upon hearing arguments of both sides this court delivered the following:

ORDER

This petition is filed by the petitioner under Order VII Rule 11 of CPC to reject the plaint in O.S.No. 5283 of 2023.

2.The averments in the affidavit filed in support of the petition in short as follows:-

2.1.The Petitioner is the 4th defendant. The above suit had been filed by the 1st Respondent/ Plaintiff for recovery of money by directing the petitioner/4th defendant herein and the respondents 2 to 4 jointly and severally, to pay to 1st Respondent/ Plaintiff the sum of Rs.6,50,000/- being the margin money/ part consideration paid by the 1st Respondent/ Plaintiff to purchase the car bearing registration certificate No. TN22 DC 5200 (under Motor Vehicles Act) with pre suit interest of Rs.2,77,906/- from 14.09.2020 to 08.08.2023 @ 14.75% totaling Rs. 9,27,906/- and with future interest on Rs. 6,50,000/- @ 14.75% P.A. from the date of the suit to the date of realization and for other relives. There is no cause of action against this petitioner for filing the above suit by the 1st respondent/plaintiff herein. There is no presuit notice caused to this petitioner by the 1st respondent/plaintiff before filingt the present suit. The suit has been filed by the 1st respondent/plaintiff as if the cause of action arose within the jurisdiction of this Hon'ble Court.

2.2.This petitioner is residing at Tirunelveli and this petitioner is no way responsible or connected to the entire alleged incidents stated by the 1st respondent/plaintiff in the plaint. The Plaint document will throw much light that the relives prayed for in the above suit are not maintainable and also do not disclose no cause of action for filing the above suit before this Hon'ble Court. No document had been filed along with the Plaint by the 1st Respondent/ Plaintiff to show that this petitioner guaranteed the amounts payable by the Defendants 1 to 3 to the Plaintiff. This petitioner have been dragged to the above case unnecessarily and there is no privity of contract in between this petitioner, the Plaintiff as well as the Defendants 1 to 3. Therefore the above suit suffers for Mis-joinder of Parties.

2.3.This petitioner is in no way connected to any of the allegations made by the 1st Respondent/ Plaintiff in the Plaint. Without admitting the allegations made against this petitioner by the 1st Respondent/ Plaintiff , those allegations do not fall under the cause of action for filing the above suit as against this petitioner before this Hon'ble Court. The entire allegation made against this petitioner by the 1st Respondent/ Plaintiff is only for the purpose of illusory cause of action. This petitioner never called the Plaintiff for a meeting on 28.12.2021 for settling the amount payable to the Plaintiff. There is no necessity for the petitioner to call for the meeting as this petitioner don't have anything with the Defendants 1 to 3. This petitioner had not guaranteed/ oral guaranteed to the Plaintiff for the money due by the Defendants 1 to 3. The 1st Respondent/ Plaintiff had not entered with any

consensus with this petitioner either at the time of purchasing the said car and also for the alleged payments made towards purchase of car by the 1st Respondent/ Plaintiff. Had that be so the 1st Respondent/ Plaintiff would have sent a notice prior to filing of the above suit stating that this petitioner stood as a guarantor as stated above. The non issuing of the legal notice by the Plaintiff prior to the filing of the above suit will prove that the above suit has been filed for speculative purpose.

2.4.This petitioner had not stood as guarantor as stated herein above, the 1st Respondent/ Plaintiff cannot make an allegation that he is liable to pay damages. Unnecessarily to harass this petitioner the 1st Respondent/ Plaintiff had made such bald allegation as against this petitioner. There is no supporting document filed by the 1st Respondent/Plaintiff to state that there had been an alleged meeting held on 28.12.2021 and this petitioner guaranteed the money payable by the Defendants 1 to 3 to the Plaintiff. Since there is no document and no pre suit notice has been issued to me clearly leads to the conclusion that there is no cause of action as against the petitioner and so the above suit is to be rejected.

2.5.The above suit is hit by Mis-joinder of necessary party and no cause of action as against this petitioner. The 1st Respondent/ Plaintiff had only made an illusory cause of action for filing the above suit as if there is a cause of action as against this petitioner for filing the above suit. It is therefore prayed to reject the Plaint as there is no of cause of action as against the Petitioner/4th Defendant.

3.The counter filed by the 1st respondent/Plaintiff in short as follows:-

The petition itself is not maintainable and has no merits for the following reasons:

(i) The plaint discloses cause of action against petitioner/ 1st defendant and against 2nd to 4th respondents/ 2nd to 4th defendants and therefore, plaint cannot be rejected at all under any provision of CPC.

(ii) To see whether plaint discloses cause of action or not is one thing. To see whether adequate evidence is available to prove the cause of action is another thing. Plaint disclosing cause of action cannot be rejected, even if the possibility of success of the plaint/suit is very thin.

(iii) The petition discloses no single reason that attracts any clause in Order VII Rule 11 CPC.

(iv) The petition is completely outside the scope of Order VII Rule 11 CPC.

(v) Plaint cannot be rejected if it discloses cause of action atleast against any one defendants.

(vi) Plaint pleading discloses that the defendants are not only necessary parties but also proper parties. Therefore, neither plaint shall be fully or partially rejected nor any defendant shall be removed.

(vii) The petition was filed with the only malafide intention to delay and drag the trial of the suit knowing well that the petition has no merits in law and in facts.

(viii) There is no misjoinder of parties. Even if so, plaint cannot be rejected.

(ix) Complaint is filed rightly before jurisdictional court. Even if not so, complaint cannot be rejected.

(x) Pre-suit notice is not mandatory and it cannot be said that the complaint discloses no cause of action merely because pre suit notice not served to defendants.

(xi) Evidence does not limit to documents. A fact can be proved in many ways. It cannot be said complaint discloses no cause of action merely because no document was produced for the alleged involvement /promises of defendants.

(xii) The petition has no merits in law and in facts.

Hence it is therefore prayed to dismiss the petition.

4. The point for consideration:-

1. Whether the complaint has to be rejected or not?

5.POINT:

5.1. A complaint shall be rejected in any one of the following grounds elicited under order VII Rule 11(a) to (f) of the CPC. For better appreciation the above provision of law is extracted below:-

“11. Rejection of complaint.— The complaint 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 complaint is written 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 exceptional nature for correction 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.”

5.2.Perusal of Order 7 Rule 11 shows that the plaint can be rejected only if it appears from the statement in the plaint to be barred by any law. It is an undisputed canon of codified civil jurisprudence that the legislative intent behind the provisions of Order VII Rule 11, is to bring the finality to a civil lis before the court at the very threshold, provided, the grounds stated therein for **rejection** of a **plaint** are satisfied. On a close scrutiny of the arguments of both sides it is seen that the provision under Order 7 Rule 11 cannot be applied to the present facts of the case. Since the the above suit is filed seeking the relief of recovery of money by directing the Defendants 1 to 4 jointly and severally, to pay to 1st Respondent/ Plaintiff the sum of Rs.6,50,000/- being the margin money/ part consideration paid by the 1st Respondent/ Plaintiff to purchase the car bearing registration certificate No. TN22

DC 5200 (under Motor Vehicles Act) with pre suit interest of Rs.2,77,906/- from 14.09.2020 to 08.08.2023 @ 14.75% totaling Rs. 9,27,906/- and with future interest on Rs. 6,50,000/- @ 14.75% P.A. from the date of the suit to the date of realization and for other reliefs. Though the petitioners would contend that there is no cause of action and the plaintiff has not proved the oral agreement existing between the plaintiff and defendants 1 to 3 and that the 4th defendant has stood as a guarantor for the said agreement, as far as suits for recovery of money are concerned, it is the bounden duty of the plaintiff to establish a strong prima facie case and the burden lies entirely on the shoulders of the plaintiff to prove the consideration. Regarding the Cause of Action, this Court would rely upon the Hon'ble Apex Court in its judgment in the case between **P.V. Guru Raj Reddy v. P. Neeradha Reddy reported in (2015) 8 SCC 331** has held as below:-

“5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred

under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant.”

5.3. Further, in **Chhotanben v. Kirtibhai Jalkrushnabhai Thakkar**, in the case reported in **(2018) 6 SCC 422**, the Hon’ble Apex Court has held as below:-

“15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18-10-1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellant plaintiffs is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers, original Defendants 1 and 2, in favour of Jaikrishnabhai Prabhudas

Thakkar or Defendants 3 to 6. They acquired that knowledge on 26-12-2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realized the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original Defendants 1 and 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half ($\frac{1}{2}$) portion of the land so designated towards their share. However, when they realised that the original Defendants 1 and 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the trial court opined that it was a triable issue and declined to accept the application filed by Respondent 1-Defendant 5 for rejection of the plaint under Order 7 Rule 11(d). That view commends to us. ...

19. In the present case, we find that the appellant-plaintiffs have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original Defendants 1 and 2 by keeping them in the dark about such execution and within two days from the refusal by the original Defendants 1 and 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the trial court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order 7 Rule 11(d) CPC.”

5.4.The Hon'ble High Court of Madras held in

Palaniswamy ..vs.. S.B.Subramani, 2001(1) CTC 300

Para 9 of the Judgment

“ Order – 7 Rule 11 CPC - For the limited purpose of determining the question as to whether the suit has to be wiped off under Order 7 Rule 11 of CPC, the averments in the plaint are only to be looked in to. So long as the plaint discloses cause of action and raises question fit to be decided by the Court, mere fact that the plaint is framed in a different manner and such framing of the plaint would make the case weak and not likely to succeed could never be a ground for striking a plaint”

Further in the case between

P. Chidambaram Vs. R. S. Rajakannappan, 2012 (3) CTC 673,

In Para 32.2, the Hon'ble High Court of Madras has held that,

“Normally a plaint can be rejected only if there is absolutely no cause of action and the same cannot be rejected if there is a lack of cause of action”.

5.5.Further in the case between

Yrooj Ahamed Lords Enterprises ..Vs.. Preethi Kitchen appliances

Pvt.Ltd, 2013(6) CTC 247,

the Hon'ble High Court has rightly held that,

“A cause of action would constitute bundle of facts. It implies a right to sue. There is a difference between a non-disclosure of cause of action and a defective cause of action. There is no difficulty in appreciating the position of law that an application under section Order

VII Rule 11 CPC would govern a case of non-disclosure of a cause of action. However, it does not govern a defective cause of action”.

5.6. Further, the Hon’ble Supreme Court in

Dahiben Vs. Arvinbhai Kalyanji Bhansai 2020 SCC On line 563

in Para 11 has held that,

“The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision”.

Astral Cables Ltd., Delhi – 6 ..vs.. National Small Industries Corporation Ltd (A Government of India Enterprise) rep. By its Chairman cum Managing Director, 111-B/118, Sector-18, Shopping Complex, Noida 201 301 and Chennai and Another, (2011) 7 MLJ 438

“Code of Civil Procedure (5 of 1908), Order 7 Rule 11 – Rejection of plaint – While considering application, strength or weakness of plaintiff’s case not to be seen – Plaint averments to effect that part of cause of action has arisen in Chennai – Learned Single Judge no right in rejecting plaint on ground that no part of cause of action has arisen in Chennai – Findings on said ground of cause of action set aside – How-ever, plaint liable to be rejected on different ground under Order 7 Rule 11(d) CPC.

RATIO DECIDENDI: Where the allegations made in the plaint prima facie discloses a cause of action, plaint cannot be rejected and the question whether the plaint discloses any cause of action is to be

decided by looking at the plaint averment and not the defence set up in the written statement.”

5.7.The learned counsel relied upon Hon'ble Apex Court Judgment reported in 2004(9) SCC 512, where it has been clearly held as below :-

“Whether a plaint disclose a cause of action or not is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is to whether if the averments made in the plaint are taken to be correct in its entirety, a decree would be passed.

A Cause of Action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the afore mentioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence”

5.8.Further the Hon;ble High Court, Madras held in

2013 (1) TLNJ 469 (Civil), Vasagam Vs Jothi and Ors

“Civil Procedure Code 1908, as amended, Order 7, Rule 11 – Application filed for rejection of plaint on the main ground that there was no cause of action disclosed in the plaint and the Court fees paid after valuing the suit was also erroneous – application was dismissed by trial court – on revision held that serious legal issues involved in a suit could not be brought within the narrow campus of Order VII Rule 11 of the Code of Civil Procedure and the parties should go the whole hog in conducting

trial and ultimately the Court has to render its decision – CRP (PD) dismissed”

5.9. The Hon’ble Apex Court had held in various decision that while dealing with such an application seeking rejection of a plaint, ought to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon. In this regard, while making such a determination, courts would have to disregard the pleas taken by the defendant in the written statement and application for rejection of the plaint on merit. So, while determining any application filed under O 7 R11, the courts should restrict itself to the plaint and should not go into the detail facts as provided under the written statement or even the application filed under O7 R 11. The Hon’ble Apex Court time and again in its various judgments reiterates that whether the plaint discloses a cause of action or not is essentially a question of fact. However, whether it does or does not must be found from the reading of the plaint itself during which the averments made in the plaint in their entirety must be held to be correct. In other words, the plaint must be construed as it stands, without addition or subtraction of words.

5.10. The Hon’ble Apex Court in its Judgment in

Sopan Sukhdeo Sable Vs. Asstt. Charity Commr., (2004) 3 SCC 137)

had held as below :-

“The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order X of the Code is a tool in

the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised.”

5.11.As far as this case is concerned, as contended by the respondents, the above case is purely civil in nature and all the issues could be decided only after a full fledged trial of the case is heard and only then the controversy can be decided after evidence is adduced by both sides. Further a court cannot look into the **plaint** alone for determining the merit of the suit, it has to examine the pleadings of the respective parties and the documents filed along therewith since the orders of the court passed under these provisions have serious repercussions on the rights of the parties and as such they need to be construed strictly and would not normally admit a liberal or an enlarge construction which would bring within its ambit and scope of the provisions what is not specifically provided. Our Hon'ble High court has clearly held that a mixed question of law and fact cannot be decided in the initial stage itself. Hence, the contentions raised by the petitioner cannot be a ground to reject the plaint at this stage. But however after hearing the arguments putforth by both the parties it is now seen that deciding the issue at a premature stage is not a proper judicial approach. The petitioners have to work out their remedies during the trial proceedings and the reasons stated by the petitioners in their affidavit are

not suffice to dismiss the entire suit. There is no material documents marked on the side of the petitioner and no oral evidence is adduced. The issue involved can be decided after examining the parties after framing necessary issues and after adducing sufficient oral and documentary evidence on both sides since it is a settled proposition of law that to reject the plaint under Order VII Rule 11 (a) of the Code, the petitioner / defendant should establish that there is no legally sustainable cause of action, to seek the relief as prayed for in the plaint. On the other hand, if the allegations in the plaint *prima facie* show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. It is also a settled position of law and it is an admitted fact that the averments in the plaint are sufficient to prove that where the cause of action is mentioned and averred in the plaint, there is no need to decide as to whether the cause of action averred in the plaint is true and correct. In view of the above citations which suits the present case in our hand, this court of the view that the plaint cannot be rejected at present without any material evidence placed before the Court. The issues raised by the petitioner / defendant will be decided by looking at the plaint averment and not the defence set up in the written statement. From the plaint averments and the cause of action disclosed in the plaint, there is *prima facie* evidence available as per the plaint documents and now this court of the view of that the question of no cause of action will be decided during the course of trial. Hence this court is

not inclined to allow this petition to reject the plaint in total. Under such circumstances, I am not inclined to allow this petition.

In the result, this petition is dismissed No costs.

Directly dictated to the stenographer, computerized by her, corrected and pronounced by me in the open Court, this the 5th day of March 2025.

II Additional Judge.
City Civil Court, Chennai.

List of Witness and Exhibits on both side: Nil

II Additional Judge.
City Civil Court, Chennai.

Draft / Fair : Order
I.A.No.7/2024 in
O.S.No.5283 of 2023
Dated: 05.03.2025
II Additional City Civil
Court, Chennai.