

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**
PG.D.PM/IR.,
ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Monday, the 28th Day of October 2024

I.A. No.8/2024

-in-

O.S. No.44/2017

1. Premasekaran

2. Jeyabaskaran

... Petitioners / Defendants 1, 2

-Vs-

Sujatha *through her*

Power Agent Mr.Subramaniam

... Respondent / Plaintiff

This petition came on 03.10.2024 before this Court for final hearing in the presence of Tvl. A.Kalyanasundaram, S.Mohammedsulaiman, P. Suresh Baskaran, Advocates for the Petitioners, Tvl. P. Jeganathan, J.P.Arjun, A.Arun Krishna Kumar, Advocates for the Respondent and on heard their arguments and on perusal of records, this Court delivers the following :

ORDER

Petition filed by the Petitioners / Defendants 1 and 2 Under Order 7, Rule 11 of Civil Procedure Code seeking orders to reject the plaint.

2. **The contention of the petitioners in brief :**

The plaintiff has filed the suit for partition of 1/6th share through her

Power Agent. Trial was commenced and PW1 was examined and the suit is posted for cross examination of PW1. These petitioners have filed a detailed written statement in the suit. Father of the petitioners / defendants 1 and 2 had executed a Will dated 02.08.1991 bequeathing the suit properties to these petitioners / defendants 1 and 2. The plaintiff and defendants 3 to 5 have attested the said Will. The said Will was executed long back on 02.08.1991. Later, as per the Will, the defendants 1 and 2 have divided the suit properties among themselves by way of a registered Partition deed dated 14.06.2002 vide document no.1776/2002. Since then, these defendants 1 and 2 are alone are enjoying their respective shares. Since, the suit properties were already divided and dealt with by documents long back, the plaintiff being a female legal heir is not entitled for partition in the suit properties as per the provision of Section 6 of the Hindu Succession Act. Thus, the plaintiff has no cause of action for the suit as the plaintiff is not entitled for any share in the suit properties. Similarly, these defendants 1 and 2 have been enjoying the said properties separately for more than 15 years and the suit is barred by limitation. The plaintiff is excluded from possession for more than 15 years and the court fees paid u/s. 37 (2) of Tamil Nadu Court Fees Act is wrong and she should have paid court fees u/s. 37 (1) of Tamil Nadu Court Fees Act at the value of Rs.25,05,42,916/- and the court fee of Rs.75,16,287/- should be

paid. Since, the plaintiff has not paid proper court fee, she should be directed to pay the deficit court fee, failing which the plaint has to be rejected. Since, the plaintiff is an attesor she has filed the suit through her husband. The suit is nothing but an abuse of process of law and hence the plaint has to be rejected for the reasons stated above. The petition to reject the plaint can be filed at any time before judgment and so the petition is maintainable. Thus, the petitioners have prayed that the suit is not maintainable as there is no cause of action, it is barred by limitation and court fee paid is not correct and so have prayed to reject the plaint.

3. **The contentions of the respondent in brief:**

The petition filed by the petitioner is not maintainable and the plaint cannot be rejected merely on the ground that the plaintiff is not entitled for any relief. The cause of action is a bundle of facts and law and the parties must let in evidence to prove the same. Similarly, the question of limitation is also a mixed question of facts and law and cannot be decided in petition under Order 7 Rule 11 of CPC, but only after a full fledged trial. Mere deficiency in court fees cannot be a ground to reject the plaint and the plaintiff must be given time to make good the deficiency. Opportunity must be given to the plaintiff to rectify the defects like deficit court fee and the plaint cannot be

rejected for the said reasons. The defendants have admitted that the suit properties are ancestral and the validity and legality of the said Will and the Partition deed are matters that require detailed examination of evidence and cannot be decided in petition under Order 7 Rule 11 of CPC. The petition is filed with inordinate delay and without any reasonable cause and has to be dismissed. Hence, the respondent prays that the plaint has cause of action and the objection regarding the court fee is unfounded and the suit is not barred by limitation, so the plaint cannot be rejected and the petition must be dismissed.

4. The point for determination in this petition is “ **Whether the petition be allowed ?**”

5. No oral or documentary evidence was let in by either party.

6. Heard the arguments on both sides.

7. **ANSWER TO POINT :**

This petition is filed by the defendants 1 and 2 to reject the plaint on the following three grounds. (i) No cause of action, (ii) Barred by limitation and (iii) the Court fee paid is incorrect. Thus the petition is filed under Sub Rule

(a), (b) and (d) of Rule 11 of Order 7 CPC. Therefore, this court deems it appropriate to deal with each ground separately to find out whether the plaint can be rejected.

(i) **Cause of Action:**

8. The main contention of the petitioners/defendants 1 and 2 to reject the plaint is that the plaintiff is not entitled for any relief much less partition of 1/6th share since the properties are already dealt with by the documents namely the Will dated 02.08.1991 in which the plaintiff and the other sisters and mother (D3 to D5) are attestors. Similarly, these defendants 1 and 2 have divided the suit properties by way of a registered partition deed dated 14.6.2002 much earlier to the cut of date namely 20.12.2004 and hence the plaintiff being a female heir is not entitled to any partition as per Sect 6 of Hindu Succession Act as amended in 2005. Therefore, they would contend that since, there is no cause of action to file the suit for partition as the properties were already divided earlier to 20.02.2004, the plaint has to be rejected. The learned counsel for the petitioners contended that even though the petition is filed when the case is posted for cross examination of PW.1, the same is maintainable as it could be filed at any time before pronouncement of judgment. He relied upon the decision of “***K.R. Andu Gowder and others***

Vs. Saroja and others¹ . wherein it is held that

“The application is maintainable even at the time of pronouncement of the judgment”.

9. This Court has no hesitation to hold that a petition to reject the plaint can be filed at any stage before pronouncement of judgment as per the dictum of the Hon’ble Supreme Court in ***“I.T.C Vs. Debt Recovery of Tribunal and other”***². The said decision was followed by the Hon’ble Madras High Court in ***“K.R. Andu Gowder and others Vs. Saroja and others”***. Therefore, this court hold that the petition to reject the plaint filed after examination of PW1 is very well maintainable.

10. The learned counsel for the respondent argued that the plaint cannot be rejected just because the plaintiff is not entitled to any relief when the plaintiff has specifically pleaded clear cause of action. He also relied upon the decisions of Hon’ble Supreme Court in ***“ Gurudev Singh Vs. Harvinder Singh”***³ . He further relied upon the decisions of Hon’ble Madras High Court in i) ***“Amsaveni and other Vs. Revathi”***⁴ and ***“R.Pavayee and others Vs.***

¹ 2023 (5) L.W. 1111

² (1998) 2 SCC 70.

³ 2022 Live Law (SC) 963

⁴ CRP (PD) No.3045/2018 dated 2.7.2021

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N.Pavayee and others⁵. In these decisions the Hon’ble Higher Courts have categorically held that the plaint cannot be rejected merely because the petitioner claims that the plaintiff is not entitled to any relief in the suit. Similarly, the Hon’ble High Court of Madras has also categorically held that ;

“ Parties should let in evidence to prove the contentions raised by the petitioners and the cause of action of the plaint is vital of facts and law and it cannot be rejected in limine”

On the other hand, the learned counsel for the petitioners’ contended that since the plaintiff is not entitled for claiming partition as per the Sec.6 of Hindu Succession Act, as the suit properties were already divided under the partition deed dated 14.6.2002, the plaint has to be rejected.

11. In this regard, this court is aware that while deciding an application to reject the plaint under Order 7 Rule 11 CPC, the averments of the plaint alone has to be considered and the contentions raised in the written statement shall not be looked into. This proposition has been well settled by the decision of the Hon’ble Supreme Court in ***“R.K.Roja Vs. U.S.Rayudu and another”***⁶. In the said decisions the Hon’ble Supreme Court has categorically held that

“The consideration of the application for rejection should not be

⁵ **CRP (PD)4271 /2018 dated 16.6.2021.**

⁶ **(2016) 14 SCC 275**

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on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the applications for rejection of plaint. The Court has to consider only the plaint as a whole, and in case the entire plaint comes under the situations covered by Or.VII Rule 11(a) to (d) of the CPC, the same has to be rejected.”

12. It is also important and pertinent to refer to the decision of the Hon’ble Supreme Court in **“Church of Christ Charitable Trust and Educational Charitable Society, rep. By its Chairman vs Ponniammal Educational Trust by Chair person ((2012) 8 S.C.C 706)**, wherein it has held that,

“ The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against defendant. Every fact which is necessary for the plaintiff to prove, to enable to get the decree should be set out in clear terms.”

Similarly, it is well settled that for the purpose of finding out whether the plaint discloses a cause of action or not, the averments made in the plaint in their entirety must be held to be correct. In **“Ravi Setty Venkatramana Vs. Nasyam Jamal Sahib”**⁷, the Hon’ble Supreme Court has held;

“The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed”

⁷ 2023 INSC 456

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13. Therefore, this Court has to read the plaint in its entirety to find out if a cause of action is made out. A careful perusal of the plaint shows that the plaintiff has pleaded that the suit properties are ancestral properties and that she is entitled for 1/6th share in the suit property. As rightly pointed out by the learned counsel for the respondent, the plaint reveals cause of action for filing a partition suit and the question about the legality and validity of the alleged Will dated 2.8.1991 and the partition deed dated 14.6.2002 can be looked into only after giving an opportunity to the parties to let in evidence and prove or disprove the same. The correctness or otherwise, the validity or otherwise, and the legality or otherwise, of those two documents cannot be considered or decided in the petition under Order 7 Rule 11 CPC. Thus, in view of the decisions in ***“Church of Christ Charitable Trust and Educational Charitable Society, rep. By its Chairman vs Ponniammal Educational Trust by Chair person”***, while considering the plaint in its entirety, this Court finds that the plaintiff has clearly pleaded that the suit properties are ancestral properties belonging to her father and that the plaintiff and the other defendants also have share in the said properties, as per the Hindu Succession Act, as amended in 2005. It is also pleaded by the plaintiff that the defendants are making encumbrances which would not bind her. Therefore, in a suit for partition, it is sufficient if the plaintiff has pleaded that

the suit properties are the ancestral properties, tracing out the title and also that the plaintiff has a specific share in the said properties so as to make out the cause of action. Further whether the plaintiff is entitled to such share or not can be looked into only during the Trial of the suit and not at this stage.

14. Therefore, it is held that the plaint clearly reveals the cause of action for the suit for partition and it cannot be rejected on the ground that there is no cause of action for the suit. Further as per the decision of the Hon'ble Supreme Court in “ *Gurudev Singh Vs. Harvinder Singh*” case, the plaint cannot be rejected merely because the petitioners/defendants 1 and 2 claim that the plaintiff is not entitled to any relief.

(ii) **Barred by Limitation:**

15. The other ground on which the plaintiff has sought to reject the plaint is, on the question of limitation. The learned counsel for the petitioners' argued that the properties are divided and the defendants 1 and 2 are in possession of their respective shares for more than 12 years and the plaintiff is ousted from possession and hence her claim for partition is barred by limitation.

16. It is needless to state that the question of limitation cannot be considered as a pure question of law in this case. Since the defendants 1 and 2 have claimed that they have divided the properties and are enjoying the same for more than 12 years, it is for them to establish the same during trial. The question of limitation is a mixed question of fact and law and hence it is a triable issue, in the present case, since the ouster of plaintiff or the exclusive possession of the defendants 1 and 2 have to be proved by letting in evidence. Thus, the question of limitation cannot be decided in the proceedings under Order 7 Rule 11 CPC and the same has to be decided only at the time of trial. This proposition has been held by the Hon'ble Supreme Court in “***Salim D.Agboatwala and others Vs. Shamaji Oddhavji Thakkar and others***”⁸ Therefore this court is of the considered opinion that the question of limitation raised by the defendants 1 and 2 in this case is a mixed question of facts and law and it cannot be decided in the proceedings under Order 7 Rule 11 CPC and that the plaint cannot be rejected on the ground that it is barred by limitation.

(iii) **Court Fee paid is not correct:**

17. The learned counsel for the petitioners contended that the plaintiff has

⁸ AIR 2021 Online SC SC 731
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been ousted from possession and these defendants 1 and 2 alone are in exclusive possession of the suit properties and hence the court fee paid by the plaintiff u/s.37(2) of Tamil Nadu Court Fees Act is wrong. He would contend that the plaintiff should have paid the Court fees u/s.37(1) of the Tamil Nadu Court Fees Act valued at *Ad-Valorem* basis and should not have paid fixed court fees. He relied upon the decision of the Hon'ble Madras High Court in ***“Gurunathan and others Vs. Thenmozhi and others”***⁹. In the said decision the hon'ble High Court has held that the question of sufficiency of court fees must be decided by the Trial court as per the decisions of the Division Bench of the Madras High court in ***“S.N.S. Sugumaran Vs. C. Thangamuthu”***¹⁰. Therefore, he would argue that the court has to decide whether the court fees paid by the plaintiff is correct or not and it has to direct the plaintiff to pay the deficit court fees. He would further argue that the plaintiff should pay a court fee of Rs.37,16,287/- u/s.37(1) of Tamil Nadu Court Fees Act and should be directed to pay the same and if the plaintiff fails to pay such Court fee, the plaint must be rejected.

18. Per contra, the learned counsel for the respondent argued that the objection as to the court fees is unfounded and the plaintiff being a share

⁹ **C.R.P. No. 1050/2017 dated 29.4.2022.**

¹⁰ **2012 (5) CTC 705 (DB)**

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holder has to be considered to be in joint possession until the properties are divided in metes and bounds and the respective shares are allotted to the parties. Therefore, he would argue that the court fee paid u/s.37(2) is correct.

19. This court on a careful perusal of the decision of the Hon'ble High court of Madras, in ***“Gurunathan and others Vs. Thenmozhi and others”*** case relied upon by the defendants 1 and 2, finds that the said decision arose from an application filed by the defendants u/s.12(2) of the Tamil Nadu Court Fees Act. In the said case, the defendants 4 to 9 had filed I.A.No.60/2015 under Order 7 Rule 11 of CPC and also u/s.12(2) of the Act. They had sought a relief that the court should take up the issue regarding the valuation of the suit and the sufficiency of court fees paid as preliminary issue and adjudicate the same. However, no such application u/s.12(2) of the Tamil Nadu Court Fees Act is filed by the defendant herein in this case to take up the issue of court fee as a preliminary issue. Hence, in the considered opinion of this court, the said decision of the Hon'ble Madras High Court is distinguishable and not applicable to the facts of this case.

20. Be that as it may, it is relevant to note that the Hon'ble Division Bench of Madras High court in ***“S.N.S. Sugumar Vs. Thangamuthu's”*** case has laid

out certain guidelines, wherein it is held that

“ii) When a defendant comes forward with a case pleaded in the written statement questioning the correctness of the valuation of the suit property and payment of court fee and asks the Court, by an application, to decide it first before deciding the suit on merits, then a duty is cast upon the Court under Section 12(2) of the State Act to first decide the objection before deciding the suit on merits.

iii)

iv) Such objection with regard to improper valuation of the suit and insufficiency of court fee shall be entertained by the Court only before the hearing of the suit on merits commences and witnesses are examined.”

But in this case, the trial has commenced and PW1 has been examined and only after examination of PW1, the petitioners have filed the application under Order 7 Rule 11 CPC to reject the plaint. It is to be noted that they have not even filed an application u/s.12(2) of the Tamil Nadu Court Fees Act to decide the issue of court fees as a preliminary issue as required. Hence, the question of sufficiency or other wise of the court fee paid by plaintiff cannot be now decided as a preliminary issue.

21. Further, this court is also bound by the decision of the constitution bench of Hon’ble Supreme Court in “**Sathappan Chettiar Vs. Ramanathan Chettiar**”¹¹, wherein it has been categorically held as follows:

¹¹ (1958) SCR 1024

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“ The amount stated by the plaintiff as the value of his claim for partition has ordinarily to be accepted by the Court in computing the court fees payable in respect of the said relief ”

Thus, the value given by the plaintiff in this case has to be accepted by this Court. The question whether she is excluded from the possession of the property or not depends on the decision of the suit and decision about the validity and the legality of the Will and partition deed. But, this cannot be decided at this stage without considering the evidence and could be done only after trial. Similarly in yet another decision, the Hon’ble Supreme Court in ***“Commercial Aviation and Travel Company and others Vs. Vimal Pannalal”***¹² wherein it is held as;

“ It is manifestly clear that the Court has to come to a finding that the relief claimed is undervalued which necessarily means that the Court is able to decide and specify proper and correct valuation of relief ”

22. Therefore, it is evident that in order to direct the plaintiff to pay the deficit court fee, the Court has to first determine the proper and correct court fee. Thus, the court must be able to determine the correct valuation of the relief in this case, which cannot be done at this stage that requires to decide whether the plaintiff is in separate possession or not by merely going through

¹² **AIR 1988 SC 1636**

the pleadings. It is needless to state that the averments of the written statement or the documents filed along with it cannot be considered by the Court while deciding an application under order 7 Rule 11 CPC. Therefore, the Court has to only consider the pleadings made in the plaint and in this case, the plaintiff has categorically pleaded that she is in joint possession of the property along with the other share holders. It is equally important to note that the Hon'ble Supreme court in "*Neelavathi Vs. Natarajan*"¹³ has categorically held as under;

"It is settled law that court fee must be considered in the light of the allegations of the plaint and its decision cannot be influenced either by the plea in the written statemet or by the final decision of the suit on merits."

23. Therefore, in view of the discussion made above and also following the decisions referred supra, this Court is of the considered opinion that the contention of the petitioners that the court fees paid by the plaintiff is not proper cannot be considered at this stage. However, it is also to be reminded that the question of court fee is between the plaintiff and the Court and the defendants cannot claim that the valuation made by the plaint is wrong. Similarly, in the decision of the Hon'ble Supreme court in "*Sathappan Chettiar Vs. Ramanathan Chettiar*" (supra), it is held that Or 7 Rule 11 (b)

¹³ AIR 1980 SC 691

contemplates correct valuation and not approximate correct valuation and such correct valuation of the relief has to be determined by the Court. If the court cannot determine the correct valuation of the relief claimed, it cannot require the plaintiff to correct the valuation and consequently order 7 Rule 11 (b) C.P.C will not be applicable. Thus, this Court is of the considered opinion that the plaint cannot be rejected under Order 7 Rule 11 (b) CPC on the ground that the court fee paid is improper.

24. In fine, the court has come to the considered conclusion that the grounds under Sub Rule (a) , (b) and (d) of Rule 11 of Order VII CPC are not applicable to this case and the plaint cannot be rejected under any of those grounds as per the detailed discussion made above. Hence, it is held that the plaint cannot be rejected under Order VII Rule 11 C.P.C. This point is decided accordingly.

In the result, this petition is dismissed with cost.

Dictated to the stenographer , transcribed and typed by her in computer, corrected and pronounced by me in the Open Court on this the 28th day of October 2024.

Sd/-Thiru.A.K.Mehbub Alikhan,
Additional District Judge,
Dindigul.

