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**(2009) 03 MAD CK 0049**

**In the Madras High Court**

**Case No :** C.R.P. (PD) . No. 3874 of 2007 and M.P. No. 2 of 2007

Kothandarama Naidu and Mohana

APPELLANT

Vs

Vasanth, Puspavathi, Tara Bai and Neela

RESPONDENT

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**Date of Decision :** 05-03-2009

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

**Citation :** (2009) 03 MAD CK 0049

**Hon'ble Judges :** G. Rajasuria, J

**Bench :** Single Bench

**Advocate :** No appearance, for the Appellant; No appearance, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

G. Rajasuria, J.—Inveighing and impugning the order dated 03.12.2007 passed by the learned VI Assistant Judge, City Civil Court,

Chennai in I.A. No. 16301 of 2007 in O.S. No. 5518 of 2005, this civil revision petition is focussed.

2. A resume and epitome of the relevant facts, which are absolutely necessary and germane for the disposal of this revision would run thus:

The respondents/plaintiffs herein filed the suit O.S. No. 5518 of 2005 seeking the following reliefs:

- to declare that the plaintiffs are class II legal heirs of the deceased Late Padmavathy

- to declare that the release deed 22.02.63 Document No. 491/63 executed by the late Padmavathy in favour of the first defendant is null and

void.

- to declare that the Settlement Deed executed by the first defendant in favour of the second defendant vide Document No. 1777/04 dated

20.07.2004 is null and void.

- to declare that the Settlement Deed dated 10.9.2003 Doct. No. 1991/03 in favour of the second defendant is null and void.
- to declare that the sale deed dated 16.2.63 Doct. No. 400/63 in favour of the first defendant is null and void as Benami Transaction.
- consequently an order of injunction restraining the defendants or their men, agents or servants from alienating in any manner the suit schedule mentioned property.

While so, the defendants entered appearance and filed their written statement. Thereafter, it appears the matter was posted for trial and PW1 was

examined and documents were marked and at that stage, the defendants filed I.A. No. 16301 of 2007 under Order VII Rule 11 of the CPC for

rejecting the plaint on the main ground that the bedrock of the plaint is based on Benami Transaction and the suit itself was also barred by

limitation. After hearing both the sides, the lower court dismissed the said I.A. Being disconcerted by and dissatisfied with the order of the lower

court, this revision has been focussed on various grounds, inter alia thus:

The order of the lower court is against law and weight of evidence as the delay aspect alone was considered by the lower Court without

considering the applicability of The Benami Transactions (Prohibition) Act, 1988, and without application of mind, the order was passed. The

lower court failed to consider the decision of the Hon"ble Apex Court reported in (2003)1 CTC 557.

3. Despite printing the names concerned, none appeared and there is no representation on their behalf.

4. A plain perusal and poring over of the typed set of papers including the copy of the order of the lower Court would exemplify and expatiate,

display and demonstrate that the lower court in its order evinced that the points raised by the defendants could be considered while deciding the

suit and not in the application under Order 7 Rule 11 of the Code of Civil Procedure.

5. At this juncture, I would like to recollect and call up, the scope of Order 7 Rule 11 of the Code of Civil Procedure. The rejection of the plaint

under the said provision would arise, if at all ex facie and prima facie from the averments in the plaint itself, the plaint could be rejected. If the

circumstances are such that after entertaining evidence on both sides only on merits, the matter has to be decided then, the question of invoking

Order 7 Rule 11 of the CPC would not arise. The following decisions of the Hon"ble Apex Court could rightly be cited fruitfully.

1. State of Orissa Vs. Klockner and Company and Others,

2. V.S. Achuthanandan Vs. P.J. Francis and Another,

3. AIR 1982 SC 1559 (Roop Lal Sathi v. Nachhattar Singh)

A plain perusal of those decisions would amply make the point clear that the facts and circumstances involved in this case would not attract Order

7 Rule 11 of the Code of Civil procedure.

6. Certain excerpts from the plaint would run thus:

10. The plaintiff submits that the late Padmavathy purchased vacant land from her own funds in the year 1959 from one Thiagarajan and

Swarnamani; the suit scheduled mentioned property measuring about 859 sq.ft.Door No. 44 and 45 Demellow Road, Pattalam, Chennai-12 by a

registered sale deed dated 30.4.59 vide Document No. 1044/59. The said late Padmavathy also purchased the adjacent vacant site in the name of

R.K.Raman alias Kothandaraman (1st defendant) measuring 1113 sq.ft.vide Doct. No. 400/63 dated 16.2.63 in R.S. No. 1725, 1717 and 1718.

O.S. No. 349. R.S. No. 1723, C.C. No. 1099. Land No. 38/L Door 1/34 in the northern side of Demollows Road, for her own funds and

purchased in the name of 1st defendant as Benami transactions. The defendant had no source of income. At the time of sale deed the said

Kothandaraman aged only 19 years....

11. The plaintiffs submit that the Padmavathi considering the age of the first defendant, who has not even attained his majority and with a view to

settle him in life allowed the first defendant to run a fire wood shop in the portion of the schedule mentioned property purchased by her. The

balance portion was occupied on rental basis.

12. ...

The plaintiffs submit that the said Padmavathi had no iota of doubt in the assurances made by the first defendant or her other brother Ramachandra

Niadu that they will take care of her aged mother and her other sisters. The plaintiffs submit that, during 1963, the first defendant taking undue

advantage of his sister's good intention and faith she had on him, got the property purchased by the said Padmavathi transferred in his name, on the guises that the property was purchased by the first defendant himself from his source of income in the name of his sister as a benami. It is pertinent to note here that, at the time of purchase of the said portion of the property by Padmavathi in the year 1959, the first defendant would have been either a minor or that he would have just attained majority, with no sufficient source of income to buy the property. Further, there was no necessity either for the first defendant to purchase the same in her sister's name as a benami. The plaintiffs submit that they are in joint possession of the suit property.

A bare perusal of those excerpts in addition to the other portions of the plaint would display it is clear that the plaintiffs approached the Court

stating that the B Scheduled property was purchased Benami in the name of D1 by Padmavathi but not the A Scheduled property. However, it

appears that the settlement deed was executed by Padmavathi in favour of D1 for some reasons. The plaintiffs impute as though the first defendant

pleaded benami and got the A Scheduled property also in his favour even though it was not covered by any benami transaction.

7. It is the contention of the plaintiffs that D1 obtained the property with some assurance that he would maintain the family of Padmavathi, etc.

Hence these are all complicate pleas, which could be gone into only at the time of trial. Even though the lower court has not elaborately dealt with

the points, nonetheless, the analysis of facts would indicate that these complicate facts cannot be decided under Order 7 Rule 11 of the CPC for

simply rejecting the plaint. The decision relied on by the revision petitioners/defendants reported in *Saleem Bhai and Others Vs. State of*

*Maharashtra and Others*, , no doubt would highlight the point that at any stage of the suit, Order 7 Rule 11 of the CPC could be invoked.

8. Here my discussion *supra* would reveal and evince that the facts involved and pleaded are not so simple as the revision petitioners/defendants

try to project so as to bring it under Order 7 and Rule 11 of the Code of Civil Procedure. One of the three decisions already referred to by me

reported in AIR 1982 SC 1559 (*Roop Lal Sathi v. Nachhattar Singh*) would highlight that there cannot be any piecemeal rejection of the plaint

also. Hence for all these reasons, I could see no merit in this revision.

9. Accordingly, the revision fails and the same is dismissed confirming the order passed by the lower court in I.A. No. 16301 of 2007. No costs.

Consequently, the connected miscellaneous petition is closed.