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**(2014) 04 MAD CK 0108**

**In the Madras High Court**

**Case No : C.R.P.(PD). No. 2379 of 2012 and M.P. No. 1 of 2012**

Narasu's Coffee Company

APPELLANT

Vs

R.P. Sarathy

RESPONDENT

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**Date of Decision : 17-04-2014**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 11(d), Order 7 Rule 14(1), Order 7 Rule 14(2)  
Constitution of India, 1950 — Article 227  
Partnership Act, 1932 — Section 48

**Citation : (2014) 3 LW 419 : (2014) 5 MLJ 710**

**Hon'ble Judges : S. Tamilvanan, J**

**Bench : Single Bench**

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**Judgement**

S. Tamilvanan, J.—This Civil Revision has been preferred under Article 227 of the Constitution of India, challenging the fair and decreetal order, dated 18.08.2011 made in I.A. No. 865 of 2009 in the suit in O.S. No. 106 of 2009 on the file of the Additional District Judge/FTC No. 1, Salem. It is seen that the suit in O.S. No. 106 of 2009 was filed by the first respondent/plaintiff against the petitioners herein and others, seeking preliminary decree for partition, dividing the suit properties into 100 shares and to allot 55 contiguous shares to the plaintiff and also pass final decree for the same by allotting the said shares, in favour of the first respondent/plaintiff.

2. During the pendency of the suit, Interlocutory Application in I.A. No. 865 of 2009 was filed by the revision petitioners/defendants, under Order 7 Rule 11 of the Code of Civil Procedure (herein after referred to as the Code), seeking an order to reject the plaint, on the ground that the first respondent/plaintiff, a retired partner is not entitled to partition and claim any share in the immovable property belongs to the partnership firm. The petitioners have stated that there is no legal cause of action, as stated by the first respondent/plaintiff in the plaint, to the relief sought for therein. Mr. S. Prabhakaran, learned counsel for the petitioners submitted that the relief sought for in the suit is based on false

averments and the relief sought for is also a vexatious claim, hence, the Application was filed under Order 7 Rule 11 of the Code, seeking an order to reject the plaint, however, the court below has not allowed the Application and rejected the suit.

3. Per contra, Mrs. Hema Sampath, learned Senior counsel appearing for the first respondent/plaintiff submitted that the first respondent/plaintiff is entitled to seek the relief, as prayed for and according to the learned Senior counsel, only the Interlocutory Application filed by the revision petitioners herein under Order 7 Rule 11 of the Code was not legally sustainable, hence, as per the impugned order, dated 18.08.2011, the Court below has rightly dismissed the Interlocutory Application.

4. Mr. S. Prabhakaran, learned counsel appearing for the petitioners submitted that the property more fully described in the plaint were admittedly the properties of Narasus Coffee Company, a partnership firm and the first respondent/plaintiff, the second petitioner/second defendant and the respondents 2 and 3/defendants 5 and 6 were partners in the firm. It is not in dispute that the plaintiff and the defendants 5 and 6 subsequently retired from the partnership firm and the defendants 3 and 4 were inducted as new partners of the first defendant firm. The counsel for the petitioners contended that the firm was subsequently incorporated into a Private Limited Company, wherein the petitioners 2 to 4 are share holders and also Directors, hence, the suit filed by the first respondent/plaintiff, seeking partition of the properties belonged to the firm is not maintainable and liable to be rejected.

5. It is an admitted fact that the petitioners 3 and 4 are wife and son respectively of the second petitioner/second defendant. The first respondent/plaintiff has stated in the plaint that due to the pressure given by the second petitioner/D2, the plaintiff and the defendants 5 and 6 were forced to retire from the firm, though the partnership business was very lucrative. The first respondent/plaintiff has further stated that the plaintiff and the defendants 5 and 6 were owning 80% of the shares of the business of the first defendant firm.

6. It is not in dispute that a Memorandum of Understanding (MOU) was entered into between the plaintiff, the defendants 2, 5 and 6 on 10.08.2006 as partners, setting out the terms and conditions with regard to certain properties being transferred in the name of the plaintiff and defendants 5 and 6, in view of the retirement of the plaintiff and defendants 5 and 6 from the firm and the second petitioner/second defendant and other partners executed a sale deed in favour of the plaintiff on 23.08.2006 in respect of 2 acres of land comprising a portion of the properties covered in Ward B, Block 2 T.S. No. 2 and 3. Similarly the second petitioner/second defendant and other partners executed another sale deed in favour of the 5th defendant in respect of 14,262 sq. feet of land in the same town survey numbers. Subsequently, the second petitioner/D2 and other partners, executed a sale deed in favour of the 6th defendant in respect of 1,09,921 sq. feet of land in Ward B, Block 11, T.S. No. 12, after execution of the

aforesaid sale deeds in favour of the plaintiff and the 5th defendant, the remaining extent in Ward B, Block 2, T.S. No. 2 and 3 is shown as Item 1 in the schedule of properties. After execution of the sale deed in favour of the 6th defendant, the remaining extent of land in Ward B, Block 11, T.S. No. 12 is shown as Item No. 2 in the schedule of properties. According to the learned counsel for the plaintiff, the plaintiff and the defendant 5 & 6 are entitled to share in the properties of the firm, though they had retired from the firm.

7. It is an admitted fact that a deed of partnership was entered into on 26.08.2006 between the first respondent/plaintiff, 2nd petitioner/2nd defendant and the respondents 2 and 3/D5 and D6. Subsequently, the first respondent/plaintiff, respondents 2 and 3/D5 & D6 retired from the partnership firm and the petitioners 3 and 4 were inducted as partners. The first respondent/plaintiff has stated in the plaint that on 01.03.2008, the cause of action arose for filing the suit, when the plaintiff lastly demanded for partition at Salem Town and other places, where the suit properties are situate. The plaintiff has further stated that major portion of the suit properties are situated within the jurisdiction of the Court below, hence, the suit was filed before the said Court.

8. Learned counsel appearing for the petitioners contended that admittedly all the suit schedule properties were the properties of the first petitioner/partnership firm, wherein the plaintiff, the second defendant and the defendants 5 and 6 had been partners. Subsequently, the partnership firm was dissolved, since the plaintiff along with defendants 5 and 6 had retired from the firm, as per the Memorandum of Understanding (herein after referred to as the MOU) entered into between the partners of the firm. As per the MOU, the first respondent/plaintiff and the defendants 5 and 6 received various properties, by way of getting sale deeds executed in their favour and also a huge sum towards their retirement, in lieu of their shares on account of their retirement from the firm, hence, filing of the suit, seeking partition is only an abuse of process of law and Court.

9. According to the learned counsel appearing for the revision petitioners, having received the immovable properties by way of registered sale deeds and huge amount towards his share, the first respondent/plaintiff is not entitled to seek partition and separate possession of the properties belonged to the firm, after his retirement. Admittedly, the suit is not for dissolution of the firm and rendition of accounts but only for partition. It is not the case of the first respondent/plaintiff that the properties are joint family properties. It is an admitted fact that the suit properties were the properties of the firm and after the retirement of the plaintiff and the defendants 5 and 6, the firm was run by the revision petitioners 2 to 4. Learned counsel for the revision petitioners submitted that the firm was subsequently, incorporated into a private limited company. On the said circumstances, whether the first respondent/plaintiff is entitled to maintain the suit, seeking partition of the properties of the firm, is the question to be decided in this revision.

10. As per the MOU, admittedly, the first respondent/plaintiff and the defendants 5 and 6 have received certain properties, by way of registered sale deeds being executed in their favour and also amount of cash towards their shares. It was argued by Mr. Prabhakaran that the plaintiff has no locus standi to maintain the suit in the year 2009, after his retirement from the firm in the year 2006. Subsequent to the retirement, the revision petitioners 2, 3 and 4 were running the firm, in view of the MOU and the consent given by the plaintiff and defendants 5 and 6, to continue the partnership firm, in the same name and style of the firm. Subsequently, the firm has been incorporated into a private limited company, hence, filing a suit, seeking partition and separate possession of 55 shares out of 100 shares is against law and as such, the suit itself is not legally sustainable. Learned counsel for the petitioners submitted that the alleged cause of action in the plaint is self contradictory and not legal to maintain the suit and the relief sought for in the plaint is also against law, hence, the plaint has to be rejected under Order 7 Rule 11 of the Code, as it is an abuse of process of law.

11. In support of his contention, Mr. S. Prabhakaran, learned counsel appearing for the petitioners relied on the following decisions and submitted that there is no cause of action for seeking partition of the suit schedule properties, even as per the plaint averments:

1. The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee,

2. Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others,

12. It is not in dispute that the properties described in the plaint schedule were the properties of Narasus Coffee Company, a partnership firm and the first respondent/plaintiff and the respondents 2 and 3/defendants 5 and 6 had retired from the partnership firm in the year 2006. As per the averments of the plaint, the first respondent, who is the plaintiff in the suit in O.S. No. 106 of 2009 has specifically stated in the plaint that a deed of retirement was entered into between the parties on 27.08.2006, under which the first respondent/plaintiff and the defendants 5 and 6 retired from the partnership firm. The plaint further reads in para No. 6 that as agreed, the plaintiff was given an amount in his capital account plus 25% and the defendants 5 and 6 were paid the amount standing to their credit in their capital account and portions of immovable properties at Gandhi road and Court road were also given by way of executing registered sale deeds towards giving up their rights and (sic) shares of the lucrative business and they were assured that they would be given their due shares in the other immovable properties.

13. The averments of the plaint would clearly show that after 27.08.2006, the respondents 1 to 3 herein, who are plaintiff and the defendants 5 and 6 in the

suit were not partners of the firm. It is also an admitted fact that the second petitioner, by inducting the revision petitioners 3 and 4, namely his wife and son was running Narasus Coffee Company, the partnership firm and subsequently, the same was converted into a private limited company. It was argued on the side of the petitioners that on the facts and circumstances, the first respondent/plaintiff is not entitled to seek partition or even dissolution of the firm, after his retirement and getting amount, by way of cash and immovable properties, by way of sale deeds. As per the MOU, neither the first respondent/plaintiff nor the defendants 5 and 6 in the suit could claim partition of the suit properties, having admitted the fact that the suit properties were the properties of the firm. Learned counsel for the petitioners argued that the relief sought for in the suit is not legally maintainable and there is no cause of action for seeking the relief of partition, even as per the plaint averments. Hence, filing of the suit has to be construed only as an abuse of process of Court and on that ground, pleaded for rejection of plaint under Order 7 Rule 11 of the Code.

14. In *The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. Ponnamman Educational Trust represented by its Chairperson/Managing Trustee*, , the Hon''ble Apex Court has held that rejection of plaint is permissible, under Order 7 Rule 11 of the Code, where the defendant sought rejection of plaint, on the ground of non-disclosure of cause of action or non-fulfilment of statutory requirements. It has been further held that for rejection of plaint in respect of one of the defendants, before rejection, other defendants need not necessarily be heard, as their rights remain unaffected. Referring various earlier decisions, the Hon''ble Apex Court has ruled as follows:

30. In the light of the above discussion, in view of the shortfall in the plaint averments, statutory provisions, namely, Order 7 Rule 11, Rule 14(1) and Rule 14(2), Form Nos. 47 and 48 in Appendix A of the Code which are statutory in nature, we hold that the learned single Judge of the High Court has correctly concluded that in the absence of any cause of action shown as against the 1st defendant, the suit cannot be proceeded either for specific performance or for the recovery of money advanced which according to the plaintiff was given to the 2nd defendant in the suit and rightly rejected the plaint as against the 1st defendant. Unfortunately, the Division bench failed to consider all those relevant aspects and erroneously reversed the decision of the learned single Judge. We are unable to agree with the reasoning of the Division Bench of the High Court.

31. In the light of the above discussion, the judgment and order dated 16.08.2011 passed by the Division Bench of the High Court in *Ponnamman Educational Trust v. Church of Christ charitable Trust* is set aside and the order dated 25.01.2006 passed by the learned single Judge in Application No. 3560 of 2005 is restored...

15. In *Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others*, , it was held by the Hon''ble Apex Court that plaint could be rejected under Order 7 Rule 11(a) CPC, when the plaint does not disclose a cause of

action. The cause of action should be a cause of action, as per law for the relief sought for in the suit. Stating something against law cannot be construed as cause of action to maintain a suit.

16. It is well settled that for rejecting the plaint, as per the said provisions of law, the Court has to decide the same, based on the whole pleadings of the plaint and not based on the defence raised in the written statement filed by the defendants. The Hon''ble Apex Court has categorically held that while deciding an application filed under Order 7 Rule 11 of the Code, the averments in the plaint are germane, the plea taken by the defendant(s) in the written statement would be wholly irrelevant at this stage.

17. In this regard in Azhar Hussain Vs. Rajiv Gandhi, , the Hon''ble Supreme Court has held as follows:

The Court has power to reject an election petition summarily under the provisions of the CPC. The purpose of conferment of such power is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. There is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the nation, the controversy is set at rest at the earliest if the facts of the case and the law so warrant. Since the Court has the power to act at the threshold the power must be exercised at the threshold itself in case the court is satisfied that it is a fit case for the exercise of such power and that exercise of such power is warranted under the relevant provision of law. It is therefore not possible to accept the contention that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold.

18. It is also relevant to note that a Division Bench of this Court in a decision Wipro Limited, Thiru Vi Ka Industrial Estate and Wipro Chandrika Limited Vs. Oushadha Chandrika Ayurvedic India (P) Limited, Oushadha Chandrika Research Centre and Narayana Stores, , referring various earlier decisions of the Apex Court has held as follows:

18. In our opinion, the learned single Judge is clearly in error in going beyond the statement contained in the plaint. It has been repeatedly held by the Supreme Court that for the purpose of deciding an Application under clauses (a) and (b) of the Order 7, rule 11 of the C.P.C., the averments made in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, (see O.N. Bhatnagar Vs. Smt. Rukibai Narsindas and Others, ; Roop Lal Sathi Vs. Nachhattar Singh, and Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others, ).

19. This Court in *The Ootacamund Club Vs. H.S. Mehta*, has held that in a suit challenging the action taken against the member of the club, the defendant club challenged the order granting interim injunction and order dismissing the Application to reject the Plaint, by way of Civil Revision Petition before this Court, wherein this Court held that the revision preferred under Article 227 of the Constitution of India was maintainable, in spite of the availability of the alternative remedy, by way of preferring appeal. Each case depends on its own facts and merits of the case. It is well settled that though appeal remedy is available, if it is established that filing the suit is an abuse of process, this Court can pass appropriate orders under Article 227 of the Constitution of India.

20. In case of availability of alternative remedy, it was held in *A. Venkatasubbiah Naidu Vs. S. Challappan and Others*, , by the Apex Court thus:

18. Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies on or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex-parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition.

21. A Division bench of this Court, by its Judgment, dated 18.12.2008, in *O.S.A. Nos. 337 and 338 of 2008*, relying on various decisions of the Hon"ble Apex Court, held that so far as Order 7 Rule 11(a) of the Code is concerned, when there is no cause of action disclosed, the Courts will not unnecessarily protract the hearing of the suit, except passing appropriate orders.

22. Per contra, Mrs. Hema Sampath, learned Senior counsel appearing for the respondents 1 and 2 and Mr. D. Shivakumaran, learned counsel appearing for the third respondent submitted that the petitioners/defendants have not specifically stated as to how there was no cause of action alleged in the plaint, to maintain the suit. Learned Senior counsel argued that while deciding the petition under Order 7 Rule 11 of the Code, the petitioners/defendants are not entitled to argue anything based on the defence raised in their written statement or to raise a plea that the suit is barred by any law, based on the written statement. The aforesaid arguments advanced by the learned Senior counsel for the respondents are undisputed settled legal propositions of law. The learned Senior counsel, in support of her contention, relied on the following decisions:

1. *Commissioner of Income Tax Vs. M.K. Chandrakanth and Others*,
2. *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*,

23. In *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, , the Hon''ble Supreme Court has held as follows:

5.... The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership.

24. In the aforesaid decision, a Three Judge Bench of the Hon''ble Apex Court has held that after the dissolution of the firm, as the firm has no legal existence, the properties of the firm vest in all the partners and as such, every partner has an interest in the properties of the partnership and during the subsistence of the partnership, no partner can deal with any portion of the property as that of his own, nor can he assign his interest in a specific item of the properties belongs to the firm to anyone and upon the dissolution of the firm, a partner is entitled to a share in the profits of the firm, which remain after discharging the liability set out in clause (a) and sub-clauses (i), (ii) and (iii) of Clause (b) of Section 48 of Partnership Act (9 of 1932).

25. In *Commissioner of Income Tax Vs. M.K. Chandrakanth and Others*, , a Division Bench of this Court held as follows:

Though under the income-tax law, a firm is treated as a separate assessable entity, under the general law of partnership, a firm name is a compendious mode to designate the partners. It is well settled that property of a firm is the property of partners and the use by the firm is the use by the partners. Therefore, when the assessee used the property prior to the dissolution of the firm for their residence, it must be held that they were owners of the property and they were using the property in their own right for the purpose of residence. A similar view was taken by a Bench of this court in *Commissioner of Income Tax Vs. Kamala Devi*, . The question that arose before this court was whether a particular capital asset should be treated as a short-term capital asset or long-term capital asset, and this court, following a decision of the Supreme Court in *Addanki Narayanappa v. Bhaskara Krishnappa*, held that a firm is not a legal entity and assets cannot be held to be of the firm. It was also held that it is the partners who own the properties and the firm is treated as a separate entity only for the purpose of assessment under the Income-tax Act and the properties really belong to the partners of the firm.

26. It is a settled proposition of law that to reject the plaint under Order 7 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. Similarly as per Rule 11(d) of Order 7 of the Code, if the suit is barred by any statute or if it is an abuse of process of Court, it could be ordered. In order to establish that there is no cause of action and seek an order to reject the plaint, the defendant is not entitled to rely on his written statement. The applicant/defendant has to establish the fact that there is no cause of action, only based on the averments of the plaint and the admission made by the plaintiff, on the factual aspect.

27. In the instant case, the first respondent, who is the plaintiff in the suit has stated that a deed of partnership was entered into on 26.08.2006, inducting the defendants 3 and 4 as partners, subsequently, a deed of retirement was entered into on 27.08.2006, by which the first respondent/plaintiff and the defendants 5 and 6 retired from the partnership firm. Having admitted the fact that the first respondent/plaintiff and the defendants 3 and 4 got retired from the firm, permitting the petitioners 2 to 4 to continue the firm in the same name and style of Narasus Coffee Company, it is not open to the first respondent/plaintiff to raise a self-contradictory plea and seek partition. It is seen that the alleged cause of action is against the admission made in the plaint by the first respondent/plaintiff in paragraph number 6. It cannot be disputed that the first respondent/plaintiff is estopped from raising any cause of action against his own admission, made by way of averments in the plaint.

28. The first respondent/plaintiff has stated that a Memorandum of Understanding was entered into between the plaintiff and the defendants 2, 5 and 6 on 10.08.2006, setting out the terms and conditions with regard to certain other properties to be transferred in the name of the others, in view of the retirement of the plaintiff and the defendants 5 and 6. It is also an admitted fact that pursuant to the retirement, the second petitioner/second defendant, along with other partners, executed a sale deed in favour of the first respondent/plaintiff on 23.08.2006 in respect of 2 acres of land comprised in a portion of the properties covered by Ward B, Block 2 T.S. No. 2 and 3 and executed another sale deed in favour of the 5th defendant in respect of 14,262 sq. feet of land in the same survey numbers. Similarly, the second petitioner/second defendant and other partners, executed a sale deed in favour of the 6th defendant in respect of 1,09,921 sq. feet of land comprised in Ward B, Block 11, T.S. No. 12, on account of her retirement from the firm. After getting cash and immovable properties, by way of sale deeds, the plaintiff, 5th defendant and the 6th defendant, had retired from the partnership firm, the remaining extent in Ward B, Block 2, T.S. No. 2 and 3 is shown as Item 1 in the schedule of properties. It is seen that after the execution of the sale deed in favour of the 6th defendant, the remaining extent of land in Ward B, Block 11, T.S. No. 12 is shown as Item No. 2 in the schedule of properties. In view of the retirement, the first respondent/plaintiff and the defendants 5 and 6 had also given consent in favour of the revision petitioners 2 to 4 to run the firm in the name and style of Narasus Coffee Company as partners.

29. However, against the admitted facts, the suit has been filed by the first respondent herein, seeking a preliminary decree for partition, for dividing the suit properties into 100 shares and allot 55 contiguous shares to the first respondent/plaintiff and allot the share by way of appointing Commissioner to divide the suit properties by metes and bounds. It is also alleged that for filing the suit, the first respondent/plaintiff has raised a cause of action that on 01.03.2000 the plaintiff, lastly demanded partition of the properties, as the same was not possible, the suit was filed by the first respondent/plaintiff. The alleged cause of action raised by the plaintiff is totally contrary to the admission made by the plaintiff and also against the provisions of the Partnership Act.

30. The petitioners/defendants 1 to 4 in the suit have filed I.A. No. 865 of 2009 under Order 7 Rule 11 of the Code, seeking an order to reject the plaint. As per Order 7 Rule 11 of the Code, plaint could be rejected, as per sub-rule (a) and (d), which reads thus:

(a) where it does not disclose a cause of action;

(b) x x x x x

(c) x x x x x

(d) where the suit appears from the statement in the plaint to be barred by any law.

31. It is well settled that at the time of deciding the application filed under Order 7 Rule 11 of the Code, the Court has to consider only the pleadings of the plaintiff, as per the plaint and also the admitted documents of the plaintiff, hence, this Court cannot go into the written statement or the defence raised in the written statement by the defendant(s).

32. Mr. S. Prabhakaran, learned counsel appearing for the petitioners/defendants 1 to 4 submitted that the first respondent/plaintiff has admitted the fact in the plaint that the suit schedule properties are the properties of a partnership firm, in which, the plaintiff, second petitioner/D2 and the respondents 2 and 3/D5 and D6 had been partners. Subsequently, the revision petitioners 3 and 4, who are defendants 3 and 4 were inducted as partners in the firm, then the first respondent/plaintiff and the respondents 2 and 3/defendants 5 and 6 in the suit, retired from the partnership firm, by giving consent for the Revision petitions 2 to 4, to run the partnership firm in the same name and style after getting cash and immovable properties for their share. Subsequently, the revision petitioners 2 to 4/defendants 2 to 4 are admittedly running of the first defendant firm as partners. Having admitted the fact that the suit properties belong to the first defendant firm, represented by the second petitioner/D2 and the petitioners 2 to 4 are running the firm, after the retirement of the plaintiff and the defendants 5 and 6, who are the respondents herein, it is not open to the first respondent/plaintiff to maintain a suit, seeking partition by raising a self-contradictory plea. If at all, he could have filed a suit for rendition of accounts or for any amount,

due and payable, based on the MOU, by establishing the claim. According to the learned counsel for the revision petitioners, having admitted the fact that the respondents 1 to 3 had retired from the firm and also the fact that the suit properties were only the properties belonged to the said partnership firm, the first respondent/plaintiff cannot maintain the suit, seeking partition with an inconsistent and self-contradictory plea. It has been made clear that there is no legal cause of action for the plaintiff to maintain the suit, seeking partition.

33. Learned counsel appearing for the petitioners further contended that at the time of retirement, the first respondent/plaintiff and the other respondents were given valuable immovable properties and also money to the tune of Rs. 26.5 crores towards their share(s) and they have given written consent for the petitioners 2 to 4 to continue the partnership firm as its partners.

34. Learned counsel appearing for the revision petitioners submitted that the amounts were received by the respondents, by way of cash and immovable properties by way of registered sale deeds and they have subsequently sold some of the properties given to them, pursuant to the retirement of the plaintiff and the defendants 5 and 6 from the firm and that was not denied by the plaintiff. As per the mutual arrangement towards the retirement of the respondents and continuation of the firm by the petitioners 2 to 4, it has been made clear that the retirement of the plaintiff was acted upon and the petitioners 2 to 4 are running the firm for number of years. In the aforesaid circumstances, it was argued by the learned counsel for the revision petitioners/defendants 2 to 4 that the suit was filed by the first respondent against law, which is a clear abuse of process of law, hence, as per Order 7 Rule 11(d) of the Code, the plaint has to be rejected.

35. In the light of various decisions rendered by the Hon'ble Apex Court and this Court, it is crystal clear that the plaint could be rejected under Order 7 Rule 11(a) of the Code, if there is no cause of action raised in the plaint, for the relief sought for, similarly, as per Rule 11(d) to Order 7 of the Code, if the suit is statutorily barred by any law, the plaint has to be rejected. In the instant case, the first respondent/plaintiff has admitted that the suit properties were the properties of the partnership firm, wherein the plaintiff, second petitioner/D2 and the defendants 5 and 6 were partners, subsequently, the first respondent/plaintiff and defendants 5 and 6 in the suit, who are respondents 2 and 3, retired from the firm in the year 2006, permitting the revision petitioners 2 to 4 to run the firm, as per the agreement entered into by the said parties.

36. The plaintiff himself has admitted that there was a memorandum of understanding entered into between the first respondent/plaintiff, the second petitioner and the respondents 2 and 3. The xerox copy of the memorandum of understanding, signed by both the parties on 10.08.2006 is also available as a plaint document and the execution of the document is not in dispute, in this suit.

37. Mr. S. Prabhakaran, learned counsel appearing for the revision petitioner

submitted that the memorandum of understanding is an admitted document filed by the first respondent/plaintiff, whereby he has admitted the terms and conditions stipulated in the memorandum of understanding at the time of his retirement from the firm and further submitted that sale deeds were executed by the second petitioner herein and other partners on 23.08.2006 in favour of the first respondent/plaintiff, as per the MOU. Similarly, another sale deed, dated 25.08.2006 was executed by the second petitioner and other partners in favour of the second respondent herein.

38. As per the deed of retirement, dated 27.08.2006, the respondents 1 to 3 herein have retired from the partnership firm, "Narasus Coffee Company". It is not in dispute that pursuant to the retirement, sale deeds were executed by the second petitioner herein and other partners in favour of the first respondent/plaintiff and other respondents, who had retired from the firm. It is not in dispute that the first respondent/plaintiff and other partners have admittedly signed the document, dated 27.08.2006, which reads as follows:

Whereas parties No. 1 to 3 mentioned above, hereafter called retiring partners had expressed their desire to retire from the firm for their personal reasons, on the following terms and conditions:

1. Parties Nos. 1 to 3 have retired from the partnership, on getting their accounts settled, as agreed by full payments through bank, of the entire balances standing to the credit of their accounts, in the books of account of the head office and the export unit as per the list attached which fact is also acknowledged by them by signing this retirement deed and also by transfer of portions of immovable properties at Gandhi Road, Cherry Road and at Court Road in favour of retiring partners Shri. R.P. Sarathy, Smt. B. Jayashree and Smt. B. Latha by executing separate transfer deeds.

2. The retiring partners agree that the parties Nos. 4 and 5 can continue, along with anyone else the business of the firm, in the same place in the same name and style of "NARASUS COMPANY" with NARASU'S EXPORTS unit.

3. The firm may carry on any other business at any other places also in the same name or some other name, and the retiring partners shall not object against the same.

4. The parties Nos. 1 to 3, the retiring partners hereby confirm that they and their successors shall have no right or claim whatsoever on any of the assets of the firm, like land, building, goodwill, other fixed assets and current assets.

The retiring partners shall have no responsibility or liability to the loans and liabilities of the firm except the amount due to the creditors per list attached.

5. The continuing partners have agreed to discharge, all debts and liabilities of the firm and indemnify the retiring partners against all proceedings, costs, claims and expenses in respect thereof.

6. Parties Nos. 1 to 3 us, though signed as partners of this firm until today, agree that they are not entitled to share the profit of the firm or interest and also not liable for any loss if any, of the firm, from 01.04.2006, as agreed to among the parties.

39. It is a well settled proposition of law that if it is not possible for any partner, to continue the partnership firm, he can seek dissolution of the firm and rendition of accounts. Having admitted the fact that the suit properties were the properties of "Narasus Coffee Company", a partnership firm and also the alleged retirement of the first respondent/plaintiff and other respondents from the firm and receiving the consideration for the shares, including sale deeds executed in favour of the first respondent/plaintiff and other respondents in the year 2006, it is not open to the first respondent/plaintiff, for filing a suit, seeking partition in the year 2009 with the alleged cause of action, which is not legally sustainable. The plaintiff has alleged that he had demanded partition on 01.03.2009 at Salem and in other places, as it was not possible, he filed the suit, seeking partition. The plaintiff has categorically admitted that the suit properties were the properties of the firm, hence, he cannot file the suit for partition, contrary to Indian Partnership Act.

40. The plaintiff had admitted that he was a partner in the firm, along with the second petitioner and the respondents 2 and 3 and the suit schedule properties were the properties of the said partnership firm "Narasus Coffee Company" and that the first respondent/plaintiff and the other respondents 2 and 3 retired from the partnership firm in the year 2006, hence, the first respondent/plaintiff cannot file a suit, simply for seeking partition in the year 2009, after getting the amount and also getting properties, by way of registered sale deeds, executed by the second revision petitioner and other partners in favour of the first respondent/plaintiff. The relief sought for in the suit, seeking partition cannot be construed as a remedy available under the common law, since the same is governed by the Indian Partnership Act. If at all, the plaintiff could have filed suit only for dissolution of firm and rendition of accounts or settlement of balance, if any, pursuant to his retirement from the partnership firm, as per Partnership Act and not a suit for partition, after his retirement against the MOU. On the aforesaid circumstances, the suit is not legally maintainable, for want of legally acceptable cause of action, hence, this Court is of the view that as per Order 7 Rule 11(a) of the Code, the plaint has to be rejected, on the ground that there is no legal cause of action available for seeking the relief of partition by a retired partner of the firm, after getting consideration for his share, on account of his retirement from the firm and permitting other partners to continue the firm. It is also argued on behalf of the revision petitioners that the suit was filed in the year 2009, seeking partition of the property belonged to the firm by the plaintiff, who had retired from the firm in 2006, after getting consideration by cash and also immovable properties by registered sale deeds, which cannot be a common law remedy but contrary to the Indian Partnership Act and as such, barred by law, hence, the plaint has to be rejected under Order 7 Rule 11(d) of the Code.

41. It is not in dispute that after the retirement of the first respondent/plaintiff and the respondents 2 and 3 from the firm in the year 2006, a deed of retirement was entered into between the partners of the firm. Having received the consideration in cash and also properties by way of sale deeds, as per the Memorandum of Understanding (MOU) and deed of retirement, it is not open to the first respondent/plaintiff, to raise a self-contradictory plea and the alleged cause of action is against his own pleadings in the year 2009. Even as per the averments of the plaint, the suit schedule properties were only the properties of the firm and not the joint family properties of the petitioners and the respondents. The relief sought for in the plaint by the first respondent/plaintiff is contrary to the Indian Partnership Act and the alleged cause of action, for seeking partition of the properties belonged to the firm by the retired partner, after getting consideration is self-contradictory and also against the admitted documents filed on the side of the plaintiff. Therefore, filing such a suit for partition of the property owned by the firm in the year 2006 with the self-contradictory averments is against the Indian Partnership Act and as such, the same has to be construed only as an abuse of process of law and Court and accordingly, this Court is of the view that the revision petitioners are entitled to seek an order under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, to reject the plaint, on the ground that there is no legal cause of action and the relief sought for is not a common law remedy, but contrary to Indian Partnership Act and hence, the same could be construed only as an abuse of process of law and court. In the result, this Civil Revision Petition is allowed and the impugned order, dated 18.08.2011 made in I.A. No. 865 of 2009 in O.S. No. 106 of 2009 is set aside and accordingly, the plaint in the suit in O.S. No. 106 of 2009 is ordered to be rejected. Consequently, connected miscellaneous petition is closed. However, it is made clear that if there is any other case pending between the parties, the same shall be disposed of, according to law by the appropriate Court(s), without going into the order of rejection of the present plaint. No order as to costs.