

(2012) 04 MAD CK 0104

In the Madras High Court

Case No : C.R.P. (NPD) No. 1395 of 2012 and M.P.No. 1 of 2012

R. Ravichandran

APPELLANT

Vs

The Corporation of Chennai

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 2(2), 7

Citation : (2012) 04 MAD CK 0104

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : R. Thiagarajan, for the Appellant;

Judgement

Honourable Mr. Justice G. Rajasuria

1. Animadverting upon the order of rejection of the plaint dated 22.03.2012 passed by the learned I Assistant Judge, City Civil Court, Chennai in O.S.SR.No. 11595 of 2012, this civil revision petition has been focused. Heard the Learned Counsel for the petitioner.

2. The revision petitioner/plaintiff filed the suit seeking the following reliefs:

For a judgment and decree as against the defendants 1 and 2 as under:

for a declaration that the impugned notice issued by the 2nd defendant dated 05.01.2012 is illegal, invalid and non-est in the eyes of law.

for a permanent injunction restraining the defendants 1 and 2 or their men, agents, servants or any one claiming through them from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule mentioned property or effecting any demolition of the structures erected by the plaintiff at Plot No. 10, Door No. 2, Karunanidhi 2nd Street, West Mambalam, Chennai 600 033 comprised in S.No. 1/2, T.S.No. 56, Block No. 2 of Saidapet Village, Mambalam Guindy Taluk, Chennai District more fully described in the plaint schedule except in accordance with law and for costs.

(extracted as such)

on the main ground that the notice dated 05.01.2012 was issued by the second defendant calling upon the plaintiff to stop the construction despite the building have been assessed to property tax and the revised plan is pending with the second defendant.

3. The Learned Counsel for the revision petitioner/plaintiff would submit that there were some deviations, for which a revised plan was given and it is under consideration. While so, the impugned notice was given. There is no statutory remedy available for the petitioner to air the grievance as against the said notice. Since according to him, the respondents acted in violation of principles of natural justice, the plaintiff is constrained to approach the court for remedy. However, the court without numbering the suit and issuing summons to the defendants, simply, passed an order suo motu as though the suit was not maintainable.

4. The maintainability of the suit could be decided after issuing summons to the defendants and after hearing both sides, as a preliminary issue. But the trial court has not chosen to do so. Hence, the Learned Counsel prays for setting aside the order passed by the lower court and for giving direction to the trial court to number the suit and issue summons to the defendants.

5. I would like to fumigate my mind with the following decisions:

(i) Shamsheer Singh Vs. Rajinder Prashad and Others, Certain excerpts from it would run thus:

3.....Before us a preliminary objection was raised based on the observations of this Court in Sri Ratnavaramaraja Vs. Smt. Vimla, that the present appeal is not competent. In that case this Court observed that whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State and that the defendants who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court-fee payable on the plaint.....

.....

.....

In the present case the plaint was rejected under Order 7 Rule 11 of the CPC. Such an order amounts to a decree u/s 2 (2) and there is a right of appeal open to the plaintiff. Furthermore, in a case in which this Court has granted special leave the question whether an appeal lies or not does not arise. Even otherwise a second appeal would lie u/s 100 of the CPC on the ground that the decision of the 1st appellate court on the interpretation of Section 7 (iv) (c) is a question of law. There is thus no merit in the preliminary objection.

(ii) Hindustan Petroleum Corporation Limited Vs. C.M. Hariraj, C.V. Raman and Dharmarajan, . Certain excerpts from it would run thus:

18.....Normally, the rejection of the plaint amounts to a decree and an appeal has to be filed; but in this case, without any notice and without hearing of the other side, the order was passed by the court below and, as such, the inherent jurisdiction of this Court can be exercised and hence, the points are answered accordingly.(emphasis supplied)

The Learned Counsel for the revision petitioner would cite the decision of this Court reported in Madras Metropolitan Development Authority Vs. P. Muthukrishnan, P. Venkatesan, P. Damodaran and P. Sriramulu,

The aforesaid decisions are relating to the power of the court under Order 7 Rule 11 of the CPC relating to rejection of plaint.

6. No doubt, the power of the court is wide; even then that has to be exercised cautiously and justly. Here, the submissions on the side of the plaintiff are to the effect that the controversy and dispute involved is a mixed question of law and facts and before numbering the suit itself, the plaint should not have been rejected as aforesaid. As such, the Learned Counsel for the revision petitioner/plaintiff wants opportunity to put forth his case before the lower court after numbering of the suit and that too after securing the presence of the defendants before the court.

7. Order XIV of the CPC contemplates preliminary issue to be framed and heard. No doubt, the court suo motu, in this case had the doubt whether the suit itself was maintainable or not and hence it proceeded to decide it. But a mere poring over and perusal of the order as well as the records would reveal that the dispute involved in this case is a mixed question of law and fact and there are complicate points to be considered. Para Nos.8 and 9 of the plaint are extracted here under for ready reference:

8. As a matter of fact, none of the neighbours of the plaintiff or adjacent owners have raised.