

(1975) 02 MAD CK 0030
In the Madras High Court
Case No : C.R.P. No. 2015 of 1974

R. Shanmughavelu Pillai

APPELLANT

Vs

R. Karuppanna Ambalam

RESPONDENT

Date of Decision : 25-02-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115, 151, 2(2)
Specific Relief Act, 1963 — Section 9

Citation : AIR 1976 Mad 289

Hon'ble Judges : Gokulakrishnan, J

Bench : Single Bench

Advocate : M. Veluswami, for the Appellant; P. Venkataraman, for the Respondent

Final Decision : Dismissed

Judgement

Gokulakrishnan, J.—The plaintiff in an unfiled plaint No. /74 (A. 2394/74) on the file of the District Munsif of Madurai Taluk at Madurai has preferred the above revision petition against an order rejecting the plaint on 9th April 1974. The petitioner herein as plaintiff claimed damages for Rs. 2250 for three crops from the suit land for the period from 15th July 1972 to 15th September 1973. The suit land was also the subject matter of the suit in O.S. No. 358 of 1972 on the file of the District Munsif, Madurai Taluk at Madurai. It was a suit for permanent injunction against the defendant. The plaintiff obtained interim injunction on 24th July 1972, and the order was served on the defendant on 26th July 1972. After full trial, the suit in O.S. No. 358 of 1972 was decreed ordering permanent injunction against the defendant. The plaintiff has pleaded in that suit that he was in possession of the suit lands on the date of the filing of the suit and the decree was passed on 29th September 1973. It is for the same period the plaintiff in the unnumbered suit claimed damages as stated above it was alleged by the plaintiff that the defendant has been restrained from entering into the suit land from 24th July 1972 to 29th September 1973. The defendant obstructed the plaintiff from enjoying the suit land. The trial court observing that the plaintiff

never complained that he was dispossessed by the defendant for the relevant period that in as much as the plaintiff has been in possession of the suit property from the date of taking delivery, the suit for damages for three crops is not maintainable, and that the plaintiff cannot claim damage by way of mesne profits from the defendant against whom a decree for permanent injunction was in force during the relevant period held the plaint is not maintainable. On these grounds the trial court rejected the plaint ordering the court-fee paid on the plaint be refunded.

2. Aggrieved by the said order of the Court below, the plaintiff has preferred the above Civil Revision Petition. Prima facie it looks that the order of rejection upon a suit for damages on the ground stated by the trial court is erroneous. Nevertheless the matter has to be discussed and decided upon proper evidence and arguments by the respective parties before the appropriate forum. Mr. Venkataraman, the learned counsel appearing for the defendant (respondent herein) took up an objection that the revision is not maintainable. According to the learned counsel, under S. 2(2) C.P.C. the decree will include the rejection of a plaint. The rejection of the plaint which is being questioned in this revision petition is construed as a decree, and only an appeal has to be filed and not a revision.

3. Mr. Velusamy, the learned counsel appearing for the petitioner submitted that the High Court under the powers vested in it is S. 115 C.P.C., can always correct the errors committed by the trial court. The learned counsel also submitted that this court having entertained the revision petition, has ample jurisdiction to revise the order by the trial Court. The learned counsel further contended that no appeal will lie to the High Court and as such there is no bar for this court to entertain the revision petition under S. 115 C.P.C.

4. Number of decisions were cited by both sides, for their respective contentions. In Jagdish Mitter Vs. The Union of India (UOI), the Supreme Court has specifically held that no revision will lie to the High Court, the Supreme Court interpreting Section 115 of the C.P.C. has held that no revision will lie to the High Court in case where an appeal will lie to the High Court directly or indirectly. This decision was followed by many judgments of our High Court, including myself in C.R.P. S.R. No. 51709 of 1972 dated 31st October, 1974. As far as the case on hand is concerned, the damages sought to be recovered is more than Rs. 2000/- and as such a second appeal will definitely lie to the High Court.

5. The next contention raised by Mr. Velusamy is that the rejection of the plaint is not for any of the grounds provided under Order 7 Rule 11 of the C.P.C. If there is any rejection under this Order 7. Rule 11, then only the rejection will be construed as one coming under the definition of the decree contemplated under S. 2 (2) of the C.P.C. For this proposition, Mr. Velusamy cited Pt. Amba Shankar Vs. Mt. Seoti, . A single judge of the Allahabad High Court has held that the rejection of the plaint made for the reasons stated under Order 7 Rule 11 C.P.C. only will come under the definition of the decree under S. 2 (2) C.P.C. The other

cases cited by Mr. Velusamy such as C.R.P. Nos. 1853 of 1970 and 2542 of 1970 cannot be taken as authority since those decisions followed the decision in Munusamy Mudaliar Vs. Chengalvaraya Naicker and Others, which is not an authority for this proposition. Munuswamy v. Chengalvaraya AIR 1943 Mad. 645; 56 L.W. 396 is a case filed against an order refusing to review the judgment passed by the trial court. There is no difficulty in entertaining a civil revision petition against an order refusing to revise the judgment of the court below. The present case on hand is not one like that. In Seshadri v. Krishanaiah 1936 Mad. Weekly Notes, 448, Civil revision petition was entertained by this court, but the question as to whether a Civil Revision petition will lie or an appeal will lie against an order rejecting the plaint has not been discussed at all in this case. In Vaishnava College for Women v. Mrs. Alleyamma Thommas 1971 I.M.L.J. 76; 84 L.W. 197 Ramanujam, J., has held that a revision is maintainable. That is not a case filed against a rejection of the plaint. Apart from that fact, that is a case in which no appeal will lie either directly or indirectly to the High Court. Chinna v. Govindaswami AIR 1969 Mad. 191 is a case arising under S. 9 of the Specific Relief Act, wherein Ramaprasada Rao, J. has stated that in the interest of justice High Courts have ample power to interfere with the orders passed under S. 9 of the Specific Relief Act under S. 115 C.P.C. Even the decision reported in Katam Virupakshiah and Others Vs. Matam Sivalingaiah and Others, is not a case arising out of an order rejecting the plaint. But in any event, it does not support the case of the petitioner herein. Thus it is clear from the above said decisions, except the decision reported in Amba Shankar v. Mt. Seoti AIR 1937 All. 280 the question as to whether a revision will lie or an appeal from an order rejecting the plaint has not been discussed at all.

6. Mr. Venkataraman, the counsel appearing for the respondent cited Satyanarayanacharlu V. Romalingam AIR 1952 Mad. 85; 1951 II M.L.J. 74; 64 L.W. 598 (F.B.) wherein it has been held:

Where an order directing payment of additional court-fee in a suit is not complied with and it is followed by an order rejecting the plaint, a revision against the later order would not be maintainable and the proper remedy is only by way of an appeal against the decree". Another case cited Mr. Venkataraman is Harihar Bakish Singh v. Jagannath Singh AIR 1924 Oudh. 413 A bench of the Oudh Court has held -

On behalf of the appellant it is contended that the only grounds on which a court is authorised to reject a plaint are those given O. 7, R. 11 C.P.C and that the Subordinate Judge had no jurisdiction to reject this plaint on the grounds taken by him. With this contention we are not disposed to agree. The instances given in the rule referred to cannot be regarded as exhaustive or as limiting the powers of a court under S. 151 of the same code. We concur in the view taken by the Madras High Court in Lakshman Chetty v. Lakshmanan Chettiar (1914) 1 L.W. 875; 25 I.C. 738 that a Court has jurisdiction in a proper case to dismiss a suit filed by the next friend of a minor on the ground that it is not in the Interests of

the minor that the suit should be allowed to go on. The cases quoted in that ruling from "Simpson on the Law of Infants" (pp. 471 to 473) show that this is also the law in England." The next case cited by Mr. Venkataraman is Radhakrishnan v. Wall Md. AIR 1915 Mad. 483 wherein also a Bench of the Hyderabad High Court has held that:

The instances given in O. 8, R.11 cannot be regarded as extensive of all the cases in which a court can reject a plaint or as limiting the inherent powers of the court in respect thereof.

For the proposition that against the rejection of the plaint, only appeal lies, has been made clear in the decision reported in Lakshmanan v. Lakshmanan AIR 1956 Hyderabad 133 and in Badri Nath v. State of Pepsu AIR 1957 Pepsu 14. Even reading S. 2(2), C.P.C. it does not say the rejection of the plaint under O.7, R.11, C.P.C., on the other hand, it generally states that decree will include rejection of plaint. Thus it is clear both from the section and also the decisions cited above that only appeal will lie against the rejection of the plaint and it is not limited to such cases wherein the plaint was rejected for the reasons stated under O.7. R.11 C.P.C.

7. Thus it is clear that the order in question now is rejection of the plaint even though it cannot be construed as one coming under the reasons stated under O. 7. R.11, C.P.C. Nevertheless the remedy, if any, for the petitioner herein can only be by way of an appeal and not by a revision to this court. When there is a specific remedy provided and no harm will be caused to the petitioner herein by directing him to file an appeal instead of a revision in this court, I am of the view that this revision petition has to be dismissed as not maintainable.

8. Mr. Veluswamy submits that the time will be against him if he goes by way of an appeal against the order rejecting the plaint. He can prefer an appeal with a petition to excuse the delay and I am sure any court will take into account the time taken by the petitioner in litigating the matter before a wrong court, in calculating the period of limitation and excusing the delay. In these circumstance, this civil Revision Petition is dismissed as not maintainable. There will be no order as to costs.