

(2011) 01 MAD CK 0095

In the Madras High Court

Case No : C.R.P. (PD) No"s. 3281 and 3282 of 2010 and M.P. No. 1 of 2010

S. Shivashankar and S. Gunasekaran

APPELLANT

Vs

Sivabakkiam Muthusamy Trust

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 92
Constitution of India, 1950 — Article 227

Citation : (2011) 2 CTC 72

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : D. Pradeepkumar, for the Appellant; P. Valliappan, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The Defendants are the revision petitions. Originally, O.S. No. 397 of 2008 was filed on the file of the Sub Court,

Tiruchengode u/s 92 of the CPC for declaration and for removal of the revision Petitioners from the office of the Management of the Plaintiff Trust

and for directions. While the suit was pending before the Sub Court, Tiruchengode, the revision Petitioners filed I.A. No. 131 of 2008 under

Order VII Rule 11 of the CPC to reject the plaint stating that the suit was not filed by proper persons as per Section 92 of the CPC and no leave

was obtained and the Trust cannot maintain a suit u/s 92 of the Code of Civil Procedure. That application was dismissed by order dated 5.8.2008.

Thereafter, the suit was transferred to the file of the Additional District Judge (Fast Track Court), Namakkal and re-numbered as O.S. No. 142 of

2008 and after the suit was transferred, the Respondent/Plaintiff filed application to amend the pleadings and after the plaint was amended, the

revision Petitioners filed I.A. No. 184 of 2010 in O.S. No. 142 of 2008 for rejection of plaint raising the very same plea and that petition was dismissed by order dated 1.7.2010.

2. Aggrieved by the above orders, these two revision petitions are filed. C.R.P. (PD) No. 3282 of 2010 was filed against the order passed in I.A.

No. 131 of 2008 in O.S. No. 397 of 2008 on the file of the Sub Court, Tiruchengode and C.R.P.(PD) No. 3281 of 2010 was filed against the order passed in I.A. No. 184 of 2010 in O.S. No. 142 of 2008.

3. It is submitted by the learned Counsel for the revision Petitioners Mr. D. Pradeepkumar that as per section 92 of the Code of Civil Procedure, a

suit can be filed either by the Advocate General or by two or more persons having interest in the Trust and having obtained leave of the court and

in this case, it is seen from the cause title that the suit was filed only by the Trust represented by its two Trustees and therefore, the suit is filed by

one person which is against the provisions of Section 92 of the CPC and therefore, the suit as filed is not proper and the suit is liable to be rejected

on that ground. He further submitted that when two or more persons filed the suit for administration of Trust or for the reliefs stated therein, leave

has to be obtained and in this case, without obtaining the leave, the suit was filed and therefore, the suit is liable to be rejected. The learned

Counsel for the revision Petitioners further submitted that as per Section 92 of the Code of Civil Procedure, only the reliefs enumerated in Section

92 can be prayed for and no other reliefs can be asked and in this case, the Respondents asked for the relief of declaration that the supplementary

Trust Deed is not valid which is beyond the scope of Section 92 of the CPC and therefore, the suit is also liable to be rejected on that ground. He

further submitted that though it was contended by the Respondents when the suit was originally filed, that two persons filed the suit, after the suit

was transferred and re-numbered as O.S. No. 142 of 2008, it has been made clear that the suit was filed by one person viz., the Trust represented

by its Trustees and therefore, it has been admitted by the Respondent that the suit was filed by one person alone and not by two persons and to

avoid the Respondent from taking the plea that the earlier application filed in I.A. No. 131 of 2008 in O.S. No. 397 of 2008 was dismissed and

that would operate as res judicata, two revisions are filed against both the orders.

4. On the other hand, Mr. P. Valliappan, learned Counsel for the Respondent submitted that in respect of C.R.P.(PD) No. 3282 of 2010, the

order challenged in the revision petition was passed on 5.8.2008 and having allowed the order to become final, it is not open to the revision

Petitioners to challenge the same after a lapse of two years and the order passed in I.A. No. 131 of 2008 also operates as res judicata insofar as

the order passed in I.A. No. 30 of 2009 in O.S. No. 142 of 2008 which is the subject matter of C.R.P.(PD) No. 3281 of 2010 and already trial

has commenced and PW1 was examined and the case was posted for the examination of the Defendants and therefore, there is no need to pass

any order regarding rejection of plaint and considering all these aspects, the court below also rightly dismissed the application.

5. Mr. D. Pradeepkumar, learned Counsel for the revision Petitioners further submitted that there is no time limit for filing application under Order

VII Rule 11 and it can be filed at any time and once the court comes to the conclusion that the plaint is liable to be rejected, the court has to reject

the plaint.

6. Heard both sides.

7. To appreciate the contentions of both the parties, we will have to see the provisions of Order VII Rule 11 of the CPC which runs as follows:

11. Rejection of plaint

The plaint shall be rejected in the following cases:

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

(b) where the relief claimed is undervalued, and the Plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the

Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the Plaintiff, on being required by the

Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

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

(e) where it is not filed in duplicate;

(f) where the Plaintiff fails to comply with the provisions of Rule 9; Provided that

the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the Plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the Plaintiff.

8. Therefore, unless the revision Petitioners are able to bring their case within the provisions of Order VII Rule 11 of the Code of Civil Procedure, they cannot ask for the relief of rejection of plaint. As stated supra, the case of the revision Petitioners cannot be brought under Order VII Rule 11

(a), (b), (c), (e) and (f). It cannot be stated that the plaint does not disclose a cause of action or the relief claimed is undervalued or not properly

valued. Therefore, if at all the plaint can be rejected, it can be rejected only as per Order VII Rule 11(d) of the Code of Civil Procedure. As per

Order 7 Rule 11(d), a plaint can be rejected where a suit appears from the statement in the plaint to be barred by any law.

9. It is contended by the learned Counsel for the revision Petitioners Mr. D. Pradeepkumar that as per Section 92 of the Code of Civil Procedure,

a suit can be filed either by the Advocate General or by two or more persons interested in the Trust after obtaining the leave of the court and in this

case, it is made clear by the Plaintiffs after the amendment that the suit was filed by the Trust represented by its two Trustees and therefore, the suit

was filed by only one person and hence, the suit is not maintainable. Further, leave of the court was not obtained before instituting the suit and

therefore, the suit is also not maintainable under law.

10. According to me, the submissions of the learned Counsel for the revision Petitioners cannot be accepted. Even assuming that the suit was filed

by one person as contended by the revision Petitioners, the same may amount to improper institution of suit and the same cannot be brought under

Clause (d) of Order VII Rule 11 and it cannot be contended that the suit is barred by law which is in force.

11. Similarly, even assuming that leave of the court was not obtained before filing the suit, it is only an irregularity that can be cured by filing

application seeking the leave and that cannot be a ground for rejection of the

plaint as per Order VII Rule 11(d) of the Code of Civil Procedure.

According to me, in order to bring a case even under Order VII Rule 11(d) of the Code of Civil Procedure, the suit must be barred by any law. In

this case, it cannot be contended that the suit filed by the Respondent is barred by law and as stated supra, even assuming that the suit was filed by

one person, it cannot be a ground for rejecting the plaint even if the court finds that the suit was not properly instituted and that cannot be brought

under Clause (d) of Order VII Rule 11 of the Code of Civil Procedure.

12. Further, the earlier application filed by the revision Petitioners in I.A. No. 131 of 2008 on the very same ground was dismissed by the court

and that was not challenged and only after the rejection of the application in I.A. No. 184 of 2010, the revisions are filed. Even though, no time

limit is prescribed for invoking the provisions of Article 227 of the Constitution of India, it must be exercised within a reasonable time and having

allowed the order passed in I.A. No. 131 of 2008 in O.S. No. 397 of 2008 viz., the same suit, it is not open to the revision Petitioners to

challenge the very same order by filing another application. Hence, the order of the court below is correct and I do not want to interfere with the

order passed by the court below.

13. In the result, the revision petitions are dismissed. However, it is made clear that I am not giving any opinion regarding the maintainability of the

suit filed by the Respondent and it is for the Trial Court to consider the plea raised by the revision Petitioner and pass orders on merits while

disposing of the suit. No costs. The connected miscellaneous petition is also dismissed.