

(2008) 12 MAD CK 0080

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 956 of 2008 and M.P. (MD) No. 1 of 2008

S.N. Kasilingam, K. Muthulakshmi and K. Shanmugavelu APPELLANT

Vs

S.N.M. Ramachandran and R. Gandhimathi RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 9

Citation : (2008) 12 MAD CK 0080

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : V.R. Shanmuganathan, for the Appellant; M.S. Velusamy, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The petitioners are the defendants in O.S. No. 59 of 2007, on the file of the Sub-Court, Devakkottai. It is a suit filed by

the respondents herein, seeking for the relief of rendition of accounts in a shop under the name and style of ""Revathi Pathirakadai"" and also for a

direction to grant the shares in favour of the plaintiffs.

2. The second petitioner has already filed another case on the file of the same court in O.S. No. 26 of 2007, for the relief of dissolution of a

partnership firm known as ""Rajan Vadakai Pathirakadai Niruvanam"" which was formed on 02.02.1990, to direct the share of 25% in favour of the

plaintiffs and also for rendition of the accounts.

3. The first petitioner herein was not a party in O.S. No. 26 of 2007. In O.S. No. 59 of 2007, it is stated that the first plaintiff and the first

defendant are brothers, second plaintiff is wife of the first plaintiff, second defendant is the wife of first defendant and third defendant is first

defendant's son. It is alleged in O.S. No. 59 of 2007 that the joint family contained all the members of the family engaged in the business and in

1990 the parties to the suit resolved to constitute the vessels rental business in Devakkottai and they also fixed certain amount payable by each of

the parties. However, the first plaintiff was working in the shop. It is further stated that originally the firm was started in the name and style of

Rajan Vadakai Pathira Nilayam"" and the income derived from the said business was utilized to launch identical business in various places like

Thiruvadanai, Kalayarkoil and Karaikudi and likewise in Devakkottai, under the name ""Kasiram Revathi"". The Revathi Vessels Rental shop was

started in the year 2001, out of the income obtained from Rajan Vessels Rental Shop and that the things in the Revathi Vessels Rental Shop

constitute the vessels taken from the Rajan Vessels Rental Shop.

4. As far as the learned Counsel for the petitioners is concerned, O.S. No. 27 of 2007 is a comprehensive suit which would include all the affairs

of the partnership firms in which the parties to the suit are the partners and there is no necessity to file a subsequent suit for an identical relief which

is against the provisions of Order 7 Rule 11 of CPC and that the subsequent suit has to be rejected. His contention is two-folded. One is, the

plaintiffs in O.S. No. 57 of 2007 have raised inconsistent pleas, which the plaintiffs are not entitled to raise in the suit and another one is, the

absence of cause of action in O.S. No. 59 of 2007. It is his contention that having alleged in one place in O.S. No. 59 of 2007 that Revathi

Partnership firm is a sister concern and pleading in another place in the same plaint that it is a separate partnership firm is mutually destructive plea

and hence the plaintiffs are not entitled to raise them and on that ground, the plaint has to suffer rejection.

5. His next contention is with reference to the absence of cause of action. He says that already the affairs of the absence of rights and liabilities of

the partners in the firm Rajan Vessels Rental Shop are all pleaded by both the parties in their respective pleadings in the plaint and written

statement in O.S. No. 26 of 2007 and having exhausted all the defenses in the written statement filed in O.S. No. 26 of 2007, the defendants in

O.S. No. 26 of 2007 have filed their plaint in O.S. No. 59 of 2007 with the same allegations as contained in the written statement in the earlier suit

and a careful reading of the plaint would not disclose any cause of action.

6. In support of his contention, the learned Counsel for the petitioners relies upon a decision of the Supreme Court in I.T.C. Limited Vs. Debts

Recovery Appellate Tribunal and Others, , wherein their Lordships have observed that:

...while the court scrutinize the plaint, it has to ascertain whether the plaint created an illusion of cause of action by clever drafting and the role

played by the pleading with reference to cause of action is the major element in a suit to be considered under Order 7 Rule 11 of C.P.C.

7. The learned Counsel for the petitioners Mr. V.R. Shanmuganathan also draws attention of this court to a decision of this Court in Nesammal and

another Vs. Edward and another, , wherein, the learned Judge has expressed his opinion as,

grounds for rejection of the Plaint stated in this affidavit are illustrative and not exhaustive-Provisions of Order 7 Rule 11 are not exhaustive and

Court has got inherent powers to see that vexatious litigations are not allowed to consume the time of the court - Court can reject plaint for

allegations in plaint reveals abuse of process of law.

With this authority, the learned Counsel also submits that as per the above said decision, this Court widened the scope of the order 7 Rule 11 of

CPC and any aspect incidental to the ingredients found under Order 7 Rule 11 of CPC would be considered by the Court and it can be

ascertained whether the plaint deserves for rejection. He also garners support from another decision in A. Sreedevi Vs. Vicharapu Ramakrishna

Gowd, in which this Court has held that:

...if on a meaningful, not formal reading of plaint or petition, it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue,

the trial court should exercise its power under Order 7 Rule 11 of C.P.C.

8. It is the following observations and conclusions of this Court which read as follows:

It is the duty of the trial Court to read the plaint, not formally, but on meaningful way and on such reading if it is manifestly vexatious and meritless

in the sense of not disclosing a fair right to sue, it should exercise its power exercisable under order 7 Rule 11 C.P.C taking care to see that the

grounds mentioned therein are fulfilled and if clear drafting has created the

illusion of cause of action, nip it in the bud. The Penal Code is also resourceful enough to meet such men, and must be triggered against them.

9. The learned Counsel for the respondent Mr. M.S. Velusamy opened his argument by referring to Order 7 Rule 11 of CPC and contended that

if the court finds that any of the contentions raised by the petitioners does not come under the four ingredients contained in the said rule, it is out of

the scope of the Rule and it cannot be considered for a moment. It is profitable to extract Order 7 Rule 11 of CPC for better understanding of the

subject:

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-papers 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.)

High Court Amendment (Madras); For clause(c) substitute the following:

(c) where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the

deficiency within the time, if any, granted by the Court.

10. As per this provision, if the plaint does not disclose the cause of action or if the relief is under-valued or if the plaintiffs failed to perform the function as directed by the Court with reference to the supply of deficit stamp or if it is barred by law, then only the Court can exercise its powers to venture to reject the plaint and in the absence of the above said factors, the Court is left with no other option, except to dismiss the application filed by the defendants for rejection of the plaint.

11. The other side contends that inconsistent pleas are available in the plaint and it may constitute a good ground for them to agitate the same at the time of trial and it will not form basis for the court to reject the plaint. In his view, in the present suit O.S. No. 59 of 2007, the necessary causes of action have been incorporated and the very reading of the plaint would show the same. It transpires that on filing of suit in O.S. No. 26 of 2007, the court below appointed an Advocate Commissioner to take inventory in Rajan Vessels Rental Shop, he inspected and took inventory of the account books and the vessels as well, found therein and he filed the Inventory Report before the Court.

12. The learned Counsel for the respondents would show that the very filing of the Inventory Report has become the cause of action for his filing the subsequent suit in O.S. No. 59 of 2007 which is evident from the list of documents annexed to O.S. No. 59 of 2007, which shows that a copy of the inventory was also produced along with the plaint. This Court sees considerable force in his arguments. Even though, there is no specific mention about the appointment of a Commission in the earlier suit and he has taken inventory as pleaded in the plaint as well the annexure of the copy of the Commissioner's Inventory Report would make it clear that it also forms part of cause of action.

13. In general, a conscious reading of the pleading in O.S. No. 59 of 2007 would candidly show that relevant particulars are there which duly constitute the cause of action for filing of the suit. If the suit is weak enough or if the plaintiff is taking any inconsistent pleas, it is for the defendants, these petitioners to agitate the same before the trial court at the time of the final hearing of the case.

14. The learned Counsel for the respondent in support of his contention has placed reliance upon a decision of this Court in Metson Education and

Development Association(P) Limited, represented by its President v. The Church of South India Trust Association, through its Power of

Attorneys, The Rt. Rev. Dr. V. Devasagayam, 226, Cathedral Road, Chennai-86 and Anr. reported in 2008(1) CTC 521, wherein the learned

Judge has observed that:

...non-filing of document on which cause of action rests and missing of Court records are only detrimental to plaintiff's case and will only benefit

Defendant and do not warrant rejection of the Plaintiff.

15. He also gained support from another decision of this Court in J. Lili Jabakani and Others Vs. T.A. Chandrasekhar, in which the learned Judge

after referring to a catalogue of decisions on this subject pronounced by the Supreme Court, reached a conclusion that a cause of action means

bundle of facts averred in plaint that disclose right to sue and if plaint does not disclose vital and valid cause of action, plaint can be rejected under

Order 7 Rule 11 of CPC and that disputed questions of fact cannot be taken as ground for rejection of plaint and that difference exists between

pleas that there exists no cause of action and that plaint does not disclose cause of action--Issue to be determined at stage of consideration of

Application for rejection of Plaintiff is whether plaintiff has cause of action to file a suit and this should be done by looking into averments contained

in Plaintiff.

16. In Prema Lala Nahata and Anr. v. Chandi Prasad Sikaria reported in (2007)2 MLJ 1177 (SC), the Honourable Apex Court has laid down

the law as follows:

On the Scheme of the Code, there is no such prohibition or a prevention at the entry of a suit defective for misjoinder of parties or of causes of

action. The Court is still competent to try and decide the suit, though the Court may also be competent to tell the plaintiffs either to elect to proceed

at the instance of one of the plaintiffs or to proceed with one of the causes of action. On the Scheme of the Code of Civil Procedure, it cannot

therefore be held that a suit barred for misjoinder of parties or of causes of action is barred by law, here the code.

17. Following illuminating judicial pronouncements of the Honourable Supreme Court of India as well as the decisions rendered by this Court, this

Court is of the considered view that on the basis of a study of the materials

available before this Court that the order passed by the Court below does not suffer from any infirmity. If the petitioners are aggrieved by the filing of the subsequent suit by the plaintiffs, they can very well agitate the same before the Court below and on the grounds set out in the petition filed under Order 7 Rule 11 of Civil Procedure Code, the plaint cannot be rejected and this Court does not countenance the claim of these petitions and the Civil Revision Petition deserves to be dismissed.

18. In fine, the Civil Revision Petition is dismissed. It is made clear that the court below will not get influenced by any of the observations made by this Court in this order. Consequently, connected Miscellaneous Petition is also dismissed. No costs.