

(2006) 11 MAD CK 0095

Madras High Court

Case No: Application No. 3017 of 2006 in C.S. No. 960 of 2003

R. Krishnan

APPELLANT

Vs

K. Manivannan and K.
Anbirkarasan

RESPONDENT

Date of Decision: Nov. 21, 2006

Acts Referred:

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

Hon'ble Judges: S. Rajeswaran, J

Bench: Single Bench

Advocate: K. Rajasekaran, for the Appellant; T. Viswanatha Rao Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Rajeswaran, J.

The defendant in the suit is the applicant in the above application filed under Order 7 Rule 11, CPC to reject the plaint filed in the above suit.

2. Respondents 1 and 2 herein are the plaintiffs in C.S. No. 960/2005, which was filed praying to pass a judgment and decree directing partition, division and separate possession of the suit properties into 3 shares and allotting 2/3rd cumulative shares to the plaintiffs and directing the defendants (applicants herein) to render true and proper accounts for the income derived from the suit schedule properties.

3. It is the case of the plaintiffs that they are the sons of the defendant herein and their mother born to them in lawful wedlock. Subsequently the defendant got Married to another woman and the plaintiffs and defendant were living together in a joint family in Teynampet and thereafter at Saligramam. The joint family has several properties and the plaintiffs have 1/3rd share each in those properties. Of

late the defendant is not visiting them and is living only with the 2nd wife and her children. Therefore they demanded partition of the properties and as the defendant did not come forward to partition the properties, they issued a notice 4.7.2005 for which a reply dated 13.7.2005 was sent by the defendant. Another notice dated 21.7.2005 was sent by the plaintiffs and the same was duly acknowledged by the defendant on 28.7.2005. As nothing happened thereafter, the plaintiffs filed the above suit for the aforesaid reliefs.

4. The above application has been filed by the defendant to reject the plaint containing the above averments.

5. It is stated by the applicant/defendant that he never married the mother of the plaintiffs and the plaintiffs are not his sons. The plaintiffs mother was introduced to him in 1964 and it was informed that the mother of the plaintiffs deserted by her husband and she was living separately. She tried her level best to keep him under her control, but the applicant/defendant detached her relationship with her after coming to know that she had relationship with several persons. In 1995, the plaintiffs called on him and introduced themselves as the children of their mother and wanted the defendant to help them to tide over the financial crisis. When he refused, they (the plaintiffs) threatened that they would spoil his name in public by revealing that he continued to have relationship with their mother. In order to protect himself, he conveyed four newly constructed flats to them at Saligramam and they also pressurized him to sign the general power of attorney in favour of the 1st plaintiff in respect of the said flats. It is stated by the applicant/defendant that the plaintiffs are not his children and even assuming that they are his illegitimate children, they have no right over the suit schedule properties. Therefore he filed the above application to reject the plaint

6. Heard the learned Counsel for the applicant/defendant and the learned Counsel for the respondents/plaintiffs. I have also perused the documents filed and the judgments referred to in support of their submissions.

7. The learned Counsel for the applicant/defendant while reiterating the averments contained in the affidavit filed in support of the above application, relied on the following decisions in support of his submissions

1) II (1990) DMC 574 (Valliammal v. Kamalambal)

2) I (1990) DMC 257 (Mohan v. Santha Bai Ammal).

3) AIR 1997 Kant. 77 (V. Mallikarjunaiah v. H.C. Gowramma)

8. Per contra, the learned Counsel for the respondents/plaintiffs vehemently contended that there is absolutely no material to reject the plaint under Order 7 Rule 11 CPC and he relied on the decisions reported in-

1) [State of Orissa Vs. Klockner and Company and Others](#), and

2) 2005 (2) L.W. 487 (Desert Valley Medical Inc. v A. Jayachandra Reddy).

9. I have considered the rival submissions carefully. Order 7 Rule 11 CPC reads 35 under:

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 as 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 with the time, if any, granted, by the Court.

10. From the above it is very clear that the plaint shall be rejected if it does not disclose a cause or action, where the relief claimed is undervalued, which the plaintiff fails to correct in spite of the order of the court, where the plaintiff failed to supply the required stamp papers with a time fixed by the court, when the plaint written upon a paper insufficiently stamped, where the suit is barred by law, where the plaint is not covered in duplicate and where the plaintiff fails to comply with Order 9 Rule 7.

11. In the present case, none of the above conditions are attracted to reject the plaint as prayed by the applicant/defendant.

12. In AIR 1997 Kant. 77 (cited supra), the Karnataka High Court held that if a proceeding represents a situation where on a plain appraisal of the material, the trial Court finds that no cause of action has been made out and that mechanically

proceeding with the matter up to the stage of issues, evidence and judgment would be totally worthless the Court would be fully justified in dismissing the proceeding at the threshold itself."

12. I am in entire agreement with the above principle enumerated by the Karnataka High Court. It is settled law that plaint averments alone should be considered to appraise whether there is any materials as provided under Order 7 Rule 11 of CPC to reject the plaint. If these principles are applied to the facts of the present case no ground is made out to reject the plaint. The other decisions namely, II (1990) DMC 574 (cited supra) and I (1990) DMC 257 (cited supra) were rendered in Letters Patent Appeal and Appeal Suit respectively and they cannot be relied on by the learned Counsel for the applicant/defendant to contend that the plaint is to be rejected

13. In [State of Orissa Vs. Klockner and Company and Others](#), Hon"ble Supreme Court held that for the limited purpose of determining the question whether the suit is to be wiped out under Order 7 Rule 11 CPC. the averments in the plaint are only to be looked into and the trial court has to maintain the distinction between the plea that there was no cause of action for the suit and the plea that the plaint does not disclose the cause of action.

14. The above said decision of the Supreme court makes it very clear that only the averments in the plaint are to be looked into to find out whether the plaint discloses any cause of action or not. If the averments in the plaint filed in the present suit are looked into. it cannot be said that it does not disclose a cause of action In fact, there is no averment in the affidavit that the plaint does not disclose a cause of action.

15. In 2005 (2) L.W. 487 (cited supra), a Division Bench of this Court held that the question as to whether the plaint is liable to be rejected by invoking Order 7 Rule 11 CPC has to be considered by referring to the plaint and may be the documents which are filed along with the plaint but not by reference to any statement indicated in the written statement or by reference to any other document which does not form part of the plaint.

16. I am bound by the above decision of the Division Bench and if the same is applied to the facts of the present case, there is no material whatsoever to invoke Order 7 Rule 11 CPC to reject the plaint.

17. In fact the only ground urged by the learned counsel for the applicant/defendant is that the plaintiffs are not the children of the applicant and even if they are illegitimate children, they have no right over the suit schedule properties. This is hardly sufficient to reject the plaint when the case of the plaintiffs that they are the children of the applicant born through his first wife.

18. Hence I find no merit in the above application and hence the same is dismissed. No costs.