

(2009) 08 MAD CK 0390

Madras High Court

Case No: S.A. No. 86 of 2008

M. Subramani

APPELLANT

Vs

Anbazhagan

RESPONDENT

Date of Decision: Aug. 28, 2009**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 5 Rule 9

Hon'ble Judges: S. Tamilvanan, J**Bench:** Single Bench**Advocate:** V. Lakshminarayanan, for the Appellant; S. Rajendrakumar, for the Respondent**Final Decision:** Allowed

Judgement

S. Tamilvanan, J.

This Second appeal has been preferred against the judgment and decree dated 29.10.2007 made in A.S. No. 461 of 2007 on the file of the III Additional Judge, City, Civil Court, Chennai confirming the order and decretal order passed in I.A. No. 3589 of 2006 made in O.S. No. 4327 of 2004 dismissing the suit, on the file of the I Assistant Judge, City Civil Court, Chennai.

2. It is an admitted fact that the appellant/plaintiff had filed the suit, in O.S. No. 4327 of 2004, on the file of the trial Court seeking a decree declaring that the settlement deed, in document No. 1157 of 1995 dated 22.03.1995, on the file of the Sub Registrar Office, Villivakkam as illegal, void abinitio and not binding on the plaintiff and to direct the respondent/defendant to deliver peaceful possession of the property and for other consequential reliefs. The suit had been taken on file and the respondent/defendant also filed his written statement. However, while the suit was pending, the respondent herein as defendant in the suit, filed an interlocutory application in I.A. No. 3589 of 2006, under Order VII Rule 11 CPC seeking an order rejecting the plaint, on the ground that a fraudulent document had been filed by the appellant/plaintiff in support of the suit claim. In the affidavit dated 20.02.2006, the

respondent/defendant has averred that he had addressed the Tahsildar questioning the patta that was issued in the name of the appellant herein, for which, the Tahsildar sent his reply on 27.12.2005 informing the respondent herein that no patta was issued in favour of the appellant and that the patta produced by the appellant herein was a forged document. In support of his claim, the respondent had filed a xerox copy of the alleged communication. The appellant herein as respondent/plaintiff filed his counter statement wherein, he had denied the allegations levelled against him by the respondent/defendant. As per the averments made in the counter, the appellant herein has stated that the petition filed by the defendant was totally devoid of merits and the respondent/defendant, suppressing the material fact that he had filed a suit in O.S. No. 4344 of 2005 seeking relief of recovery of possession of the property from the appellant's occupation and also for permanent injunction. According to him, the appellant/plaintiff had no knowledge whether the respondent/defendant had obtained any letter from the Tahsildar or not. The respondent herein having obtained a settlement deed from a person who has no right in the suit property and also a letter from a Tahsildar having no authority to issue the same, by producing the same, in support of his claim and the trial court based on the unreliable document rejected the plaint.

3. It is not in dispute that by order dated 23.02.2007, the Trial Court allowed, the petition filed by the respondent/defendant whereby rejected the plaint filed by the appellant herein. Aggrieved, by which the appeal in A.S. No. 46 of 2007 was preferred by the appellant/plaintiff. Confirming the order and decretal order passed by the Trial Court rejecting the plaint, the appeal was dismissed by the Appellate Court by the impugned judgment dated 29.10.2007 and hence the second appeal has been preferred by the appellant/plaintiff.

4. Learned Counsel appearing for the appellant raised the following substantial questions of law in the second appeal:

1. Whether the Court below are right in rejecting the plaint when a cause of action for the institution of the suit had been clearly disclosed in the plaint?

2. Whether Order VII Rule 11 CPC can be invoked to reject the plaint relying upon the defence raised by the defendant?

3. Are the Court below justified in giving undue preference to the unsubstantiated case of the defendant by relying upon the settlement deed, police complaint and other documents generated pending the proceedings?

5. Mr. V. Lakshminarayanan, learned Counsel appearing for the appellant submitted that the court below without following the mandatory procedure contemplated under Order VII Rule 11 of CPC, had rejected the plaint, even after filing of written statement in the suit. According to him, after numbering the suit and filing of the written statement, the Trial Court could not have rejected the plaint by an order passed in the interlocutory application, without deciding the suit on merits. He

mainly contended that the Courts below have solely relied on the alleged reply sent by the Tahsildar to the respondent, though the same has no evidentiary value for rejecting the plaint. Learned Counsel also drew the attention of this Court to Order VII Rule 11 of CPC which reads as follows:

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.

In the instant case, admittedly the appellant/plaintiff has disclosed a cause of action to maintain the suit and in the interlocutory application, for rejecting the plaint, the respondent/defendant has made certain averments before the Trial Court that the patta produced by the plaintiff along with the plaint was a forged document. The respondent herein further stated in the petition that he had received reply for his letter from the Tahsildar and came to know that no patta had been issued by the Tahsildar hence, the patta produced by the appellant could have been a forged document. Only on the averments made by the respondent/defendant, the trial Court came to the conclusion that the said document was forged one and accordingly without examining any witnesses to prove the genuineness of the document, simply allowed the petition filed by the respondent/defendant and rejected the plaint. It is not the case of the respondent/defendant that there is no cause of action as alleged in the plaint, to maintain the suit. Similarly, the valuation of the suit and the payment of court fee thereon are not disputed by the respondent/defendant as contended by the learned Counsel for the petitioner/plaintiff. Based on the plaint averments, the suit cannot be construed that it is barred by any law and further, the suit had been numbered and subsequently the defendant also filed his written statement. As per the proviso, if there is any time limit fixed by the Court for the correction or the valuation and payment of court fee, for which time was not extended, in case there is non-compliance of the plaintiff, the same may be a ground for rejecting the plaint. It is not in dispute that the trial court has got jurisdiction to try the suit as per the plaint averments.

6. As per Rule 11(f) of Order VII CPC, in case the plaintiff fails to comply with the proviso to Rule 9 of Order VII CPC, within the time limit fixed by court the plaint can be rejected. In the instant case, the averments made in the interlocutory application filed by the respondent herein, before the trial court is that the patta produced by the appellant/plaintiff along with the plaint was a forged document. According to the respondent/defendant as per the reply received from the Tahsildar, he came to know that no patta was issued by the Tahsildar in favour of the appellant/plaintiff. Only based on the said averments, the Trial Court came to the conclusion that the patta produced by the plaintiff was a forged document and accordingly without examining any witness to prove the genuineness of the document the Trial court allowed the petition filed by the defendant and rejected the plaint, though the suit was already numbered by the court and written statement was also filed by the respondent/defendant.

7. Learned Counsel appearing for the appellant/plaintiff submitted that the trial court has not rejected the plaint, on the ground that there was no cause of action for the institution of the suit since the same had been clearly disclosed in the plaint, however the order of rejection was confirmed by the Appellate Court. Learned Counsel appearing for the appellant contended that the trial court had rejected the plaint against law without proper appreciation of evidence, and however, the Appellate Court confirmed the order of rejection made by the trial Court, under Order 7 Rule 11 CPC.

8. The Hon"ble Supreme Court of India in [Hari Shankar Jain Vs. Sonia Gandhi](#), at page No. 256 has held as follows:

The petitions are hopelessly vague and completely bald in the allegations made, most of which could not possibly be within the personal knowledge of the petitioners but still verified as "true" to their knowledge, without indicating the source. Such pleadings cannot amount to disclosing any cause of action and are required to be rejected/dismissed under Order VII Rule 11 CPC.

It is clear that if the averments made in the plaint are vague in disclosing the cause of action to maintain the suit, that may be a ground for rejecting the plaint, under Order VII Rule 11 CPC. In the present case, there is no such allegation for rejecting the plaint. In fact the suit was numbered after considering the plaint averments.

9. In the decision reported in [Mayar \(H.K.\) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others](#), the Hon"ble Supreme Court has held with regard to the scope of Order VII Rule 11 CPC as follows:

...the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the power under Order VII Rule 11 of the Code. Essentially, whether the

plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

10. As per Order VII Rule 11 CPC, the plaint shall be rejected where it does not disclose a cause of action, Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time limit fixed by the Court, fails to do so; Where the relief claimed is properly valued, but the plaint is 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; where the suit appears from the statement in the plaint to be barred by any law; where it is not filed in duplicate, where the plaintiff fails to comply with the provisions of Order VII Rule 9 CPC. As per Rule 9 of Order VII CPC, once the Court ordered that the summons to be served on the defendants in the manner provided in Rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper, for the defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants. The said provision has been inserted by Act 46 of 1999 and Act 22 of 2002. It is not in dispute that no such non-compliance on the side of the appellant/plaintiff was alleged by the respondent/defendant. It is seen that no conditional order had been passed by the Trial Court for rejecting the plaint, subsequently for non-compliance of the order.

11. The Honourable Supreme Court in the decision in [Mayar \(H.K.\) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others](#), has held that as per Order VII Rule 11 CPC, the plaint shall not be rejected, whether the plaint discloses any cause of action, for maintaining the suit. So long as the plaint discloses some cause of action which requires determination by the Court, likelihood of success of plaintiff cannot be a ground for rejection of the plaint.

12. It is well settled that a plaint cannot be rejected on the basis of some allegations made by the defendants in the written statement or in an interlocutory application for rejection of the plaint. The court while exercising powers under Order VII Rule 11

of the Code, has to consider whether there is sufficient cause of action disclosed in the plaint. However, the same is a question of fact which could be decided based on application of evidence and not on the basis of the averments made in the written statement or counter. The Court cannot decide the correctness of the averments to reject the plaint based on the mere averments made by the respondent/defendant.

13. The Hon'ble Apex Court in *C. Natarajan v. Ashim Bai and Anr.* reported in 2008 (1) LW 96 has ruled that in a case where the defendant did not accept that the plaintiff was in possession, an issue in that behalf is therefore, required to be framed, which required to be gone in to. In such circumstances, limitation would not commence unless there has been a clear and unequivocal threat to the right claimed by the plaintiff. Hence, the application filed under Order VII Rule 11(d) was held not maintainable.

14. In the light of various decisions rendered by the Hon'ble Apex Court, and this Court, it has been made clear that a plaint can be rejected by the Trial Court under Order VII Rule 11 CPC, only when the plaint does not disclose any cause of action or the alleged cause of action is insufficient to maintain the suit. However, when the plaint discloses cause of action for maintaining the suit, which requires determination by the Court, merely based on the opinion of the Judge, that the plaintiff may not succeed in the case, the court cannot decide the same as a ground for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure.

15. In the instant case, admittedly the appellant/plaintiff has disclosed cause of action for maintaining the suit, seeking the relief of declaration and direction to the defendant for delivery of possession of the property and other consequential reliefs. Based on the cause of action, the case was taken on file by the trial court, which is not in dispute. Subsequently, the respondent herein as defendant, filed his written statement. In the pending suit the respondent filed Interlocutory Application in I.A. No. 3589 of 2006 seeking an order to reject the plaint under Order VII Rule 11 CPC. According to the respondent herein no certificate was issued by the Government and if there is any such document, the same could have been a forged one and further averred that the respondent had addressed the concerned Tahsildar and enquired whether patta was issued in the name of the appellant/plaintiff and for which the Tahsildar allegedly sent reply, dated 27.12.2005 informing the respondent/defendant that the patta produced by the appellant/plaintiff was a forged document. Based on the complaint given by the respondent, a criminal case was registered by police against the appellant.

16. It is an admitted fact that the suit was taken on file by the trial court, based on the cause of action disclosed in the plaint and written statement was also filed, by the respondent/defendant, hence, it is not open to the trial court to pass an order in the interlocutory application, rejecting the plaint, holding that the suit property belonged to the respondent/defendant and that the appellant had filed the suit with a view to grab the property, based on the forged document, merely believing the

one sided version of the respondent/defendant, without examining any witness providing opportunity to the other side and legally considering the same on merits. Before the Trial, the Court below could not decide the probative or evidentiary value of the document filed by the petitioner/plaintiff based on the averments made in the affidavit filed by the respondent/defendant, when there is a denial by other side. Even the criminal complaint filed by the respondent against the appellant and the criminal case being registered by the police would not be sufficient to reject the plaint on the ground that the documents produced by the appellant/plaintiff was a forged document. Merely based on the allegations made by the respondent, without providing reasonable opportunity to the other side to raise his defence by adducing oral evidence.

17. As contemplated under Order VII Rule 11 CPC, plaint may be rejected only 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.

18. Ignoring the mandatory provisions as contemplated under Order VII Rule 11 CPC, plaint cannot be rejected by any Court Where the time fixed by the Court for correction being carried out or supplying the requisite stamp-papers payment of deficit court fee only by providing opportunity, court can pass an order for the non-compliance, as there is no other go for the court to keep the suit pending indefinitely, when there is default without any justification. Even for refusal to extend such time in certain special circumstances would cause grave injustice to the plaintiff and the Trial Court should take note of the same, while passing an order in rejecting the plaint, to meet the ends of justice. In the instant case, there is no such circumstance for rejecting the plaint.

19. Since the plaint discloses cause of action for the relief sought for in the suit, merely based on the averments made by the defendant, in his affidavit filed in support of an Interlocutory Application, without considering the issues on merits in the suit, as per order VII Rule 11 CPC, the Court below could not have allowed the Interlocutory Application and rejected the plaint. The appellate court, without

considering the scope of Order VII Rule 11 CPC, has confirmed the order and decretal order passed by the Trial Court and dismissed the appeal preferred by the appellant/plaintiff.

20. It is an admitted fact that the appellant/plaintiff has disclosed the cause of action for the institution of the suit, and after considering the alleged cause of action, the case was taken on file by the trial court and subsequently, the respondent/defendant also filed his written statement. Therefore, this Court is of a considered view that the Court below is not correct in rejecting the plaint, subsequently, relying on the averments made by the defendant, in his interlocutory application and pass an order, rejecting the plaint, under Order VII Rule 11 CPC. Hence rejection of the plaint by the trial court and confirmation of the same by the appellate court are unsustainable in law. Therefore, the substantial questions of law 1 & 2 framed in this second appeal are answered in favour of the appellant/plaintiff and against the respondent/defendant. The Hon"ble Apex Court in [I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others](#), has held that plaint could be rejected even after framing of issues and when the case is posted for recording evidence, when it is clearly brought to the notice of the court that the court has no jurisdiction to try the suit and is statutorily barred. However, the aforesaid decision is not applicable to the facts and circumstances of this case, since there is no statutory bar to decide the suit by the trial Court.

21. It is an admitted fact that the appellant/plaintiff had filed five documents, namely the alleged Patta, dated 20.05.1976, Settlement deed executed by one Ganesan, Family card of the plaintiff, Death Certificate, dated 17.04.1997 issued by the Corporation of Chennai, Certificate issued by the Village Administrative Officer in respect of the suit property. After the case was filed on 24.07.2004, the respondent/defendant filed his written statement on 10.12.2004. In the affidavit relating to I.A. No. 3589 of 2006 in the suit, the respondent/defendant has stated in paragraph 3 as follows:

I submit that the entire suit is based on document No. 5 of the plaint, a certificate issued by the Village Administrative Officer of Purasawalkam - Perambur Taluk in the very beginning itself, I stated that no such certificate has been issued by the Government and if at all there is one such document, it is a forged one. Therefore, I subsequently gave a complaint to the police and they have found out that it is only a forged one and registered a case not only against the respondent herein, but also against the particular officer, who was helped the respondent to get that certificate. Both of them were remanded by the police and I understand that they are under the custody. In the meanwhile, I have also written a letter to the Tahsildar, enquiring whether patta is issue din the name of the respondent. To the said letter, the Tahsildar has given a reply to me on 27.12.2005, informing me that no patta was issued and the patta produced by the respondent is a forged one. I am herewith filing the xerox copies of the communications and also the paper publication

informing the public that the respondent and the official have been arrested and a criminal case has been registered against them. I am also filing herewith FIR copy.

22. By way of filing counter, the appellant/plaintiff has denied the allegations raised by the respondent herein and further, stated thus:

"the defendant knows pretty well that he does not have a case to sustain and hence, he is attempting to avoid the witness box by filing one vexatious petition after another". When there are averments and counter averments by the appellant and the respondent relating to the Interlocutory Application, based on the averments in the plaint by the plaintiff and the written statement by the defendant, the Court below, without assessing the averments and the counter averments, has unilaterally accepted the version of the respondent and rejected the plaint, which is an erroneous procedure, not contemplated under Order VII Rule 11 CPC, however, that was overlooked by the appellate court, hence, the third substantial question of law is also answered in favour of the appellant and against the respondent.

23. When there are averments by the plaintiff, in the form of plaint and counter averments by the defendant in his written statement, merely accepting the averments made in the affidavit of the defendant, ignoring the counter affidavit filed by the plaintiff, the trial court has rejected the plaint, which is against the mandate of Order VII Rule 11 CPC. It is a settled proposition of law that no court can accept the one sided view, when the same is refused by the other side, without testifying the genuineness of the claim or the defence. Hence, the third substantial question is also answered in favour of the appellant/plaintiff and against the finding of the courts below.

24. In the result, the second appeal is allowed and the impugned Judgment and Decree passed by the courts below are set aside and the matter is remitted back to the trial court to dispose the same, solely on merits, uninfluenced by the findings of this Court in this second appeal. Both the parties are directed to bear their own costs in this second appeal. As the suit relates to the year 2004, the Trial Court is directed to dispose the same, according to law, within a period of six months, from the date of receipt of the order. Registry is directed to return the original papers relating to the suit if any.

25. The court fee paid by the appellant is directed to be refunded as per Rules. If any amount is paid by the appellant towards the costs in the suit and in the first appeal, the appellant would be entitled to get returned from the respondent/defendant.