



2023/KER/57656

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 26TH DAY OF SEPTEMBER 2023 / 4TH ASWINA, 1945

OP(C) NO. 898 OF 2023

AGAINST THE ORDER DATED 28.01.2023 IN I.A. NO.1/2022 IN OS

262/2021 OF MUNSIFF COURT, ALATHUR

PETITIONER/1ST PETITIONER IN I.A./8TH DEFENDANT IN SUIT:

JUSTICE CHETTUR SANKARAN NAIR

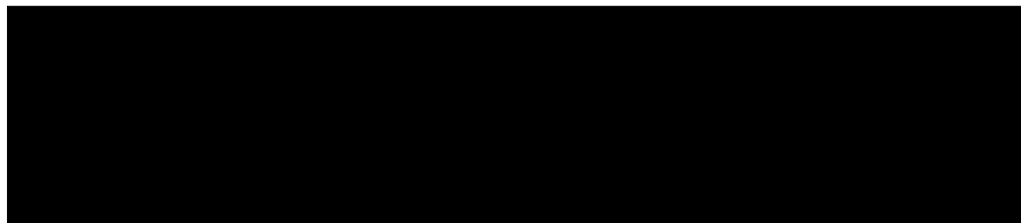


BY ADVS.
A.PARVATHI MENON
P.SANJAY
BIJU MEENATTOOR
PAUL VARGHESE (PALLATH)
P.A.MOHAMMED ASLAM
KIRAN NARAYANAN
PRASOON SUNNY
RAHUL RAJ
AMRUTHA M. NAIR
MUHAMMED BILAL.V.A

RESPONDENTS/RESPONDENTS 1-8 IN I.A., 2ND PETITIONER IN

I.A./PLAINTIFF, DEFENDANT 2-7 IN THE SUIT:

1 MADHU VADAKKEPATT



2 MOLLY



3 DAMODHARAN
AGED 63 YEARS



[REDACTED]

4 DOLLY

[REDACTED]

5 SANKAR

[REDACTED]

6 SARASWATHI

[REDACTED]

7 GEETHA

[REDACTED]

8 ARAVINDHAN RAGHU

[REDACTED]

9 PRIYADARSHINI CHETTUR

[REDACTED]

BY ADVS.

K.S.BHARATHAN

Millu Dandapani

ALPHIN ANTONY (K/625/2014)

AADITHYAN S.MANNALI (K/631/2014)

RANCE R. (K/1560/2021)

HASNA NAZAR (K/00000302/2023)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
26.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

The petitioner received summons from the learned Munsiff's Court, Alathur, regarding institution of O.S.No.262/2021 on its files by the 1st respondent herein against him; and immediately moved the said Court for rejection of the plaint, under Order VII Rule 11 of the Code of Civil Procedure (CPC).

2. The specific case of the petitioner is that the plaint instituted by the 1st respondent is incompetent because, *inter alia*, it does not disclose a valid cause of action; that the claim impelled therein is contrary to his own stand earlier taken by the said respondent in Ext.P1 Suit; that the statements contained therein will render the Suit to be barred in law; and hence that its prosecution amounts to abuse of processes of law.

3. The petitioner asserts that, unfortunately, the learned Munsiff, without understanding the true ambit of Order VII Rule 11 of the CPC, refused to even consider his application on its merits, as manifest from Ext.P11, holding that his contentions can be evaluated only after "*full-fledged*



trial in the suit” (sic) .

4. The petitioner, through his learned counsel – Smt.Parvathi Menon, vehemently asserts that the course adopted by the learned Munsiff is contrary to the scheme of the CPC and without adverting to the purpose for which Order VII Rule 11 of the CPC has been endrafted, namely, to weed out unworthy plaints at the stage of its inception itself. He thus prays that Ext.P11 be set aside and the learned Munsiff be directed to reconsider his application on its merits, within a time frame to be fixed by this Court.

5. Sri.K.S.Bharathan – learned counsel for the 1st respondent, in response, asserted that Ext.P11 is irreproachable. He argued that, as rightly found by the learned Munsiff, the objections raised by the petitioner, in his application preferred under Order VII Rule 11 of the CPC, are ones which can be adjudicated only after the trial of the suit is over. He vehemently submitted that since the petitioner appears to have raised objections against the plaint, saying that it is hit by *res judicata* and that there is no valid cause of action shown therein, the learned Munsiff could have done nothing more, but to have issued Ext.P11. He thus prayed that this Original Petition be dismissed.



6. Sri.Millu Dandapani – learned counsel appearing for the 9th respondent, supported the petitioner, arguing that, in case where a plaint does not disclose a valid cause of action, or is vitiated on account of any of the specified reasons mentioned in Order VII Rule 11 of the CPC being attracted, the Trial Judge is required to peremptorily reject it; and cannot wait for the trial to be over for this purpose. He submitted that, by doing so, the very purpose and intent of the afore provision would be frustrated, as has been now done through Ext.P11 order.

7. The files record that even though summons have been validly served on the other respondents, they have chosen not to be present in person, or to be represented through counsel; thus inferentially guiding me to the impression that they have nothing to offer in opposition to the various reliefs sought for in this Original Petition.

8. Before I venture into the assessment of the syllogistic contentions as afore, I am certain that a glance through Order VII Rule 11 of the CPC is necessary; for which purpose, I extract it as 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 is written upon 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 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 use of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and at refusal to extend such time would cause grave injustice to the plaintiff.]"

9. It is perspicuous and indubitable, even from a plain reading of the afore provision that, what is provided for is the rejection of the plaint if any of the causes mentioned therein



are attracted.

10. Apodictically, therefore, what was required for the learned Munsiff was to decide, solely on an assessment of the plaint, whether it was deserving of being rejected as prayed for by the petitioner; and if any of the reasons mentioned therein are attracted for such purpose.

11. When the provision starts by saying "rejection of plaint", one fails to fathom how the learned Munsiff could have issued Ext.P11 order, saying that the application of the petitioner, preferred under it, will be considered only after trial, because this would - as rightly argued by Smt.Parvathi Menon and Sri.Millu Dhandapani - defeat the very purpose for which it has been brought into the statute.

12. The binding various precedents which cover the field make it incontestable that, what is expected of a Trial Judge is to verify whether the plaint is an abuse of process; and whether any of the inhibiting factors as enumerated thereunder are attracted, so as to render the same incompetent and incapable of prosecution.

13. Obviously, the holding of the learned Munsiff in Ext.P11, that the petitioner will have to wait until the trial is completed, for his application under Order VII, Rule 11 of the



CPC to be considered, is not merely anachronistic, but militates against the very purpose for which said provision has been brought into force.

In the afore circumstances, I allow this Original Petition and set aside Ext.P11; with a consequential direction to the learned Munsiff, Alathur, to reconsider IA No.1/2022 in OS No. 262/2021, after hearing both sides; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than one month from the date of receipt of a copy of this judgment.

Needless to say, until such time as the afore exercise is completed and the resultant order communicated to the parties, the interim order of this Court dated 12.09.2023 will continue to be in force.

**Sd/- DEVAN RAMACHANDRAN,
JUDGE**

lsn

APPENDIX OF OP(C) 898/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE PLAINT IN OS 322/2015
DATED 20.07.2015.
- Exhibit P2 A TRUE COPY OF THE JUDGEMENT IN OS
322/2015 DATED 28.02.2018
- Exhibit P3 TRUE COPY OF THE JUDGEMENT DATED
9.4.2019 IN AS 113/2018
- Exhibit P4 TRUE COPY OF THE SALE DEED DATED
21.2.2009
- Exhibit P5 TRUE COPY OF THE SALE DEED DATED
4.5.2009
- Exhibit P6 TRUE COPY OF THE WRITTEN STATEMENT OF
THE FIRST RESPONDENT IN OS 322/2015
DATED 30.07.2016
- Exhibit P7 TRUE COPY OF THE JUDGEMENT IN OP(C)
1961/2020 DATED 18.03.2021
- Exhibit P8 TRUE COPY OF THE PLAINT IN OS 262/2021
DATED 26.08.2021
- Exhibit P9 TRUE COPY OF THE IA 1430/2022 FOR
REJECTION OF PLAINT FILED IN OS
262/2021 IN THE YEAR OF 2022
- Exhibit P10 TRUE COPY OF THE COUNTER STATEMENT
FILED TO THE IA IN OS 262/2021 FILED
BY THE FIRST RESPONDENT HEREIN DATED
05.11.2022.
- Exhibit P11 TRUE COPY OF THE ORDER DISMISSING
EXHIBIT P9 IA IN OS 262/2022 DATED
28.01.2023.

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE