

Application No.1516 of 2015
in
C.S.No.831 of 2014

K.RAVICHANDRABAABU,J

The third defendant is the applicant. The plaintiff in the above suit is the first respondent in this application. This application is filed seeking for rejection of the plaint on the ground that no cause of action arises against the applicant/third defendant.

2. The first respondent, as plaintiff, filed the said suit for recovery of a sum of Rs.1,44,20,496/-, with interest, from the defendants. The case of the plaintiff in short, is as follows :-

(a) Plaintiff is the absolute owner of the property bearing Plot No.36, measuring an extent of 9360 sq.ft., comprised in S.No.44/37, situated at No.36, Ramappa Nagar, Main Street, Perungudi, Chennai. The first defendant-Company is dealing in real estate and they also do business as promoters/developers. The plaintiff is the niece of the second defendant.

(b) The second defendant offered to promote the plaintiff's property and based on such offer, she entered into a joint venture with the defendants and executed an agreement dated 7.6.2007. By virtue of such joint venture agreement, plaintiff is entitled to 60% of the total built-up area, in consideration of her transferring 40% of the undivided share in the land to the builder, i.e., the first defendant company. She had appointed the second defendant as her Power of Attorney Agent empowering him to develop and construct residential apartments in the above said property. As per the instructions of the second defendant, the plaintiff appointed the third defendant as a Power of Attorney Agent to act in a similar manner by executing a Power of Attorney Deed, dated 01.05.2009. The second defendant, through E-mail dated 18.10.2008, informed that the construction of the project will be completed in the month of August 2009 and if the project could not be completed by that time, the plaintiff would be given compensation of Rs.1,00,000/- per month from September 2009 onwards. However, the construction was completed and flats were handed over to the plaintiff only in the month of September 2012, with lots of unfinished works. Therefore, the plaintiff is entitled to compensation of Rs.37,00,000/-.

(c) The first defendant has put up a total constructed area of 15,007 sq.ft. as per the joint venture agreement, out of which, the plaintiff is entitled to 9,004 sq.ft. of built up area as against the first defendant's share of 6,003 sq.ft. Six flats were allotted to the share of the plaintiff and five flats were allotted to the builder's share. The corresponding UDS for the excess built up area is 688 sq.ft. It was agreed that the excess area allotted to the builder is to be adjusted at the time of final settlement. The first defendant asked the plaintiff to authorize the builder to sell the additional extent of 688 sq.ft. of undivided share. Thus, the first defendant had to pay to the plaintiff the cost of 770 sq.ft. constructed area transferred to the defendants over and above the proportion stipulated in the agreement dated 07.06.2007. The defendants allotted to themselves - Flat Nos.C1, A2, C2, B3 and E. While so, there was an offer by one of the prospective purchasers to buy Flat No.A1, allotted to the share of the plaintiff. Defendants 2 and 3 sought the permission of the plaintiff to sell the flat. The plaintiff consented to the same. Hence the defendants requested the plaintiff to execute a fresh Power of Attorney empowering them to sell

Department, directly towards the tax liability of the plaintiff in the month of March 2011 for the taxation year 2009-10. This amount was paid from the amounts due by the defendants to the plaintiff as per the joint venture agreement.

(d) The plaintiff was made to believe by the defendants 2 and 3 that there were prospective buyers for the remaining flats allotted to her share. Believing their words, the plaintiff agreed to sell three other flats viz., B1, B2 and C3, allotted to her share. Accordingly, she executed Power of Attorney, dated 09.09.2011, appointing the defendants 2 and 3 as her agents to negotiate and sell the above three flats and to receive the sale consideration directly from the buyers. Flat Nos. B2 and C3 were thus sold and the plaintiff received the sale consideration directly from the buyers. The defendants, however, misappropriated the portion of sale consideration in respect of Flat No.A1.

3. The third defendant has filed the present application contending that there is no cause of action against him for the plaintiff to file the above said suit. According to the 3rd defendant, he acted only as a Power Agent. The contentions of the third defendant are as follows:

The plaintiff executed a Power of Attorney appointing the second defendant as Power Agent, for the purpose of getting approval from the statutory authorities for putting up construction. The third defendant was authorised by the first defendant to execute and register the sale deeds on behalf of the first defendant. Based on the instructions of the second defendant, the plaintiff executed a second Power of Attorney, dated 01.05.2009, appointing the third defendant as the Power Agent of the plaintiff. The plaintiff again executed a third Power of Attorney, dated 22.01.2010 permitting the second defendant to sell Flat No.A1 in addition to the five flats and permitted the second defendant and the third defendant to receive the consideration towards the sale of the Flat No.A1. A sum of Rs.63,51,750/- has been fully credited to the accounts of the first defendant-Company after the sale of Flat No.A1 to one Meenakshi Sundaram. Therefore, the third defendant has discharged his duties as Power Agent. The third defendant has also been informed that the first defendant has settled the dues to the plaintiff in respect of the Flat No.A1. The entire sale consideration arising out of the sale of Flat No.A1 has been fully remitted to the account of the first defendant and the third defendant has discharged his duties as the Power Agent without any blemish. The suit has been filed as against the third defendant on the false premise that the third defendant was a Director of the first defendant-Company. The third defendant did not hold out any promise to the plaintiff.

4. This application is opposed by the plaintiff by filing counter affidavit, wherein it is started as follows:

The third defendant has admitted that he acted as a Power Agent of the plaintiff by virtue of Power of Attorney Deeds, dated 01.05.2009, 22.01.2010 and 09.09.2011. The third defendant admitted that the sale proceeds of Flat No.A1 were remitted to the account of the first defendant-Company. However, he has falsely made an allegation that he is reliably informed that apart from a sum of Rs.47,43,323/-, payments were made by the second defendant by cash and kind to the plaintiff. Thus, the third defendant has wantonly introduced himself only with a view to scuttle the issue. The third defendant has to prove that he has resigned from the service and he was not a Director of the first defendant-Company at the material point of time. There are so many facts, which are to be established in full-fledged trial.

5. The applicant/third defendant has filed a reply affidavit reiterating the averments made in this application.

has specifically made allegations against the third defendant as well, and consequently, she seeks for the relief of recovery of money from all the defendants. It is her specific case that all the defendants have misappropriated the money payable to her. Therefore, from the plaint averments, it cannot be said that there is no cause of action for filing the present suit against the third defendant. It is well settled that averments as stated in the plaint have to be taken into consideration to find out as to whether it discloses the cause of action for filing the suit or not. In other words, the contention of the defendants on the merits of the claim cannot be considered at this stage, to decide with regard to the disclosure of cause of action in the plaint. The various averments contained in the affidavit filed in support of the above application, only reveal that the third defendant is trying to canvass the correctness or otherwise of the claim made by the plaintiff in the said suit, by contending that the third defendant is not liable to pay the suit claim. Whether the plaintiff is entitled to succeed based on the cause of action shown in the plaint, is entirely a different question which has to be considered and decided only after the conduct of trial in the main suit. Therefore, the contentions raised by the third defendant on the merits of the claim made by the plaintiff cannot be considered in this application seeking for rejection of the plaint.

9. This Court has already considered similar issue in very many decisions and held that only plaint averments are the deciding factor to find out as to whether any cause of action disclosed by the plaintiff to file the suit or not. One of such decisions is reported in 2014 (8) MLJ 513 (C.V.Karthikeyan vs. P.Subramaniam & another), wherein in paragraph 15, it is held as follows:-

"15. It is well settled that plaint should be rejected only when the requirement as contemplated under Order 7 Rule 11 CPC is pleaded and proved. Such pleading in support of the application filed under Order 7 Rule 11 CPC raising any of the grounds set out therein, should straightaway pinpoint to the relevant averments made in the plaint supporting the claim of the defendant made in his application under Order 7 Rule 11 CPC. In other words, the plaint averments on the face of it, must show that the case of the party who files an application under Order 7 Rule 11 CPC is made out. On the other hand, if the grounds raised by the party in his application under Order 7 Rule 11 CPC require further enquiry or probing of the matter, which otherwise is not possible without conducting a trial, the plaint cannot be rejected simply based on the allegation made by the party who filed the said application. It is needless to say that rejection of the plaint is an extreme step in a suit proceedings, since such rejection amounts to dismissal of the suit even before considering the claim of the plaintiff by conducting trial. It is also to be noted that such application can be filed by the defendant even before filing the written statement or at any time thereafter. Therefore, such exercise of considering the application under Order 7 Rule 11 CPC should be done by the trial Court with utmost care and caution, since the right of a party to have a full-fledged trial cannot be denied at the threshold by rejecting the plaint based on the averments contained in the application alone, unless the grounds raised in such application are also justified through a plain reading of the plaint itself.

10. Considering the above said facts and circumstances of the case, this Court is of the view that the applicant/D3 has not made out a case for rejecting the plaint. Accordingly, this application is dismissed. No costs.

15.7.2015

K.RAVICHANDRABAABU,J

Application No.1516 of 2015
in
C.S.No.831 of 2014

15.7.2015