

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **09-01-2015**

CORAM :

THE HONOURABLE MR.JUSTICE **S.TAMILVANAN**

**C.R.P (PD).No.2850 of 2013
and M.P.No.1 of 2013**

R.Chendilvel

..... Petitioner

vs

1. G.Damodaran
2. P.R.Rajeshkumar
3. P.Sankar

..... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 11.01.2013 made in I.A.No.711 of 2013 in O.S.No.329 of 2013 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.K.Gopalakrishnan
for Mr.M.Kamalakannan

For Respondents : Mr.C.B.Muralikrishnan for R1
No appearance for R2
Mr.M.Manivasagam for R3

ORDER

The Civil Revision Petition has been filed under Article 227 of the Constitution of India, challenging the order, dated 11.01.2013 made in I.A.No.711 of 2013 in O.S.No.329 of 2013 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

2. The petitioner herein is the first defendant in the suit, that was filed by the first respondent / plaintiff against the petitioner and respondents 2 and 3, seeking permanent injunction restraining the petitioner and the respondents 2 and 3 from alienating or encumbering the suit property to any third party.

3. The Interlocutory Application in I.A.No.711 of 2013 was filed by the first respondent against the petitioner and the respondents 2 and 3 herein under Order 2 Rule 2 r/w Section 151 of the Code of Civil Procedure, seeking leave to file a comprehensive suit for seeking specific performance on later stage on the same cause of action. The first respondent, as plaintiff, has stated in the plaint that the cause of action for the suit arose within the territorial jurisdiction of the City Civil Court, Chennai on 07.04.1944 when the first defendant's forefather purchased the property, vide Doc.No.1241/44 and the agreement of sale in favour of the plaintiff was entered into at Chennai, after receiving the advance sale consideration of Rs.40,00,000/- in chennai at the office of the plaintiff and when signed the agreement by the plaintiff and defendant. In the cause of action paragraph, the first respondent / plaintiff has not stated the date of the agreement for sale. However, in the list of document filed under Order 7 rule 14 (1) & 2 CPC, the first respondent / plaintiff has stated Document No.1, agreement between the plaintiff and the defendant, dated 08.10.2012 and also Memorandum of Understanding,

dated 02.08.2012. The xerox copy of the memorandum of understanding filed in the typed set of papers would show that it is only an unregistered agreement between the plaintiff and the other party.

4. As per the impugned order, dated 11.01.2013, the Court below has allowed the petition, whereby granted leave to the first respondent / plaintiff to file a comprehensive suit for specific performance on a later stage, aggrieved by which, this Revision has been preferred by the petitioner / defendant.

5. Mr.K.Gopalakrishnan, learned counsel appearing for the petitioner submitted that the order passed by the Court below is against law, whereby the Court below granted leave for the first respondent / plaintiff, to file a separate suit for the main relief of specific performance of contract. It was further argued by the learned counsel for the petitioner that the first respondent / plaintiff could have filed a proper suit for specific performance and paid Court fee for the value of the agreement stated therein and also drew the attention of this Court to the unregistered Memorandum of Understanding (MOU), which reads in paragraph number 3 as follows :

"The party of the second part agree to purchase the property for a total sale consideration of Rs.4,40,00,000/- (Rupees four crores forty lakhs only) and the party of the first part agreed for the same."

It is seen that the proposed vendor, as per the MOU has been stated as party of the first part and the proposed purchaser, D.Damodharan / first respondent herein is stated as party of the second part.

6. As per the prayer, in the Interlocutory Application, the first respondent / plaintiff has sought leave to file a suit for specific performance of the agreement. As stated in the MOU, the sale consideration, as per the agreement is Rs.4,40,00,000/-. Without filing a suit, seeking specific performance of agreement, by making payment of proper court fee for the said value of the agreement, the first respondent / plaintiff had simply filed a suit, seeking bare permanent injunction restraining the petitioner / first defendant and defendants 2 and 3 from alienating or encumbering the property, for which he valued the property only at Rs.1,000/- under Section 27 (c) of Tamil Nadu Court Fees and Suits Valuation Act.

7. As contended by Mr.K.Gopalakrishnan, learned counsel appearing for the petitioner / D1, the main relief sought for should be for specific performance of contract and the consideration fixed by the parties for the value of the property is Rs.4,40,00,000/-. On the aforesaid circumstances, the first respondent / plaintiff cannot file a suit, merely for bare injunction restraining the owner of the property, not to alienate or encumber the property, stating the value of the suit at Rs.1,000/-. Had

the suit been filed seeking specific performance of the contract, consequential prayer could have been for injunction restraining the petitioner / first defendant, not to alienate the property, till the disposal of the suit, on the ground that it may create multiplicity of proceedings. However, strangely the suit was filed only for permanent injunction restraining the defendant in the suit, not to alienate or encumber the property based on the alleged agreement.

8. As contended by the learned counsel for the petitioner / defendant in paragraph No.4, at page No.3 of the plaint, the first respondent / plaintiff has specifically stated that the value of sale consideration fixed and agreed was Rs.4,40,00,000/- and also drew the attention to Page No.7, schedule of property, which shows that the property is situated in a posh locality, south by Eye Hospital, west by Road, Ambattur Town, Thiruvallur District, measuring an extent of one acre and two cents in S.No.2/3, Ambattur Taluk in the village stated therein. The sale consideration is stated at Rs.4.4 crores in the plaint, however, the suit was notionally valued at Rs.1,000/- and the relief sought for is only for permanent injunction restraining the defendants not to alienate the property. Without filing suit for specific performance of the agreement, the suit cannot be filed for bare permanent injunction, based on the agreement, without any bonafide reason.

9. The first respondent / plaintiff himself has stated that the sale consideration was fixed, as per the agreement at Rs.4,40,00,000/-, hence, he cannot simply file a suit seeking bare injunction, restraining the petitioner from alienating or encumbering the property, by paying a nominal court fee for the value of Rs.1,000/- and seek leave to file a separate suit for specific performance at a later stage.

10. It is seen that under Order 2 Rule 2 CPC, omission to sue for one or several reliefs would be construed as relinquishment of the particular relief, unless leave is obtained from the court. However, no party to the suit can reserve the main relief, on account of payment of heavy court fee and file a suit for consequential relief, whereby reserving the main relief, under Order 2 Rule 2 CPC.

11. In the instant case, the main relief, for which the first respondent / plaintiff has sought leave is to file a suit, seeking specific performance of contract, for which, as per his pleadings, he has to pay court fee for the alleged sale consideration of Rs.4,40,00,00/-. Hence, he cannot simply file a suit, seeking bare injunction against the owner of the property not to alienate the property, stating the value of the claim, notionally at Rs.1,000/- and pay court fee under Section 27 (c) of the Act.

12. It is well settled that an agreement holder is entitled to maintain a suit, seeking specific performance of the contract, however, without filing a proper suit, seeking specific performance of the contract, he cannot file a suit, seeking bare injunction against the owner of the property, not to alienate the property and reserve the main relief, to file a suit for specific performance of the agreement and the first respondent / plaintiff has not stated any acceptable reason, for seeking leave for filing suit at the later stage, based on the alleged agreement.

13. Learned counsel appearing for the petitioner contended that the MOU is a contract between the petitioner and the first respondent, relating to immovable property and hence, the suit itself is not maintainable for seeking bare permanent injunction. Per contra, Mr.C.B.Muralikrishnan, learned counsel appearing for the first respondent submitted that the suit is maintainable, in view of the MOU, dated 08.10.2012.

14. Learned counsel for the first respondent relied on the decision, **A.C.Subba Reddy v. Jawahar International Trading Corporation Company**, reported in **2008 (4) CTC 160**, wherein it was decided by a Division Bench of this Court, with reference to the scope of Clause 12 of Letters Patent, regarding leave to sue. It was a suit for specific performance of an agreement for sale filed, therein ancillary reliefs of

injunctions sought for viz., (a) permanent injunction regarding alienation / encumbrance and (b) permanent injunction regarding interference with possession. Learned Single Judge therein held that the Court has no jurisdiction to try the suit, as it was a suit relating to land and the relief of injunction regarding interference with possession being amounting to control of the suit property rendering it a suit for land. On appeal, in view of the appellant / plaintiff giving up relief of permanent injunction relating to interference with possession and Court permitting deletion of the prayer, the order of the learned single Judge was set aside. On a perusal of the decision, it is clear that the said suit relating to the C.S.No.508 of 2006 had been filed, seeking the following reliefs :

"(a) directing the defendants 1 to 4 specifically perform their part of the obligations of the agreement for sale dated 05.03.2004 as merged in supplemental agreement dated 25.02.2005 by executing and registering sale deed or deeds in respect of the suit property and register the name on receipt of the balance sale consideration of Rs.5.35 lakhs on a date to be fixed by this Hon'ble Court and in default direct the Court to execute and register the deed or deeds of sale in respect of the plaint schedule property in favour of the plaintiff at the expense of the plaintiff on deposit of the balance sale consideration payable by him to the credit of the suit or in the alternative direct the refund of the advance amount of Rs.5,35,000/- paid by the

plaintiff with interest at 24% per annum from the date of payment till the date of realization;

(b) For a permanent injunction restraining the defendants 1 to 6 or their men, agents, servants or any person or claim through them or authorized by them from interfering with the peaceful possession and enjoyment of the property, more fully described in the schedule hereunder;

(c) For a permanent injunction restraining the defendants 1 to 6 or any other person or persons claiming through them from alienating or encumbering dealing with the suit schedule mentioned property either by way of sale, mortgage, joint development lease or in any other manner detrimental to the interest of the plaintiff, except in accordance with law."

Division Bench of this Court has held that if we look at the prayers "a" and "c" alone were clear that principally the suit could be for specific performance of an agreement and even the ancillary relief of permanent injunction was also for restraining defendants from alienating or dealing with the suit property in any way. Hence prayers "a" and "c" are not for title or possession and the injunction relief sought for also does not affect the title or possession.

15. In the aforesaid decision, there was a prayer for specific performance of an agreement for sale, apart from other consequential

reliefs, hence, the aforesaid decision is not applicable to the facts and circumstances of this case, since the first respondent / plaintiff has not filed the suit, seeking proper relief of specific performance of the contract, based on the agreement or for the return of advance already paid, but filed only a suit for bare injunction and seeking leave to file a suit for the main relief, at a later stage.

16. In the present suit in O.S.No.329 of 2012, as Managing Director of M/s. Inland Builders Pvt. Ltd., Chennai-40, has raised a cause of action, stating that on 07.04.1944, the defendant's forefather purchased the property, vide Doc.No.1241/44 and the agreement of sale in favour of the plaintiff was executed at Chennai, after receiving the advance and part of sale consideration of Rs.40,00,000/- at Chennai. Subsequently, though the plaintiff was insisting the defendant to execute the sale deed, after getting the balance of sale consideration, however, the plaintiff came to understand that the defendants were negotiating with third parties to sell the properties. Hence, the suit was filed, seeking permanent injunction restraining the defendants, their men, agents etc, from alienating, selling or in any manner disposing the suit property to any third party without the knowledge and consent of the plaintiff.

17. In the plaint, the first respondent, as plaintiff has stated that sale consideration was fixed at Rs.4,40,00,000/- and Rs.40,00,000/- was

paid as advance and part of sale consideration. However, without filing a suit, seeking specific performance of the contract or for return of the alleged advance amount, the suit was filed only seeking permanent injunction restraining the defendants from selling or alienating the property to any third party, stating a notional value at Rs.1,000/-. It cannot be disputed that for filing a suit for specific performance, the plaintiff could have paid proper Court fee for the value of Rs.4.4 crores. In order to avoid, paying proper court fee, as per procedure known to law, he filed a petition in I.A.No.711 of 2013, under Order 2 Rule 2 read with Section 151 of the Code of Civil Procedures, seeking leave to file a comprehensive suit of specific performance at later stage on the same cause of action. The Court below, without deciding the same according to law, on merits after providing opportunity to the defendant, has simply passed an one word order, "Permitted" on 11.01.2013, which is contrary to law.

18. In a suit for specific performance of agreement for sale, there could be ancillary relief of interim injunction, not to alienate or encumber the property, detrimental to the rights of the agreement holder till the disposal of the suit. However, without seeking the main relief of specific performance or seeking return of the advance amount and paying necessary Court fee, according to law, the first respondent / plaintiff would not be entitled to file a suit, seeking permanent injunction against

the proposed vendor, not to alienate or encumber the property and seek leave to file a comprehensive suit at later stage, namely, suit for specific performance. The Court below, has mechanically allowed the petition, by one word order "Permitted", which shows only the non-application of mind. As the first respondent / plaintiff has claimed right, based on an agreement of sale, the main relief could be seeking specific performance of agreement for sale and for which, he could have been ready and willing to perform his part of the contract, by paying the balance of sale consideration. However, it is seen that the suit has been filed by the first respondent, seeking only permanent injunction restraining the owner of the land, not to alienate or encumber the property. Hence, permitting the first respondent / plaintiff to file a suit in the name of comprehensive suit at a later stage should be construed only permitting the first respondent to circumvent the law, by not filing proper suit, based on the alleged agreement of sale.

19. Order 2 Rule 2 of the Code of Civil Procedure is crystal clear, which reads as follows :

"Relinquishment of part of claim - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished."

20. In **Vigro Industries (Eng.) P.Ltd., v. Venturtech Solutions P. Ltd.**, reported in **2012 (5) CTC 359**, the Hon'ble Supreme Court has held on the cardinal requirement for application of the provisions contained in Order 2, Rule 2 (2) and (3) of the Code of Civil Procedure, that the cause of action in the later suit must be the same as that of the first suit. The principle embodied in Rule discourages / prohibits, vexing the defendant again and again by multiple suits, except in a situation, where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the Court which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons.

21. In such circumstance, leave of court could be granted only upon the due satisfaction and upon good and satisfactory reasons, as held by the Hon'ble Supreme Court.

22. The Hon'ble Supreme Court in **State Bank of India v. Gracure Pharmaceuticals Ltd.**, reported in **2013 STPL (Web) 939 SC**, the Apex Court has held as follows :

"15... We find, as such, that respondent had omitted certain reliefs which were available to it at the time of filing of the first suit and after having relinquished the same, it cannot file a separate suit in view of the provisions of sub-rule

2 of Order 2 Rule 2 CPC. The object of Order 2 Rule 2 is to avoid multiplicity of proceedings and not to vex the parties over and again in a litigative process. The object enunciated in Order 2 Rule 2 CPC is laudable and it has a larger public purpose to achieve by not burdening the court with repeated suits."

23. It is well settled that Order 2 Rule 2 of the Code of Civil Procedure relates to relinquishment of part of claim, hence, if a plaintiff omits to sue in respect of or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

24. In the instant case, admittedly the suit was filed, based on a Memorandum of Understanding. In the xerox copy of the MOU available in the typed set, date is not available, however, it is stated that the unregistered Memorandum of Understanding was entered in the month of October 2012, for selling the suit schedule property for Rs.4,40,00,000/-. As per the Document, P.No.4, Sl.No.7, sale transaction shall be completed within a period of 90 days from the date of Memorandum of Understanding. However, in the suit, the first respondent / plaintiff has not prayed any relief for specific performance of the agreement, but the suit was filed only seeking permanent injunction restraining the petitioner / first defendant from selling or alienating the property to any third party.

He has notionally valued the suit for the relief of court fees at Rs.1,000/- under Section 27 (c) of the Tamil Nadu Court Fee and Suits Valuation Act.

25. As per Order 2 Rule 2 CPC, plaintiffs cannot seek leave to file the main suit later on, on account of the necessity of paying proper court fee and simply file a suit for permanent injunction, not to alienate the property. In the instant case, the first respondent / plaintiff, simply filed the suit, stating the value of the suit claim for the relief of court fees at Rs.1,000/- as per the Section 27 (c) of Tamil Nadu Court Fee and Suits Valuation Act, though the value of the property is Rs.4.4 crores and filed application seeking leave to file a comprehensive suit for specific performance at later stage. Seeking leave for the main relief as per the alleged cause of action is not legally sustainable, since relief of specific performance of the agreement would be the main relief or proper relief in the suit and interim injunction restraining the other party, not to alienate would be an interim prayer, till the disposal of the suit.

26. It has been categorically held by the Hon'ble Supreme Court in the decision reported in **2012 (5) CTC 359** (*cited supra*), that the cause of action in the later suit must be the same as that in the first suit and the rule engrafts on a laudable principle that discourages / prohibits vexing the defendant again and again by filing multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not

have been claimed for a good reason for the plaintiff for not filing the suit, seeking specific performance of the contract. Merely filing a suit, seeking bare permanent injunction, not to alienate the property based on an agreement for sale would not be legally maintainable, as it would show that the plaintiff is interested in gaining time, without being ready and willing to perform his part of the contract.

27. As the relief sought for in the suit is based on an alleged agreement for sale, seeking leave for the main relief of filing suit for specific performance, but filing only a suit for permanent injunction to restrain the other party to the alleged agreement from alienating or selling the property to any third party is not legally maintainable, as per Order 2 Rule 2 of the Code of Civil Procedure. The Court below, without considering the plea of the plaintiff and the defence raised by the respondent, simply passed one word order, "Permitted", which is totally erroneous, that shows only the non-application of the mind by the Court below. When the main relief should be for seeking specific performance of the agreement, as per the pleadings in the plaint, the said main relief cannot be reserved by any party, in order to avoid payment of heavy court fee and file a suit, seeking bare permanent injunction, not to alienate or sell the property to any third party, would certainly be against the laudable principle of preventing vexatious litigations again and again against the defendant, as held by the Hon'ble Apex Court. Hence, this

Court is of the view that the impugned order has been passed by the Court below against law and the same is liable to be set aside, to meet the ends of justice.

28. In the result, this Civil Revision Petition is allowed and the impugned order, dated 11.01.2013 made in I.A.No.711 of 2013 in O.S.No.329 of 2013 on the file of the XVIII Assistant Judge, City Civil Court, Chennai is set aside. No costs. Consequently, connected miscellaneous petition is closed.

09-01-2015

Index : Yes / No
Internet : Yes / No

tsvn

To

The XVIII Assistant Judge
City Civil Court,
Chennai.

S.TAMILVANAN, J

tsvn

C.R.P (PD).No.2850 of 2013

09-01-2015