

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD) No.17 of 2015

And

M.P.No.1 of 2015

Ammavatti

... Petitioner

Vs.

Kamalaveni

... Respondent

Prayer:

Petition has been filed under Article 227 of the Constitution of India to set aside the order made in I.A.No.940 of 2012 in O.S.No.181 of 2012 dated 13.06.2013 by the learned Sub Judge, Udumalpet.

For Petitioner : M/s.D.Asenthamani

For Respondent : Mr.P.S.Kothandaraman

ORDER

Challenging the impugned order dated 13.06.2013 passed in I.A.No.940 of 2012 in O.S.No.181 of 2012, wherein, the prayer for rejection of the plaint came to be dismissed, this revision has been filed.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3. The learned counsel appearing for the petitioner would submit that the respondent as plaintiff filed suit for bare injunction against this petitioner/ first defendant on the basis of the sale agreement dated 08.03.1999, 23.10.2003, 08.03.1999. He would further submit that instead of filing a suit for specific performance, she filed a suit for bare injunction as if in pursuance of the sale agreement dated 08.03.1999, possession has been handed over to her and she is in possession and enjoyment of the same. Subsequently, the amount has been paid and now the first defendant/ petitioner has attempted to interfere with her possession, hence, she filed the suit for bare injunction. Likewise, she filed the suit against the owner of the properties who are the defendants 2 to 6 stating that they have also attempted to interfere with the peaceful possession and enjoyment of the same.

4. The learned counsel appearing for the petitioner would further submit that the petitioner filed application stating that the

suit itself has to be rejected on the basis that no cause of action arose for filing of the suit. The sale agreement between the plaintiff and the first defendant and her husband is of the year 1999. The suit has been filed in the year 2012. The suit is barred by limitation. The suit does not disclose any cause of action because, the suit has been filed against the third parties from whom she entered into sale agreement. So the suit itself is not maintainable. That factum was not considered by the trial court and hence, prayed for setting aside of the impugned order.

5.The learned counsel appearing for the petitioner also fairly conceded that the plaintiff has filed an application and obtained leave to file a suit for specific performance in I.A.No.739 of 2012. He further submitted that the respondent/ plaintiff herself stated that she has paid only the part payment.

6.Resisting the same, the learned counsel appearing for the respondent/ plaintiff would submit that whether the suit is barred by non-joinder of necessary party or mis-joinder of necessary party is to be decided at the time of trial. In pursuance of the sale agreement, she was in possession and she is in possession till now.

She has filed I.A.No.739 of 2012 seeking for leave to file a suit for specific performance under Order II Rule 2 and it was also allowed. So, the Trial Court has considered all the aspects on proper prospective and came to the correct conclusion and hence, prayed for the dismissal of the revision.

7.Considering the rival submissions made by both sides and on perusal of the typed set of documents, it is known that though there are six defendants in the suit, this revision has been filed only by the first defendant. The plaintiff filed suit for permanent injunction against six persons stating that she entered into sale agreement with all the persons and in pursuance of the same, she has paid part payment and since the defendants attempted to interfere with her possession, she filed suit for permanent injunction. Even though the other defendants entered appearance contesting the same, the first defendant alone has filed this revision challenging the order dated 13.06.2013 passed in I.A.No.940 of 2012 in O.S.No.181 of 2012, wherein, the prayer for rejection of the plaint came to be dismissed.

8.According to the learned counsel appearing for the

petitioner, the other defendants are not challenging the order passed under Order VII Rule 11 of C.P.C. The only point to be decided is whether the impugned order is sustainable? The learned counsel appearing for the petitioner would submit that there is no cause of action for filing the suit and would further submit that there is a mis-joinder of cause of action because the suit properties are not only assigned in favour of the first defendant and would further submit that the other defendants also got the same by way of assignment. As per the document nos.1 to 3, the first defendant and her husband has entered into sale agreement with the plaintiff and on the basis, possession has been handed over to her and she is in possession.

9.It is true that a perusal of the plaint would show that the plaintiff has filed suit on the basis of sale agreement entered into with the other defendants also stating that on that basis, she was put into possession and only Form F has been issued on 19.07.2006. Now they have attempted to interfere with her possession. Hence, she filed the suit. Whether the plaintiff is in possession, whether it is a legal possession has to be decided at the time of trial.

10. According to the learned counsel appearing for the petitioner, the suit is barred for mis-joinder of cause of action. So it is appropriate to incorporate Order VII Rule 11 of C.P.C. which reads as follows:

"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 on the paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any, granted by the Court.

(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.

[Added by amendment Act 46 of 1999]

(f) where the plaintiff fails to comply with the provisions of rule (9) [Added by

amendment Act 22 of 2002]

[Provided that the time fixed by the Court for 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.]

[Added by Act 104 of 1976]"

In that Rule 11(a) deals with non disclosure of cause of action. In that mis-joinder of cause of action is not a ground for rejection of the plaint.

11. Further, the learned counsel appearing for the petitioner would submit that there is non-joinder of necessary parties i.e., husband of the first defendant is not impleaded as party, he is also party to the sale agreement and also mis-joinder of necessary party with the other defendants, but it is not a ground for rejection of the plaint as per Order VII Rule 11 of C.P.C. Furthermore, the learned counsel appearing for the petitioner would submit that the

suit is barred by limitation.

12.It is well settled dictum of the Apex Court that while dealing under Order VII Rule 11 of C.P.C., only the plaint averment and document alone has to be considered. A perusal of the list of documents filed by this petitioner would show that the sale agreement is of the year 1999 and the Assistant Commissioner (Land Reforms), Erode, has issued Form 'F' only in the year 2006. But it is pertinent to note that the plaintiff has stated that in the year 2009 also she paid some amount and endorsement was made by this defendant. Furthermore, as per I.A.No.739 of 2012, leave has been granted by the Trial Court for filing of a suit for specific performance. In such circumstances, whether the suit is barred by limitation has to be decided at the time of trial after letting in oral and documentary evidence.

13.It is also the dictum of the Apex Court that the plea of limitation is a mixed question of law on fact and if any question of fact is involved, that can be decided after letting in oral and documentary evidence. The arguments advanced by the learned counsel appearing for the petitioner that the suit is barred by the

law of limitation and the grounds for mis-joinder of cause of action are not a reason for rejection of plaint.

14.In such circumstances, I do not find any merits in allowing this revision and the same is dismissed as devoid of merits. Since the suit is of the year, 2012, the learned Sub Judge, Udumalpet is directed to dispose of the suit in O.S.No.181 of 2012 within a period of three months from the date of receipt of a copy of this order.

15.Accordingly, this Civil Revision Petition is dismissed and the order dated 13.06.2013 made in I.A.No.940 of 2012 in O.S.No.181 of 2012 by the learned Sub Judge, Udumalpet is confirmed. No costs. Consequently, the connected miscellaneous petition is also closed.

27.01.2016

pri
Index: Yes/ No
Internet: Yes/ No
To

1.The Sub Judge, Udumalpet.

R.MALA,J.

pri

**C.R.P.(PD) No.17 of 2015
And
M.P.No.1 of 2015**

27.01.2016