

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) Nos.3120 & 3121 of 2015
and
M.P.Nos.1 & 1 of 2015

1.K.Ravi
S/o.K.R.Kannappa Chettiar

2.K.Sundar
S/o.K.R.Kannappa Chettiar

3.K.Kalavathi
D/o.K.R.Kannappa Chettiar

4.K.Baskaran
S/o.K.R.Kannappa Chettiar

5.K.Maheswari
D/o.K.R.Kannappa Chettiar ... Petitioners in both revisions

vs

M/s.Maxworth Home Ltd.
represented by its Authorized Signatory
U.Sivakumar
No.50, Maxworth Nagar,
Sunnambu Kolathur,
Chennai - 600 117. ... Respondent in both revisions

Civil Revision Petition filed under Article 227 of the Constitution of India against orders of learned Sub Judge, Tambaram, passed in I.A.Nos.243 and 244 of 2015 in I.A.Nos.129 and 130 of 2015 in O.S.No.44 of 2015 on 21.07.2015.

For Petitioners : Mr.V.Raghavachari
for Mr.P.Krishnan

For Respondent : Mrs.Hema Sampath, senior counsel
for Mr.J.Shenbagalingam

COMMON ORDER

These revisions arise against orders of learned Sub Judge, Tambaram, passed in I.A.Nos.243 and 244 of 2015 in I.A.Nos.129 and 130 of 2015 in O.S.No.44 of 2015 on 21.07.2015.

2. O.S.No.44 of 2015 on the file of Sub Court, Tambaram, is a suit preferred by respondent seeking relief of specific performance and consequential permanent injunctions against interference with enjoyment of property and against encumbering the same. I.A.Nos.129 and 130 of 2015 were moved by respondent/plaintiff seeking interim injunctions. On the same being granted, I.A.Nos.243 and 244 of 2015 came to be moved by petitioners/defendants 3 to 7 seeking vacation of interim injunctions. On such petitions being dismissed under orders dated 21.07.2015, petitioners/defendants 3 to 7 have preferred the present revisions.

3. Heard Mr.V.Raghavachari, learned counsel for petitioners and Mrs.Hema Sampath, learned senior counsel for respondent.

4. Learned counsel for petitioners submitted that an agreement dated 07.02.1996 was entered between the company by name M/s.Vox Industries Limited/first defendant and the plaintiff company. Under the said agreement, Vox Industries Ltd. was to make arrangements for purchase of land by plaintiff. The Chairman of the first defendant company held a registered Power of Attorney from the owner of property under a deed registered as document No.376 of 1995 on the file of Sub Registrar, Pallavaram, dated 30.04.1995. The said Power of Attorney was specific that the principal had not received any consideration from the agent and that no transfer was effected there through. The original agreement was modified under an agreement dated 18.01.1997 where under the extent required by plaintiff company was reduced but the value was enhanced. Issues arose between the companies and on the death of the Chairman of the first defendant company, such company through the second defendant came forward to settle issues and in the course of arbitration proceedings, a Memorandum of Settlement was signed between first defendant company and the plaintiff on 28.05.2014. Though the agreements between the first

defendant company and the plaintiff were only of the years 1996 and 1997, the plaintiff preferred a complaint to the police on 21.08.2014 informing that one of the land owners had sold properties through the first defendant company under a Power document No.376/1995, apparently a false allegation. The allegation was that the third defendant and his henchmen destroyed the fencing of plaintiff's property. As against the plaintiff's claim of it being in possession of the property, it was the petitioners' case that they, the legal heirs of Kannappa Chettiyar, the original owner, alone are in possession and the relief of specific performance had been sought by plaintiff on the strength of General Power of Attorney dated 30.04.1995. Kannappa Chettiyar, who executed the General Power of Attorney dated 30.04.1995 had died on 09.07.2004 and one S.Gnanasundaram, who had been constituted his attorney, had also died on 07.06.2007. When the person who executed the General Power of Attorney died, the same ceased to have any effect. When once Kannappa Chettiyar and S.Gnanasundaram had died, the suit for specific performance cannot be maintained and is liable to be dismissed in limini. Therefore, petitioners/defendants moved I.A.No.221 of 2015 on the file of learned Subordinate Judge, Tambaram, seeking rejection of plaint. As stated supra, respondent/plaintiff moved I.A.Nos.129 and 130 of 2015 seeking interim injunctions. On such applications being allowed, petitioners/defendants moved I.A.Nos.243 and

244 of 2015 seeking vacation of interim injunctions. In dismissing such applications, the Court below has found that the respondent/plaintiff had proved its case also through Ex.R6, Memorandum of Settlement, such settlement has been arrived at on the death of S.Gnanasundaram, the then Chairman of first defendant company and once issues mutually were discussed and settled, the arbitration was deemed to be closed, respondent/plaintiff has proved its case also through Ex.R1, General Power of Attorney dated 30.04.1995 executed by Kannappa Chettiyar in favour of S.Gnanasundaram and Ex.R4, General Power of Attorney dated 16.03.1998, executed by Kannappa Chettiyar in favour of plaintiff company and that through Ex.R2, the plaintiff/respondent has proved that on the date of preliminary agreement i.e., 07.02.1996, the first defendant company handed over physical and legal possession of the entire earmarked area to the plaintiff company so as to enable the plaintiff company to take up land development and infrastructure development works for their Township project. Learned counsel submits that on the above finding, the Court below erroneously has held that balance of convenience was in favour of respondent/ plaintiff.

5. Learned counsel points out that the Court below wrongly has held that agreement dated 07.02.1996 is one for sale whereas the same is only

towards procurement of property. Court below dismissed the application to vacate the interim injunction in I.A.No.243 of 2015 on 21.07.2015 but kept I.A.No.244 of 2015 pending at the interim injunction stage till date. Learned counsel contended that when petitioners were not party to both agreements of 1996 and 1997 and both principal and agent were long dead, no decree of specific performance could be sought against them on the basis of settlement arrived at in 2014, one which they were not parties to. Learned counsel referred to decision of the Apex Court in ***The Church of Christ Charitable Trust & Educational Charitable Society vs. M/s.Ponniamman Educational Trust [CDJ 2012 SC 446]***, wherein it has been held thus:

“6. ... It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order VII Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial. This position was explained by this Court in Saleem Bhai & Ors. vs. State of Maharashtra and other, (2003) 1 SCC 557, in which, while

considering Order VII Rule 11 of the Code, it was held as under:

“9. A perusal of Order VII Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 CPC at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court”

It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co.Ltd. vs. Ganesh Property (1998) 7 SCC 184 and Mayar (H.K.) Ltd. and others vs. Owners & Parties, Vessel M.V.Fortune Express and others (2006) 3 SCC 100.

7) It is also useful to refer the judgment in *T.Arivandandam vs. T.V.Satyapal & Anr.*, (1977) 4 SCC 467, wherein while considering the very same provision, i.e. Order VII Rule 11 and the duty of the trial Court in considering such application, this Court has reminded the trial Judges with the following observation:

“5. ...The learned Munsif must remember that if on a meaningful - for formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them ...”

11) Mr.K.Parasaran, learned senior counsel by taking us through Form Nos.47 and 48 of Appendix A of the Code which relate to suit for specific performance submitted that inasmuch as those forms are statutory in nature with regard to the claim filed for the relief for specific performance, the Court has to be satisfied that the plaint discloses a cause of action. In view of Order VII Rule 11(a) and 11(d), the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. The statutory forms require the date of agreement to be mentioned to reflect that it does not appear to be barred by limitation. In addition to the same, in a suit for specific performance, there should

be an agreement by the defendant or by a person duly authorized by a power of attorney executed in his favour by the owner.

12) In the case on hand, the plaintiff-respondent to get a decree for specific performance has to prove that there is a subsisting agreement in his favour and the second defendant has the necessary authority under the power of attorney. Order VII Rule 14 mandates that the plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the power of attorney when the plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is. In the case on hand, only the agreement between the plaintiff and the second defendant has been filed along with the plaint under Order VII Rule 14(1). As rightly pointed out by the learned senior counsel for the appellant, if he is not in possession of the power of attorney, it being a registered document, he should have filed a registration copy of the same. There is no such explanation even for not filing the registration copy of the power of attorney. Under Order VII Rule 14(2) instead of explaining in whose custody the power of attorney is, the plaintiff has simply stated 'Nil'. It clearly shows non-compliance of Order VII Rule 14(2)."

6. Learned counsel relied on the decision of the Apex Court in **Anil Kumar Singh vs. Shivnath Mishra alias Gadasa Guru [1995 (3) SCC 147]**, wherein it has been held thus:

“4. Equally, Order 1, Rule 3 is not applicable to the suit for specific performance because admittedly, the respondent was not a party to the contract. Rule 3 of Order 1 provides that :

*“3. Who may be joined as defendants. - All persons may be joined in one suit as defendants where -
(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and
(b) if separate suits were brought against such persons, any common question of law or fact would arise.”*

5. In this case, since the suit is based on agreement of sale said to have been executed by Mishra, the sole defendant in the suit, the subsequent interest said to have been acquired by the respondent by virtue of a decree of the court is not a matter arising out of or in respect of the same act or transaction or series of acts or transactions in relation to the claim made in the suit.

8. The question is whether the person who has got his interest in the property declared by an independent decree but not a party to the agreement of sale, is a necessary and proper party to effectually and completely adjudicate upon and settle all the questions involved in the suit. The question before the court in a suit for the specific performance is whether the vendor had executed the document and whether the conditions prescribed in the provisions of the Specific Relief Act have been complied with for granting the relief of specific performance.

9. Sub-rule (2) of Rule 10 of Order 1 provides that the

Court may either upon or without an application of either party, add any party whose presence before the Court may be necessary in order to enable to the Court effectually and completely to adjudicate upon and settle all questions involved in the suit. Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party.”

7. Learned counsel submitted that on presentation, the Court below had returned the plaint raising the following queries on 05.02.2015:

1. *As per the original agreement and to the plaint schedule, the Survey numbers differs, the same to be explained.*
2. *Since prior to Arbitration proceedings has been initiated, it is not stated, whether the proceedings pending or not, is not clearly stated in the plaint.*
3. *Even in the subsequent memorandum the Survey Numbers differs to that of the plaint. Schedule Survey numbes, the same to be explained.*
4. *Whether the principal owner of the suit property has executed any sale deed, if so the same to be produced.*
5. *Whether the legal notice has been issued to the Legal heirs of deceased Kannappa Chettiar D3 to D7 regards transaction of specific performance of contract of sale agreement or not if issued the copy of the notice to be filed.*
6. *Since the L.R's 3 to 7 were not informed about the*

agreement, as such how the suit is filed as against LR's D3 to D7 to be explained.

- 7. The agreement of the year 1997, no prior information of readiness of performance of specific performance of contract on the part of plaintiff by way of notice and the refusal by the D3 to D7, the same to be explained as to how the suit is in time to be explained.*
- 8. Whether the memorandum of settlement has been registered if not how the suit lie on the unregistered memorandum of settlement to be explained.*
- 9. Whether the L.R's of principal of the power deed has been added as party in the Arbitration proceedings to be stated.*
- 10. Whether notice have been issued to L.R.'s subsequent death of their father regards to the sale agreement or not, the same to be explained.*
- 11. How the relief of specific performance of contract is in time to be explained.*
- 12. Fresh docket to be attached.*

On representation, respondent/plaintiff *inter alia* informed the following answers :

"No sale had been executed by the Principal.

No written notice was sent to defendants 3 to 7 however oral request was made.

The L.R.'s of defendants 3 to 7 were orally informed about the agreement dated 18.01.1997."

8. Learned counsel contended that where admittedly no sale had been executed by the principal/owner of property, he only having executed a Power of Attorney in favour of one S.Gnanasundaram, such document itself making clear that no money had changed hands, plaintiffs could not seek specific performance from one who had no right to property. There was not even any agreement between the first defendant company and petitioners and a prayer for specific performance against petitioners totally was misconceived.

9. Learned counsel relied on judgment of this Court in ***Ranipet Municipality vs. M.Shamsheerkhan [1997 (2) LW 761]***, wherein it has been held thus:

“16. Even though the case cited was coming under Section 151, Code of Civil Procedure, while invoking the powers under Article 227 of the Code of Civil Procedure, this Court can take note of what has happened before the Court below and invoke that power along with Section 151 of the Code of Civil Procedure. And if there is miscarriage of justice, it is the duty of the Court to see that the same is rectified. His Lordship Srinivasan, J. (as he then was) in Annapoorni v. Janaki (1995-1-L.W.141) dealt with such a case. In that case, a decree happened to be passed in a suit for declaration of title. In execution of that decree, the defendant raised an objection on the ground that the decree was unsustainable in

law, on the ground that she being the mother, is also a legal heir of her deceased son and a decree that had been granted amounted to error of law, for her right had not been recognised. The plaintiff was the wife and the defendant was the mother of the deceased, both being entitled to half right over the property. The plaintiff claimed absolute right, even though it is admitted that the deceased died intestate. In the said circumstance, His Lordship held thus:-

“When this Court finds that a decree suffers from an error of law apparent on the fact of the record owing to nonapplication of mind of the Court, to the relevant principles of law, this Court cannot keep silent and allow the decree to be in force, particularly, when it causes grave injustice. There can be no doubt whatever that under the Hindu Succession Act, certain persons are designated as Class I heirs and all of them are entitled to succeed to the estate of a deceased Hindu. There is no earthly reason for depriving the mother of the deceased, or her legitimate share in the estate which in this case happens to be a moiety.

This is a typical case of miscarriage of justice which should be rectified the moment it comes to the notice of this Court. It is only for that reason, I am exercising my powers under Section 115 of the Code of Civil Procedure and Article 227 of the Constitution of India.”

(Emphasis supplied.)

19. For granting an order of interim injunction, there is a duty case on the Court below to see whether the plaintiff

has got a prima facie case. In all the proceedings, the plaintiff has admitted that he is only a licensee and that his licence has ended years before. If he is only a licensee, he cannot file a suit against the owner. That is a fundamental thing which the Court below has forgotten to take note of.

....

21. Now that I have found that there has been a miscarriage of justice and the action of the plaintiff in filing litigation's one after another is really an abuse of process of Court, what is the remedy to which the petitioner is entitled. I have also found that the Court below has not taken into consideration the relevant provisions of law while passing the impugned order. The lower Court has committed an error and that has caused injustice to the petitioner. It is the duty of this Court to see that the error is corrected. It cannot be doubted that apart from the provisions of the Code, the Court has got the inherent power to correct such error by any means consistent with the ends of justice. As was held in AIR 1924 Allahabad 818 (2) (Pandit Balgobind v. Sheo Kumar) (referred to supra), "Even if the defendants have not taken every step open to them, or have not shown a prompt sense of their obligation, or a right appreciation of the appropriate procedure, it is nonetheless as Lord Justice Bowen said in the case of H.Cropper v. Smith (16 Chancery Division 700) the object of Courts to decide the rights of parties, and not to punish them for mistakes they make in the conduct of their case, by deciding otherwise than in accordance with their rights. But it seems to us further that Section 151 could not

be invoked more appropriately, than in a case like this, for the purpose of correcting such a miscarriage of justice appearing on the face of the proceedings, and there is abundant authority, which it would be wearisome to cite, there being no case quite analogous to this one, where the “Courts in India have held themselves justified, under this salutary provision, in making such orders in the nature of consequential orders, as may be necessary for the ends of justice and to prevent an abuse of the process of the Court, which we take to include the idle multiplicity of proceedings.”

10. Learned counsel also relied on judgment of this Court in ***M.V.Jayavelu vs. E.Umpathy [2011 (1) MWN (Civil) 113]***, wherein it has been held as follows:

“9. ... Hence, the plaint is liable to be rejected as held by this Court in the judgment reported in 1998 (3) CTC 165 [Palanisami, N. V. A.Palaniswamy] that the provisions of Order 7, Rule 11 is not exhaustive and the suit can be rejected when it is a clear case of abuse of process of law. Further, in the judgment of Palanisami, N. V. A.Palaniswamy, cited supra, it has been held as follows,

8..... The trial Court is also bound to see that the valuable time is not taken away by proceeding the trial in the vexatious litigation, which is clearly abuse of process of law. In fact, in the

decision reported in *T.Arivandandam v. T.V.Satyapal and another*, 1977 (4) SCC 467, the Honourable Supreme Court held that it is also duty bound not to take such cases. In para 7 of the Judgment, Their Lordships held that,

"We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party more than regret the circumstances that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India. We hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worth while disputes and avoiding the distraction of sham litigation such as the one we are disposing of Another moral of this unrighteous chain litigation is the gullible grant of ex-parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy.

9. In *Azhar Hussain v. Rajiv Gandhi*, 1986 (Supp) SCC 315, in Para 12, Their Lordships held that,

"Learned Counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In

substances, the argument is that the Court must proceed with the trial record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise the mind of the respondent. The word of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law."

10. The same principle was followed in the very recent decision of Supreme Court reported in *I.T.C. Limited v. Debts Recovery Appellate Tribunal*, 1998 (2) SCC 70. In that case, Their Lordships followed the decision in *Ashar Hussain v. Rajiv Gandhi*, 1986 Supp. SCC 315.

11. In the event of all these decisions the argument of the counsel for the petitioners that unless the conditions are satisfied under Order 7 Rule 11 of Code of Civil Procedure, the plaint cannot be rejected is without any basis. The provisions of Order 7 Rule 11

are not exhaustive and the Court has got inherent powers to see that the vexatious litigations are not allowed to take or consume the time of the Court. In appropriate cases, directions can be given by this Court as well as the Court in which the suit is filed not to entertain the suit, if on reading the allegations in the plaint it reveals that the same is abuse of process of law.”

11. Learned senior counsel for respondent submitted that the interim injunction was granted in February 2015 and final orders were passed therein in July 2015. For more than a year, revision petitioners have not taken any steps to bring up these revisions for admission. Petitioners had, under I.A.No.221 of 2015, sought rejection of the plaint but had not pursued the same. The revision petitions were filed against orders of interim injunctions. Application for rejection of plaint moved by petitioners is still pending at the trial Court and petitioners should be required to pursue the same as the submissions of learned counsel for petitioners have mainly addressed such issue. A Power of Attorney has been executed by the father of revision petitioners on 16.03.1998, as spoken to in the plaint, directly in favour of respondent/plaintiff and therefore, the argument of there being no nexus between the property and the plaintiff based on the other Power of Attorney dated 30.04.1995 in favour of S.Gnanasundaram was misplaced.

Though the principal is no more, the Power of Attorney related to the property and all title deeds were handed over to the plaintiff who was in possession thereof. A lay out had been formed even in 1975 and revision petitioners/sons and daughters of the principal are trying to hold the plaintiff to ransom taking advantage of the fact that patta to the property stands in the name of the original owner. It was the respondent/plaintiff's case that petitioners' father had sold about 68½ cents situated in Survey Nos.414/11, 414/12A, 414/12B, 414/16 and 414/17 and had executed Power of Attorney dated 30.04.1995 in favour of S.Gnanasundaram, the then Chairman of the first defendant company and had sold another extent of 16 cents situated in 415/11B, 415/12 and 415/14 to the plaintiff company through Power of Attorney dated 16.03.1998 as instructed by first defendant company. During the pendency of the arbitration proceedings, petitioners' father died on 09.07.2004 and S.Gnanasundaram, the then Chairman of the first defendant company also died on 07.06.2007. Plaintiff is the rightful owner of Plot Nos.958 & 959, the suit scheduled property by operation of Section 53-A of the Transfer of Property Act and even otherwise they have got interest over the said properties, by virtue of their entering into land procurement agreement with first defendant by making payment of Rs.4.28 crores; by virtue of first defendant handing over all the original documents along with possession to the plaintiff company for development and since

18.01.1997, the date on which the above agreement was signed by first defendant with the plaintiff company; by virtue of plaintiff company having taken up development work including laying out, re-conjugating roads, marking plots, laying roads, carrying out Township infrastructure facility works; by virtue of having executed sale deed in favour of their customers form the total extents for which possession, title deeds, Power of Attorney etc., was received through first defendant company; by virtue of issuing of allotment letter to one Mr.S.Paneerselvam on 14.08.2000 itself and by virtue of signing the settlement agreement with first defendant through the second defendant on 28.05.2014.

12. Learned senior counsel submitted that once possession of property of the large extent and title deeds thereto had been shown to be in possession of the plaintiff and therefore some connection between plaintiff and the property is exhibited, it is for the first defendant to lead evidence in the application before the Court below to prove its case. The factual position made applicable the doctrine of part performance and the petitioners would have to make out their case only through trial.

13. By way of reply, learned counsel for petitioners submitted that what the plaintiff sought is enforcement of an agreement of the year 1997

and the subsequent memorandum dated 28.04.2014. The Power of Attorney of 1998 is not supported by consideration. For applicability of Section 53-A of the Transfer of Property Act viz., doctrine of part performance, there should be an agreement in writing. After the death of the principal in 2004, the plaintiff could claim no right whatsoever over the property. Learned counsel submitted that the issue involved petitioners' father and the plaintiff company. There was no necessity to make the first defendant company, a party to the proceedings. Respondent/plaintiff has not informed of any oral agreement. As the Power of Attorney of the year 1998 was towards obtaining DTCP permission, there was no question of there having been an approved lay out in the year 1974. The Power of Attorney of the year 1998 did not find mention even in the prayer portion of the suit i.e. no right was sought to be established there through. According to learned counsel, plaintiff had created an agreement with the first defendant in the year 2014 knowing of the death of petitioners' father and thereunder sought to enforce the same against petitioners.

14. This Court has considered the rival submissions.

15. There is no privity of contract between the parties, petitioners not having been shown to be party to any agreement or any manner related

to the transactions between the plaintiff and the first defendant. All that the respondent/plaintiff is able to show for now is that the father of petitioners/original owner of the property executed a Power of Attorney in favour of S.Gnanasundaram, who was the Chairman of first defendant company in 1995 and thereafter, in favour of the plaintiff in 1998. The principal had expired on 09.07.2004. In the circumstances, mere claim of holding the original title deeds to the property for over 20 years, even if true, would not justify a claim for interim injunction. As rightly pointed out by learned counsel for petitioners to attract the operation of Section 53-A of the Transfer of Property Act/Doctrine of part performance, there must be an agreement in writing.

For the said reason, the Civil Revision Petitions shall stand allowed. The orders of learned Sub Judge, Tambaram, passed in I.A.Nos.243 and 244 of 2015 in I.A.Nos.129 and 130 of 2015 in O.S.No.44 of 2015 on 21.07.2015, shall stand set aside. Any observations made herein above are only towards disposal of the present revision and will have no bearing on the merits of the case of either parties. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2016

Index:yes/no
Internet:yes

gm

To
The Sub Judge,
Tambaram.

C.T.SELVAM, J

gm

Civil Revision Petition (PD) Nos.3120 & 3121 of 2015

