

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30-03-2016

PRONOUNCED ON : 11-05-2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P.(PD) Nos.3528 and 3529 of 2015

and

M.P.Nos.1 of 2015

B.S.Garg
S/o.Lachhu Ram
No.35A, Spur Tank Road
Chetpet, Chennai - 600031

... Petitioner in both the
CRPs

vs.

1.Mrs.R.Meena Sundar
2.Suman Kumar Jain
3.Ajit Kumar Jain
4.Mrs.Babitha Anil Jain
5.Anurag Jain

...Respondents in both
the CRPs.

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the XVI Assistant Judge, City Civil Court, Chennai dated 16.06.2015 made in I.A.Nos.12876 and 12877 of 2012 in O.S.No.9417 of 2011

For Petitioner : Mr.S.R.Raghunathan
in both CRPs

For Respondents : Mr.V.Lakshminarayanan for R1
in both CRPs Mr.P.Vasanthakumar for R2 to R5

ORDER

C.R.P.(PD) No.3528/2015 and C.R.P.(PD) No.3529/2015 have been filed by B.S.Garg, the first defendant in O.S.No.9417/2011 on the file of the XVI Assistant Judge, City Civil Court, Chennai challenging the common order and final orders of the said court dated 16.06.2015 made in I.A.Nos.12876/2012 and 12877/2012 in the said suit.

2. Notice before admission was issued and the respondents have entered appearance through counsel. The arguments advanced by Mr.S.R.Raghunathan, learned counsel for the petitioner in both the revisions, by Mr.V.Lakshminarayanan, learned counsel for the first respondent and by Mr.P.Vasanthakumar, learned counsel for the respondents 2 to 5 in both the civil revision petitions were heard. The certified copy of the common order and certified copies of the final orders passed in I.A.No.12876/2012 and 12877/2012 in O.S.No.9417/2011 on the file of the XVI Assistant Judge, City Civil Court, Chennai and copies of the other documents produced in the form of typed set of papers and also the grounds of revision were perused.

3. The first respondent in the civil revision petitions by name Mrs.R.Meena Sundar filed the above said suit O.S.No.9417/2011 against the revision petitioner and respondents 2 to 5 for a declaration declaring the sale deed dated 01.07.2011 registered as document No.2286/2011 on the file of the Sub Registrar, Royapuram in respect of a vacant site bearing plot No.12(part), 13(part) and 14(part) bearing old door No.349, which was changed into door No.118 and new door No.385, Tiruvottiyur High Road, Tondiarpet, Chennai -

600 081 measuring an extent of 4713 sq.ft. to be sham and nominal and null and void and not binding on him, and for a consequential permanent injunction restraining the respondents 2 to 5 from alienating or encumbering the same to third parties or putting up any construction over the same.

4. The revision petitioner (first defendant in the said suit) filed two applications, namely I.A.No.12876/2012 and 12877/2012, the first one under Section 5 and 12 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and Order VII Rule 11(b) of the Code of Civil Procedure, 1908 for determining the correct court fee payable, keeping in mind the valuation of the sale deed dated 01.07.2011 bearing document No.2286/2011 and the second one for rejection of the plaint under Order VII Rule 11 CPC, 1908. The said applications were resisted by the first respondent/plaintiff by filing a common counter. The learned trial Judge, after hearing both sides, by a common order dated 16.06.2015 dismissed both the applications without cost. The said common order and the final orders passed in the above said interlocutory applications are challenged in the present civil revision petitions preferred under Article 227 of the Constitution of India.

5. The first respondent/plaintiff has filed the above said suit O.S.No.9417/2011 for the relief of declaration that a sale deed dated 01.07.2011 executed by the revision petitioner/first defendant and registered as Document No.2286/2011 on the file of SRO, Royapuram in respect of old door No.118, new door No.285, Tiruvottiyur High Road, Tondiarpet, Chennai - 600 081, to be sham and nominal, null and void and not binding on the plaintiff and for a consequential permanent injunction restraining the respondents 2 to 5/defendants 2 to 5 from alienating and encumbering the

said property to a third party and from putting up any construction over the same. The said prayer was made based on her contention that in March 2010, the revision petitioner/first defendant entered into an oral agreement with her for the sale of Plot Nos.6 to 14 along with a 20' common passage comprised in S.Nos.4310/36, 4310/1(part), C.A.No.394/97, R.S.No.4310/100 bearing door No.118, Tiruvottiyur High Road, Chennai - 600 081 totally measuring 11 grounds 2123 sq.ft. for a sale consideration at the rate of Rs.50,00,000/- per ground; that the understanding was that sale deeds should be executed either in favour of the first respondent/plaintiff or in favour of her nominees; that the revision petitioner/first defendant executed a sale deed conveying a part of the property alone in favour of one I.Muthuperumal and his wife Anbuselvi, who were the nominees of the first respondent/plaintiff; that thereafter, the revision petitioner/first defendant was dodging the sale process of the remaining plots and that the revision petitioner/first defendant was trying to alienate the remaining plots to third parties. It has also been contended in the plaint that the understanding between the first respondent/plaintiff and the revision petitioner/first defendant was that the sale transaction would be completed before the end of December 2010 and that since the revision petitioner/first defendant chose to execute a sale deed in favour of the respondents 2 to 5/defendants 2 to 5 before the expiry of the time for completion of the sale transaction, she was forced to file the suit for the above said reliefs.

6. The revision petitioner/first defendant has chosen to challenge the maintainability of the suit on the basis of his contention that the relief of declaration to the effect that the sale deed dated 01.07.2011 executed by the revision petitioner/first defendant in favour of the respondents 2 to 5/defendants 2 to 5 ought to have been valued either on the market value of

the property or on the value quoted in the sale deed and that since the first respondent/plaintiff chose to notionally value the relief under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, the trial court should determine the correctness of the valuation and sufficiency of the court fee paid by the first respondent/plaintiff. It is the further contention of the revision petitioner/first defendant that if the relief is properly valued, then the value of the relief will exceed the pecuniary jurisdiction of the court in which the suit has been filed and that on the ground of jurisdiction also, the suit is not maintainable.

7. The further contention of the revision petitioner/first defendant is that prior to the filing of the present suit, the first respondent/plaintiff filed an earlier suit O.S.No.11501/2010 praying for a bare injunction not to alienate or encumber the suit property against the revision petitioner/first defendant alone; that in the said suit her application filed under Order II Rule 2 CPC seeking leave of the court to file a separate suit for the relief of specific performance at a later point of time was dismissed by the trial court and the same was confirmed by the High Court in the revision and that hence the present suit is barred by Order II Rule 2 CPC attracting Order VII Rule 11(d) of the Code of Civil Procedure. The revision petitioner/first defendant has also contended that there is no real cause of action for filing the present suit and the cause of action alleged in the plaint is illusory and that on the ground of plaint pleadings not disclosing a cause of action also, the plaint is liable to be rejected under Order VII Rule 11(a) CPC. However, the revision petitioner/first defendant has chosen to file a common affidavit in support of I.A.No.12877/2012 for rejection of plaint and I.A.No.12876/2012 for determination of correct court fee payable. The revision petitioner also

committed a mistake in citing Order VII Rule 11(b) along with Sections 5 and 12 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 in I.A.No.12876/2012 as the provision under which the prayer for determination of court fee payable has been made.

8. Order VII Rule 11(b) deals with the question of rejection of the plaint where the relief claimed is undervalued and the plaintiff, having been required by the court to correct the valuation within a time to be fixed by the court, fails to do so. Perhaps conscious of the fact that a prayer for rejection of the plaint straight away on the ground that the relief has been undervalued without first seeking a decision on the correctness or otherwise of the valuation and inviting a direction to the plaintiff to correct the value, cannot be sustained, the revision petitioner/first defendant has chosen to restrict his prayer in I.A.No.12876/2012 to the determination of court fee payable on the relief of declaration sought for in the plaint. The same is the position regarding the question of jurisdiction. The question whether the trial court does have the pecuniary jurisdiction depends upon the finding as to whether the valuation made in the plaint is correct or not? The learned trial Judge chose to hold that since the prayer was not for a declaration of title and for possession, nor was it a suit for declaration of title and for consequential injunction attracting sub clauses (a) and (b) of the said section and that the suit squarely fell under sub clause (d) of Section 25 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Thus the trial court has rendered a finding that the valuation made by the plaintiff was proper. The learned trial Judge also held that since the first respondent/plaintiff was not a party to the document which was sought to be declared null and void, the valuation made under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 was proper. Accordingly, the

learned trial Judge dismissed I.A.No.12876/2012.

9. It is the contention of the learned counsel for the revision petitioner that the learned trial Judge ought to have passed an order for determination of the question as to the correctness or otherwise of the valuation as a preliminary issue and the venture made by the trial court to render a finding to the effect that the valuation made was correct in the said application itself will show an improper and irregular exercise of the jurisdiction conferred on the trial court causing miscarriage of justice. On the other hand, it is the contention raised on behalf of the first respondent/plaintiff that the revision petitioner/first defendant having invited a finding regarding the correctness or otherwise of the valuation by making a prayer for determination of the correct court fee payable cannot be allowed to contend that the trial court ought to have tried it as a preliminary issue rather than deciding the issue in the application itself. It is the further contention of the learned counsel for the first respondent that since the first respondent/plaintiff claimed the impugned sale deed to be a sham and nominal one, the valuation of the relief under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 cannot be said to be either improper, defective or infirm, much less irregular exercise of jurisdiction causing injustice or exercise of jurisdiction not conferred on the trial court. The above said contention raised on behalf of the first respondent/plaintiff cannot be brushed aside as untenable. Hence this court comes to the conclusion that the challenge made in C.R.P.(PD) No.3528/2015 to the dismissal of I.A.No.12876/2012 cannot succeed and that the said civil revision petition deserves to be dismissed. However, it is made clear that since the decision made by the trial court is not based on evidence adduced on both sides, it will

not bar the defendants including the first defendant/revision petitioner, from raising a plea of defence in the written statement regarding the question of valuation and jurisdiction.

10. I.A.No.12877/2012 has been filed for the rejection of the plaint on the following grounds: (1) under valuation and payment of a lesser fee; (2) absence of cause of action and (3) barred by a provision of law, namely Order II Rule 2 CPC. So far as the first ground is concerned, the discussions made in respect of C.R.P.(PD) No.3528/2015 will provide an answer. Accordingly, it has to be held that the plaint cannot be straight away rejected on the ground of undervaluation and payment of lesser court fee without following the procedure contemplated under sub clauses (b) and (c) of Order VII Rule 11 CPC. In fact, the learned counsel for the revision petitioner does not very much rely on the above said ground and on the other hand, he advanced arguments based on the contention that though real cause of action has been revealed by the averments made in the plaint, the suit is clearly barred by Order II Rule 2 CPC. Both the contentions raised on behalf of the revision petitioner/first defendant seems to be having substance in them.

11. The first respondent/plaintiff claims that she is having a right under an oral agreement to purchase the suit property from the revision petitioner/first defendant. Simply because the owner of the property has entered into an agreement with a person for the sale of his property, it cannot be said that his right to deal with the property including a right to alienate or encumber the same in favour of the other persons is lost. The only restriction is that such alienations or encumbrances will be subject to the right of the purchaser under the agreement to seek conveyance from the transferees also

subject to an exception that the bonafide transferees for valuable consideration, without notice of the agreement shall be protected. The purchaser from the vendor under the agreement for sale shall get title subject to the right of the prior agreement holder to specifically enforce the prior agreement against such transferees. Even in case of possession having been delivered to the purchaser under the agreement in part performance of the agreement, the interest of the transferees for consideration without notice of the prior agreement shall be protected under the proviso to Section 53-A of the Transfer of Property Act, 1872. Instead of seeking a declaration that the sale deed executed by the revision petitioner/first defendant in favour of the respondents 2 to 5/defendants 2 to 5 is null and void and not binding on him, the first respondent/plaintiff could have very well filed a suit for specific performance making subsequent purchasers, namely respondents 2 to 5/defendants 2 to 5 also as party defendants along with the revision petitioner/first defendant. The first respondent/plaintiff has not chosen to do so. If at all she is of the view that the transfer is a fraudulent one, she could have very well filed a suit for avoiding the fraudulent transfer. The first respondent/plaintiff has not chosen to do it also. A purchaser under an agreement for sale cannot prevent the vendor under the agreement for sale indefinitely from exercising his right of transfer of the property to others. Hence the main prayer made by the first respondent/plaintiff seeking a declaration that the sale deed dated sale deed dated 01.07.2011 executed by the revision petitioner/first defendant and registered as Document No.2286/2011 on the file of SRO, Royapuram in respect of old door No.118, new door No.285, Tiruvottiyur High Road, Tondiarpet, Chennai - 600 081, as null and void will show the un-preparedness on the part of the first

respondent/plaintiff to file a suit for specific performance and hence we can infer absence of cause of action insofar as there is no plea of readiness and willingness on the part of the first respondent/plaintiff to complete the sale transaction.

12. It is also pertinent to note that the first respondent/plaintiff claims right under an alleged oral agreement for sale between the revision petitioner/first defendant and the first respondent/plaintiff. However she has not stated the exact date on which the alleged oral agreement came to be made. Though the first respondent/plaintiff could have chosen to refer to a sale deed allegedly executed by the revision petitioner/first defendant in favour of Muthuperumal and his wife Anbuselvi as sale deed executed by the revision petitioner in faovur of her nominees, she has not chosen to furnish the particulars of the date and document number of the said sale deed. Though she would have chosen to contend that she and her husband attested the said sale deed executed by the revision petitioner/first defendant in favour of Muthuperumal and his wife Anbuselvi, there is nothing in the pleadings to show that the said document contains any recital to the effect that the same was executed in pursuance of the oral agreement alleged by the first respondent/plaintiff and that the purchasers therein, namely Muthuperumal and Anbuselvi were the nominees of the first respondent/plaintiff. She has also not chosen to produce either the original or a certified copy of such a sale deed along with her plaint.

13. In addition, it is also pertinent to note that in 2010 itself, the first respondent/plaintiff filed a suit in O.S.No.11501/2010 on the file of the very same trial court against the revision petitioner herein/first defendant for a

bare injunction restraining him from alienating and encumbering the suit property in favour of third parties, without preserving the rights of the first respondent/plaintiff to purchase the same. While filing the said suit in October 2010, she also filed an application in the said suit as I.A.No.18271/2010 under Order II Rule 2 CPC seeking leave of the court to file a separate suit for the relief of specific performance in respect of the suit property. It is also an admitted fact that the said application was dismissed by the trial court on 22.01.2011 and that the said order was confirmed by the High Court in a revision. When the said application filed under Order II Rule 2 CPC was dismissed by the trial court, the first respondent/plaintiff would have withdrawn the said earlier suit and filed a comprehensive suit for specific performance and also for injunction. The stage for seeking leave to file a separate suit under Order II Rule 2 CPC shall be prior to the suit being taken on file. When an application is filed along with the plaint seeking leave to sue separately for certain other reliefs, the plaint should be kept unnumbered and the application seeking leave under Order II Rule 2 CPC should be decided first. In case leave is granted, it shall be well and good and the court may proceed with numbering the plaint. On the other hand, if the leave is refused then the plaintiff shall be given an option before numbering the plaint either to include the prayer by way of amendment or to withdraw the plaint and file a comprehensive suit for all the reliefs including the relief regarding which leave has been refused.

14. No doubt the plaint came to be numbered in the previous suit before the disposal of the application seeking leave under Order II Rule 2 CPC to file a separate suit for specific performance. At least after the disposal of the said application, the first respondent/plaintiff could have withdrawn the suit

so as to enable her to file a comprehensive suit. Otherwise she could have filed an application for amending the plaint to include the prayer for specific performance also. Had she done it then the value of the relief would have exceeded the pecuniary jurisdiction of the trial court and the trial court would have lost its jurisdiction to try the suit. As the first respondent/plaintiff has not done it, it is obvious that she is indulging in vexatious litigation without opting to sue for specific performance which shall be more expensive.

15. The filing of the present suit for declaration that the sale deed executed by the revision petitioner/first defendant in favour of the respondents 2 to 5/defendants 2 to 5 is sham and nominal, null and void and not binding on her, and for a permanent injunction restraining the defendants 2 to 5 from alienating or encumbering the suit property and from putting up any construction in the suit property without filing a suit for specific performance and after having failed to obtain leave under Order II Rule 2 CPC in the previous suit, will show that it is a glaring example of abuse of process of court besides attracting the bar provided under Order II Rule 2 CPC bringing the plaint within the purview of Order VII Rule 11(d) of CPC. Hence this court comes to the conclusion that the learned trial Judge committed an error in exercise of jurisdiction by holding that the plaint could not be rejected under Order VII Rule 11 CPC. The order of the trial court dismissing I.A.No.12877/2012 cannot be sustained in law. The revision petitioner has clearly made out a case for rejection of the plaint under Order VII Rule 11 CPC not only on the ground that the cause of action alleged is not real but illusory, but also on the ground that the present suit is barred by Order II Rule 2 CPC, besides being an abuse of process of court, based on which, this court can strike off the plaint using its power under Article 227 of the Constitution of

India. For all the reasons stated above, this court comes to the conclusion that C.R.P.(PD) No.3528/2015 deserves to be dismissed and C.R.P.(PD) No.3529/2015 deserves to be allowed.

Accordingly, C.R.P.(PD) No.3528/2015 is dismissed. C.R.P.(PD) No.3529/2015 is allowed. The order of the trial court dismissing I.A.No.12877/2012 is set aside. I.A.No.12877/2012 shall stand allowed with the result that the plaint in O.S.No.9147/2011 shall stand rejected. However it is made clear that the dismissal of C.R.P.(PD) No.3528/2015 is of no consequence, since I.A.No.12876/2012 itself has become infructuous in view of the order passed in C.R.P.(PD) No.3529/2015 rejecting the plaint. However, there shall be no order as to cost. Consequently, the connected miscellaneous petitions are closed.

11.05.2016

Index : Yes
Internet : Yes
asr

To

The XVI Assistant Judge, City Civil Court, Chennai

P.R.SHIVAKUMAR, J.
asr/-

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