

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1592 of 2016
and
C.M.P.No.8672 of 2016

1.A.Selvamani
W/o.Late G.Aseervadam

2.A.Gnanaraj
S/o.Late G.Aseervadam

... Petitioners

vs

1.D.Sundharavalli
W/o.K.Damodaran

2.K.Damodaran
S/o.Late I.Kannan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned VI Additional Judge, City Civil Court, Chennai, passed in I.A.No.4320 of 2015 in O.S.No.9290 of 2010 on 17.12.2015.

For Petitioners : Mr.R.Arumugam
For Respondents : Mr.R.Sami [R1]
Mr.S.Thankasivan [R2]

ORDER

This revision arises against the order of learned VI Additional Judge, City Civil Court, Chennai, passed in I.A.No.4320 of 2015 in O.S.No.9290 of 2010 on 17.12.2015.

2. The suit in O.S.No.9290 of 2010 has been preferred by first respondent/first plaintiff seeking mandatory injunction. Revision petitioners/defendants 2 and 3, who have been impleaded as legal heirs of the deceased defendant, moved an application in I.A.No.4320 of 2015 in O.S.No.9290 of 2010 under Or.7 R.11(a) CPC seeking rejection of the plaint. Court below, under the impugned order, dismissed such application. Hence, petitioners/defendants 2 and 3 have preferred this revision.

3. Heard learned counsel for petitioners and learned counsel for respondents.

4. Learned counsel for petitioners submits that no cause of action was disclosed in the plaint. It is the plaintiffs' claim that monies were lent by plaintiff to the deceased defendant and the same were secured by mortgage of property allotted by the Tamil Nadu Slum Clearance Board to the deceased defendant. On the failure to repay, a Power of Attorney was also executed by deceased defendant in favour of second plaintiff, who originally had been arrayed as a defendant and subsequently, under order of the trial Court, had been transposed as second plaintiff. It is the further allegation of plaintiffs that as against the original borrowing of Rs.3,00,000/-, a sum of Rs.6,00,000/- fell due and being unable to repay, the second plaintiff, who has been appointed as Power of Attorney under document No.421 of 2002 (Bk.IV) dated 12.04.2002 entered into an agreement for sale on 18.09.2009 for a total sale consideration of Rs.12,00,000/- and out of the said consideration, a sum of Rs.6,00,000/-, the balance consideration, had not been paid. The primary contention of learned counsel is that under the Power of Attorney, the second plaintiff was not entitled to enter into an agreement for sale. As per Power of Attorney the second plaintiff can act on behalf of deceased defendant only after the principal/borrower or the agent came into possession of a sale deed

executed by the Tamil Nadu Slum Clearance Board. Learned counsel contends that when the occasion to act as an agent had not arisen, the consequential sale agreement even if true, could not support the action moved by plaintiffs. Learned counsel further submits that when the arrangement between the parties runs contra the scheme of the Tamil Nadu Slum Clearance Board in allotment of plots, the arrangement must be seen as opposed to law attracting application of Or.7 R.11(d) CPC.

5. Learned counsel for respondents, on the other hand, submits that the suit is at the stage of trial and the plaint, on a bare reading, informs a cause of action. Referring to judgment of this Court in *Tim Boyd, International President, C/o. The Theosophical Society vs. Kesiraju Krishna Pani and others [2015 (5) CTC 45]*, learned counsel submits that the cause of action would mean:

“23. Whether a Plaint discloses the cause of action as required under Order 7 Rule 11, C.P.C., is a question which is a distinct and different one from the question as to whether the Plaintiff can succeed in the Suit based on such cause of action. It is needless to state that only the latter question involves the consideration of other allied questions with regard to the maintainability of the Suit as well as the “locus standi” of the

Plaintiff to file the Suit. In my considered view, these questions, namely the maintainability of the Suit or the locus standi of the Plaintiff to maintain such Suit, are the questions which are to be relegated to be considered and decided along with the other issues on merits, after conducting trial, since these questions also involve consideration of facts and law. That is why the provision made under Order 7, Rule 11, C.P.C. for rejection of Plaintiff, specifically reads that the Plaintiff shall be rejected on one of the grounds, namely where it does not disclose the “cause of action”. In other words, the above said provision nowhere contemplates the rejection of Plaintiff if the Suit is not maintainable, or on the ground that the Plaintiff is not having locus standi to file the same. Thus, in my considered view, the cause of action and locus standi are two different aspects of the Suit and insofar as the Application filed under Order 7, Rule 11, C.P.C., is concerned, the question of locus standi cannot be a ground for rejecting the plaintiff.”

Learned counsel further relied on the judgment of this Court in ***K.R.Kirubakaran vs. G.Lakshmi and another [2015 (5) CTC 442]***.

6. Considering the rival submissions, this Court finds the reasoning afforded by this Court in ***Tim Boyd, International President, C/o. The Theosophical Society vs. Kesiraju Krishna Pani and others [2015 (5) CTC 45]***, directly applicable to the facts of the present case.

For the aforesaid reason, the Civil Revision Petition shall stand dismissed. No costs. Connected miscellaneous petition is closed.

10.08.2016

Index:yes/no
Internet:yes
gm

To

The VI Additional Judge,
City Civil Court,
Chennai.

C.T.SELVAM, J

gm

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