

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :**03.02.2016**

CORAM

THE HONOURABLE Mrs. JUSTICE. **S.VIMALA**

CRP (NPD)No.270 of 2016
and
CMP.No.1263 of 2016

1. Paramasivam
2. Ramesh ... Plaintiffs/Petitioners

..Vs..

1. Indira Gandhi
2.Thatchinamurthy
3.The Sub-Registrar
Chettikulam
Perambalur Taluk
Perambalur District.
4. The District Registrar
Ariyalur
Ariyalur Taluk
Ariyalur District. ... Defendants/Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the orders passed in the unnumbered O.S.SR Nos.1004 & 1037 of 2015 dated 16.10.2015, on the file of Judicial Magistrate and District Munsif, Perambalur.

For Petitioner : Mr.S.Kamadevan

ORDER

This Civil Revision Petition has been filed challenging the order passed by the learned District Munsif, Perambalur, rejecting the plaint, invoking the provisions of Order VII rule 11 (a) of C.P.C.

2. The suit has been filed seeking the relief of declaration and consequential injunction.

The plaint averments in brief: (O.S.Sr.No.1004 & 1035 of 2015)

2.1. Defendants 3 and 4 are Sub Registrar and District Registrar of Chettikulam and Ariyalur respectively. The suit property belonged to the plaintiffs, namely, Paramasivam and Ramesh. Plaintiffs have constructed a thatched shed and they are paying house tax. Electricity connection stands in their names. The first plaintiff is unlettered. He is earning his livelihood by crushing stones. The first plaintiff borrowed a sum of Rs.50,000/- by way of loan from the second defendant Dhakshina Moorthy. The signature of the plaintiffs were obtained in stamped blank documents.

2.2. The plaintiffs never intended to sell the property. They are not known to the wife of the second defendant, namely, Indira Gandhi, who is the first defendant. They never obtained any money from the first defendant. They did not execute any sale deed in favour of the first defendant.

2.3. The second defendant claims that the first plaintiff agreed to sell the suit property for a sum of Rs.1,19,000/- and out of which, a sum of Rs.1,00,000/- has been received by him as advance. The second defendant was claiming that for the amount borrowed by the first plaintiff, he has to pay a further sum of Rs.50,000/- towards interest and thus, the first plaintiff is liable to pay a sum of Rs.1,00,000/-. While so, the second defendant has fabricated a sale agreement dated 21.07.2011 and later on, has created a sale deed dated 25.02.2013, in the name of his wife.

2.4. An Application has been presented before the 4th defendant for compulsory registration. The 4th defendant has passed an order, directing the 3rd defendant to register the sale deed, by an order dated 16.09.2015.

2.5. There was an attempt to trespass the suit property by defendants 1 and 2. Based upon the order passed by the 4th defendant, the defendants 1 and 2 tried to get the sale deed registered from the 3rd defendant.

2.6. Based on these averments, the sale deed dated 25.02.2013 to be registered by the 3rd defendant is to be declared as void and the plaintiffs also prayed for permanent injunction, restraining the defendants from interfering with the possession and enjoyment of the suit property.

2.7. The Court below has returned the plaint, asking the plaintiffs to explain as to how the Court has got jurisdiction in respect of the relief claimed. It has been represented on the third day with an endorsement that it should be called in open Court. In the Court, arguments have been heard and thereafter, the Court has passed an order dated 16.10.2015.

2.8. The Court below has stated the following reasons for rejecting the plaint:

- a. The plaintiffs have not chosen to challenge the order passed

by the 4th defendant.

b. Copy of the sale deed in question is not filed.

c. The contention that the Court has jurisdiction to try the suit under Section 77 of the Registration Act is not relevant; the citation in the case of SK Md. Ismail vs. SK.Anwar Ali and another, reported in AIR 1991 Calcutta 391, is not applicable to the facts of the case.

3. Whether these three grounds are justifiable to reject the plaint, is the issue to be considered.

3.1. So far as the ground No.3 is concerned, certainly, Section 77 of the Registration Act, is not relevant, because, it is a provision, which can be invoked by a person, who is aggrieved over the refusal of registration.

3.2. Section 77 of the Registration Act reads as under:

77. Suit in case of order of refusal by Registrar.—

(1) Where the Registrar refuses to order the document to be registered, under section 72 or a decree section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original

jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the documents shall be receivable in evidence in such suit.

3.3. So far as this case is concerned, the plaintiffs are not aggrieved over the refusal (to register the sale deed), but, in fact, they are the persons delighted about the refusal. The grievance of the plaintiffs are over the order of the 4th defendant, directing the 3rd defendant to register the document. So far as the decision is concerned, there is an observation that in a suit, under Section 77 of the Registration Act, the only question is, whether or not the document, purported to have been executed by certain persons, is executed by that persons. Perhaps, this proposition could have been relied upon to bring out the scope of the suit. But, it cannot be said that the decision would be applicable to the facts of the case.

3.4. So far as the ground no.2 is concerned, the Court cannot expect the plaintiffs to file the copy of the sale deed, because, according to the plaintiffs, it is a concocted one by the defendants 1 and 2; it is also pending registration; only after registration, the plaintiffs can obtain the copy of the sale deed. Therefore, the ground that the copy of the sale deed is not filed, cannot be a valid ground to reject the plaint.

3.5. So far as the ground no.1 is concerned, it is for the plaintiffs to choose the parties to the litigation and the relief, that the plaintiffs need. Whether the required relief can be granted by the Court or not, is a matter for adjudication on merits and it is not a ground for the Court to reject the same at the threshold.

4. It would be appropriate to point out the grounds on which the Court can reject the plaint.

5. The Court has relied upon Order VII Rule 11 (a) of C.P.C., which reads as under.

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 upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(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;

(f) where the plaintiff fails to comply with the provision of Rule 9.

Provided that the time fixed by the court for the 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.

5.1. From the perusal of Order VII Rule 11 of C.P.C., the plaint can be rejected on the grounds that a) the plaint does not disclose a cause of action; b) the relief claimed is undervalued; c) the plaint is

insufficiently stamped; d) where the suit appears to be barred by law (Ex.) limitation, barred under specific provision of law (ex.) Article 105(2) of the Constitution; e) where the plaintiffs have not filed a duplicate; f) non-compliance of Rule 9.

6. From the order passed by the Court below and returns made, it is evident that the plaint has been rejected on the ground of a) lack of cause of action and b) lack of jurisdiction.

7. *Ubi Jus Ibi Remedium* is a Latin legal maxim which is well known. It means "where there is a right there is a remedy". The basic principle contemplated in the maxim is that, when a person's right is violated, the victim will have an equitable remedy under law. The maxim also states that the person whose right is being infringed has a right to enforce the infringed right through any action before a court. All law courts are also guided with the same principle of *Ubi Jus Ibi Remedium*.

7.1. The basic principle of a civilized jurisprudence is that absence of machinery for enforcement of right renders it nugatory. That is why the earlier part of section 9 opens the door of access to

justice in a very wide way and closes the door only in cases where there is an alternative remedy for the violation of rights.

7.2. Jurisdiction in its classical concept means the power to hear the determined cause, to adjudicate and exercise any judicial power in relation to it. The power and authority of the Civil Court is provided under Section 9 of C.P.C., which reads as under:

9. Courts to try all civil suits unless barred

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

1[Explanation I].- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

2[Explanation II].- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.].

7.3. Scope and ambit of Section 9 C.P.C. has been explained in the decision reported in AIR 1995 SC 2001 which is extracted hereunder:

"The heading which is normally key to the Section brings out unequivocally that all civil suits are cognizable unless barred. What is meant by it is explained further by widening the ambit of the Section by use of the word 'shall' and the expression, 'all suits of a civil nature' unless 'expressly or impliedly barred'.

Each word and expression casts an obligation on the court to exercise jurisdiction for enforcement of right. The word 'shall' makes it mandatory. No court can refuse to entertain a suit if it is of description mentioned in the Section. That is amplified by use of 'expression, 'all suits of civil nature'. The word 'civil' according to dictionary means, 'relating to the citizen as an individual; civil rights'. In Black's Legal Dictionary it is defined as, 'relating to provide rights and remedies sought by civil actions as contrasted with criminal proceedings'. In law it is understood as an antonym of criminal. Historically the two broad classifications were civil and criminal. Revenue, tax and company etc, were added to it later. But they too pertain to the larger family of 'civil'. There is thus no doubt about the width of the word 'civil'. Its width has been stretched further by using the word 'nature' along with it. That is even those suits are cognisable which are not only civil but are even of civil nature.

7.4. The normal rule of law is that the Civil Courts have plenary powers to try all suits of civil nature except those of which are

cognizance either expressly or impliedly excluded as provided under Section 9 of Code of Civil Procedure. Only two things are required to give jurisdiction to the Civil Court: 1) Dispute must be civil in nature 2) Cognizance should not be barred either expressly or by implication. In other words, out of civil court jurisdiction should not be inferred.

7.5. It was held in the case of Ganga Bai vs. Vijay Kumar (AIR 1974 SC 1126), that a suit for maintainability requires no authority of law and it is enough that no statute bars the suit.

7.6. It would be appropriate to refer the decision reported in AIR 2000 SC 2220 (State of Andhra Pradesh vs. Manjeti Laxmi Kantha Rao), wherein, it was held that the presumption regarding jurisdiction is in favour of existence rather than exclusion of jurisdiction. The test adopted applied in examining such jurisdiction reads as under:

(i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it.

7.7. In order to bring about implied bar, there shall be a provision giving finality to the order of the Tribunal or the authorities,

having all the remedies available to a party before the civil Court.

8. Yet another ground for rejection of plaint is lack of cause of action.

8.1. The expression 'cause of action' is not defined in the Code of Civil Procedure. It means cause, claim, claim for relief, action at law, basis for relief, demand, enforceable claim, ground, issue, just claim, lawful cause, legal assertion, reason for relief, reasonable claim, redressible wrong, right of action, right of recovery, right to relief in common parlance as well as in dictionary.

8.2. In Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

8.3. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

8.4. In Halsbury Laws of England (Fourth Edition), "Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action".

8.5. A cause of action can arise from an act, a failure to perform a legal obligation, a breach of duty or a violation or invasion of a right. The importance of the act, failure, breach, or violation lies in its legal effect of characterization and in how the facts and circumstances, considered as a whole, relate to applicable law.

8.6. The fact or combination of facts that gives a person the right to seek judicial redress or relief against another is known as cause of action. Also, the legal theory forming the basis of a lawsuit, is known as cause of action.

9. When the plaint discloses cause of action, it is not known how the plaint was rejected under Order VII Rule 11(a) of C.P.C.

9.1. The Court below did not point out under which provision, the suit is barred.

10. The order rejecting the plaint is a decree and appeal is the normal remedy. "Flagrant violation of law as well as errors of law apparent on face of record would justify High Court interfering with orders in exercise of revisional powers" - Ruled the Supreme Court in the case of " *The Managing Director, Nadipissai Pulavar K.R.Ramaswamy Sugar Mills, Mayiladuthurai Vs. A.Fareed Nawa and another* reported in [MANU/TN/0123/1996].

10.1. As held in the above decision, when there is flagrant violation of law and guidance to the Lower Court is required as to how the plaint should have been dealt with, the revision will be the appropriate mode of seeking redress.

S.VIMALA, J

arr/ogy

11. Therefore, the order rejecting the plaint on the ground that there is no jurisdiction for the Civil Court is obnoxious and it is liable to be set aside. Hence, the order passed rejecting the plaint is set aside and the Court below is directed to take the case on file, subject to the question of limitation, valuation and compliance of Rule 9 C.P.C.

12. In the result, the Civil Revision Petition is allowed on the above terms. No costs.

03.02.2016

Index : Yes/No
Internet: Yes/No
arr/ogy

To

The District Munsif Court, Perambalur.

CRP (NPD)No.270 of 2016