

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **29.06.2017**

Delivered on : **18.08.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **K.K.SASIDHARAN**

C.R.P.(PD).No.2044 of 2014

and

M.P.No.1 of 2014

Dr.R.A.Basha

: Petitioner

Vs.

Chaganlal.B.Patel

: Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decreetal order dated 04.01.2014 passed in I.A.No.213 of 2013 in O.S.No.440 of 2012 on the file of the learned Third Additional Subordinate Judge, Coimbatore.

For Petitioner : Ms.P.T.Asha,
For Mr.A.Thiyagarajan

For Respondent : Mr.C.R.Prasanan

ORDER

This Civil Revision Petition is a classic example as to how the litigants are misusing the justice delivery system and contributing substantially to the Himalayan arrears in the Civil Courts.

BRIEF FACTS:

2. The challenge in this Civil Revision Petition is to the order and decretal order dated 04 January, 2014 in I.A.No.213 of 2013 in O.S.No.440 of 2012 on the file of the learned Third Additional Subordinate Judge, Coimbatore, dismissing the application filed by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure to reject the plaint.

3. The property, which is the subject matter of the civil suit in O.S.No.440 of 2012, absolutely belongs to the petitioner and his brother. The respondent is stated to be a tenant in respect of a portion of the property. The petitioner filed eviction petition in R.C.O.P.No.178 of 2002 before the learned First Additional District Munsif, Coimbatore, seeking eviction. The respondent was arrayed as third respondent in the Rent Control Original Petition. The learned Rent Controller allowed the eviction petition by order dated 17 July, 2008. There was no appeal preferred against the said order by the respondent.

4. The respondent filed a civil suit in O.S.No.299 of 2003 before the learned District Munsif, Coimbatore. The petitioner was arrayed as the defendant in the said suit. The suit was one for injunction. In the said suit, the respondent alleged that the petitioner agreed to sell the suit property to him, as per sale agreement dated 14 January, 1984. The petitioner, in his written statement, contended that no such sale agreement was executed by him and the signature was forged. The sale agreement was a fraudulent document. The suit was dismissed for default.

5. The petitioner filed E.P.No.74 of 2009 before the learned First Additional District Munsif, Coimbatore, for execution of the eviction order. The respondent, during the currency of the Execution Petition, filed a civil suit in O.S.No.440 of 2012 seeking a decree of specific performance.

6. Before the Trial Court, the petitioner filed an application in I.A.No.213 of 2013 to reject the plaint.

7. The learned Trial Judge dismissed the application primarily on the ground that genuineness of the sale agreement could be

decided only after taking evidence. The order dismissing the application under Order 7 Rule 11 of the Code of Civil Procedure is under challenge in this Civil Revision Petition.

SUBMISSIONS:

8(A). The learned counsel for the petitioner, by placing reliance on the observation made by the learned Rent Controller in R.C.O.P.No.178 of 2002 and the contention taken by the petitioner in his written statement in O.S.No.299 of 2003, contended that the present suit filed for specific performance of the agreement is clearly barred by limitation. According to the learned counsel, there was no such agreement executed by the petitioner and this fact was clearly mentioned in the written statement filed in O.S.No.299 of 2003. However, for the reasons best known, the respondent failed to prosecute the suit. The learned counsel contended that the present suit is a clear abuse of process, inasmuch as it was only during the final stage of the execution proceedings, the respondent has come up with a suit for specific performance. It was the further contention of the learned counsel that the Trial Court erred in dismissing the application, notwithstanding the admitted facts which are sufficient to reject the plaint.

(B). The learned counsel for the respondent justified the impugned order passed by the learned Subordinate Judge. According to the learned counsel, the question of limitation is a mixed question of fact and law and the same has to be decided on the basis of evidence. The learned Rent Controller was not correct in making an observation with respect to the right claimed by the respondent, in an application filed for eviction. Since the earlier petition was only an eviction petition, any finding given or observation made by the learned Rent Controller would not operate as *res judicata*. The learned counsel contended that the matter requires evidence and as such, the Trial Court was correct in dismissing the application.

THE ISSUE:

9. The only question that arises for consideration is as to whether the plaint in O.S.No.440 of 2012 should be axed at the threshold by invoking Order 7 Rule 11 of the Code of Civil Procedure.

DISCUSSION:

10. The respondent is a tenant under the petitioner in respect of the premises bearing Door Nos.583 and 583-A at Coimbatore. The

lease is admitted. The petitioner before initiating proceedings for eviction issued a notice to the respondent on 05 August, 2002. The respondent issued a reply notice on 30 August, 2002, wherein a contention was taken that the petitioner executed a sale agreement in his favour on 14 January, 1984. The petitioner, thereafter, filed an eviction petition in R.C.O.P.No.178 of 2002 before the Rent Controller, Coimbatore.

11. The petitioner in R.C.O.P.No.178 of 2002 contended that there was no such sale agreement executed by him on 14 January, 1984, so as to enable the respondent to make a claim. The contention taken by the respondent in his reply notice was referred to by the learned Rent Controller, in the order dated 17 July, 2008 in R.C.O.P.No.178 of 2002. The Rent Control Original Petition was allowed by the learned First Additional District Munsif, Coimbatore, in his capacity as the Rent Controller, after contest. There is a factual finding given by the learned Rent Controller with respect to the plea taken by the respondent on the strength of the sale agreement dated 14 January, 1984. Even though the scope of the rent control proceedings is very limited and the finding regarding the validity of sale agreement was recorded without any need for such a finding in a Rent Control Original Petition, the fact remains that the respondent

was well aware of the stand taken by the petitioner that he would not perform his part of the contract, in view of the contention taken that no such agreement was executed by him.

12. The order in R.C.O.P.No.178 of 2002 has become final. The finding recorded by the learned Rent Controller against the respondent has also become final.

13. Even during the currency of the Eviction Petition in R.C.O.P.No.178 of 2002, the respondent filed a civil suit in O.S.No.299 of 2003 before the learned District Munsif, Coimbatore against the petitioner. It was a suit for permanent injunction. In the said suit, the respondent contended that the petitioner executed a sale agreement in his favour and he is bound to perform his part of the contract only after evicting the other tenants and taking vacant possession. The respondent, without seeking leave to file a separate suit on the basis of the very same cause of action, filed the said suit for injunction.

14. The suit in O.S.No.299 of 2003 was contested by the petitioner by filing a detailed written statement. The petitioner, in paragraph No.10 of the written statement, disputed the genuineness

of the sale agreement. The petitioner contended that the respondent forged his signature and cooked up a sale agreement.

15. The respondent, without facing trial, got the suit dismissed for non-prosecution. The suit was dismissed, by judgment and decree dated 03 March, 2006. The decree has become final.

16. The petitioner filed E.P.No.74 of 2009 before the learned First Additional District Munsif, Coimbatore, to execute the eviction order dated 17 July, 2008. The respondent tried his level best to prolong the execution proceedings. It was only during the final stage of the execution proceedings, the respondent has come up with another suit in O.S.No.440 of 2012 for specific performance on the strength of the agreement dated 14 January, 1984.

17. The respondent in his plaint in O.S.No.440 of 2012 contended that he met the petitioner in person and made a request to execute the sale deed. Since the petitioner avoided him and contemplated to alienate the property, he was constrained to file the suit for specific performance.

18. The respondent, nowhere in the plaint, disclosed about the

earlier suit filed by him in O.S.No.299 of 2003 for injunction and the dismissal of the said suit by the Trial Court.

19. The petitioner, on receipt of summons, in O.S.No.448 of 2012 filed application in I.A.No.213 of 2013 under Order 7 Rule 11 of the Code of Civil Procedure. In the said application, the petitioner narrated the earlier events including the issuance of lawyer notice, reply notice sent by the respondent on 30 August, 2002 and the contention taken in R.C.O.P.No.178 of 2002 with respect to the falsity of the sale agreement. The application was opposed by the respondent. According to the respondent, the subsequent suit is not hit by Order 2 Rule 2 of the Code of Civil Procedure. The respondent further contended that even the statutory bar under Order 2 Rule 2 is a matter for evidence and as such, the plaint cannot be rejected at the threshold.

20. The learned Third Additional Subordinate Judge, Coimbatore, opined that the question of genuineness of the sale agreement could be decided only by recording evidence. The learned Judge was of the view that the objection raised under Order 2 Rule 2 of the Code of Civil Procedure is a matter for trial.

21. The learned counsel for the respondent contended that the time limit for filing the civil suit for specific performance would commence only after eviction of the tenants. The recital in the sale agreement dated 14 January 1984 was projected by the learned counsel in support of his plea that Article 54 of the Limitation Act would not be attracted on the facts and circumstances of the present case.

22. The respondent, for the first time, took up a contention in his reply notice that there was a sale agreement in his favour executed by the petitioner on 14 January, 1984. The petitioner, in his eviction petition in R.C.O.P.No.178 of 2002, very specifically contended that there was no such agreement and it was a fraudulent document. The contention taken by the petitioner with respect to the genuineness of the sale agreement was taken note of by the learned Rent Controller in the order in R.C.O.P.No.178 of 2002. There is a clear reference about the sale agreement in the order of eviction. Even in the written statement in the civil suit filed by the respondent in O.S.No.299 of 2003, the petitioner took up a specific contention that there was no such agreement. It is to be mentioned here that the respondent created an artificial cause of action for filing the civil suit in O.S.No.299 of 2003. The respondent in his plaint in O.S.No.299 of

2003 contended that he would be dispossessed by the petitioner and as such, a decree of injunction should be granted restraining the landlord from evicting him except by due process of law. The suit was filed on 03 February, 2003. The Rent Control Original Petition filed by the petitioner for eviction in R.C.O.P.No.178 of 2002 was pending as on the date on which the civil suit for injunction was filed by the respondent in O.S.No.299 of 2003. There is no point in saying that the landlord, who filed the Rent Control Original Petition to evict him through a Court of law, would dispossess him without due process.

23. Since the petitioner took up a specific contention in his written statement in O.S.No.299 of 2003 that the sale agreement was nothing but a false document, the respondent abandoned the suit. The suit was, accordingly, dismissed by judgment and decree dated 03 March, 2006.

24. There is no dispute that the question of limitation is a mixed question of fact and law. However, in the subject case, there is no need for recording evidence to decide the question of limitation, in view of the admitted facts. The petitioner, in his eviction petition filed

in 2002, very clearly stated that no such sale agreement was executed by the petitioner. The eviction petition was contested by the respondent. The respondent was well aware that the petitioner would not execute a sale deed in his favour, in view of his contention that the sale agreement is a fraudulent document. Similarly, from the written statement in O.S.No.440 of 2012, the respondent was aware that the petitioner would not execute a sale deed in his favour. Even then, the respondent failed to file a civil suit for specific performance within the period of limitation.

25. There is a legislative mandate that every suit shall include the whole of the claim which the plaintiff is entitled to sue in respect of the cause of action. Rule 2(2) of Order 2 provides that in case the plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

26. The respondent filed the earlier suit for injunction in O.S.No.299 of 2003 on the strength of the sale agreement dated 14 January, 1984. Since the cause of action for filing the suit was the sale agreement, the respondent ought to have filed a comprehensive

suit for specific performance and injunction. The respondent, for the reasons best known, filed a civil suit only for injunction. There was no prayer to grant him leave to file a suit for injunction and to file a suit for specific performance subsequently, on the basis of the very same cause of action. The petitioner is, therefore, perfectly correct in his contention that the subsequent suit in O.S.No.440 of 2012 is barred under Order 2 Rule 2 of the Code of Civil Procedure.

27. The petitioner denied the execution of sale agreement in his petition in R.C.O.P.No.178 of 2002. The respondent was a party to the Rent Control Original Petition. The respondent was, therefore, well aware of the stand taken by the petitioner that he would not execute the sale deed in his favour on the strength of the alleged sale agreement. Since there was a denial of the sale agreement and refusal to perform the contract, the respondent ought to have filed the civil suit for specific performance within a period of three years. The limitation would commence when the petitioner has noticed the refusal to perform the contract. The petitioner made it very clear in his original petition in R.C.O.P.No.178 of 2002 that the sale agreement was a forged document. The eviction petition was filed on 18 September, 2002. The respondent ought to have filed a civil suit within three years from the date of service of notice along with a copy of the eviction petition in R.C.O.P.No.178 of 2002. The time

prescribed for filing a civil suit for specific performance expired in 2005, in case the date of filing the petition in R.C.O.P.No.178 of 2002 is taken as the crucial date. Since the civil suit was filed on 03 February, 2003 and a written statement was filed in the said suit on 11 June, 2003, disputing the genuineness of the agreement, the limitation should be counted from the date of filing the written statement. The written statement was filed on 11 June, 2003. It was nearly three years after filing the written statement, the suit was dismissed for non-prosecution. In case the date of filing the written statement is taken as the crucial date for computing the period of limitation, the respondent ought to have filed the suit for specific performance on or before 11 June, 2006. The suit for specific performance was filed only on 30 September, 2011. The suit is, therefore, hopelessly barred by limitation. There is no need for a trial and adjudication, in view of the admitted fact that even in the year 2003 the respondent was aware of the refusal on the part of the petitioner to perform the contract. This vital aspect was omitted to be considered by the Trial Court.

28. The Supreme Court in **Madanuri Sri Rama Chandra Murthy vs. Syed Jalal [2017(5) Scale 127]** observed that if on an entire and meaningful reading of the plaint, it is found that the suit is

manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11 of the Code of Civil Procedure.

29. It would be appropriate to quote the following observation made by the Hon'ble Mr. Justice V.R. Krishna Iyer in **T.Arivandandam v. T.Satyapal [AIR 1977 SC 2421]**:

"5.....The learned Munsif must remember that if on a meaningful - not 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 O.VII R.11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear 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 O.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, (Ch.XI) and must be triggered against them....."

30. The respondent, by filing the present suit after the period of limitation, in spite of the observation contained in the order in R.C.O.P.No.178 of 2002 and the judgment and decree in O.S.No.299 of 2003, has abused the process of Court by filing this suit. The suit is, therefore, a gross misuse of the provisions of the Civil Procedure Code. I am, therefore, of the view that this is a fit case to axe the plaint by exercising the power under Order VII Rule 11 of the Code of Civil Procedure.

31. The order dated 04 January, 2014 is set aside. The application in I.A.No.213 of 2013 in O.S.No.440 of 2012 on the file of the learned Third Additional Subordinate Judge is allowed.

32. In the upshot, I allow the Civil Revision Petition without any liability to pay costs. Consequently, the connected miscellaneous

petition is closed.

18.08.2017

Index : Yes/No

Internet : Yes/No

SML

K.K.SASIDHARAN, J.

SML

To
The Third Additional Subordinate Judge,
Coimbatore.

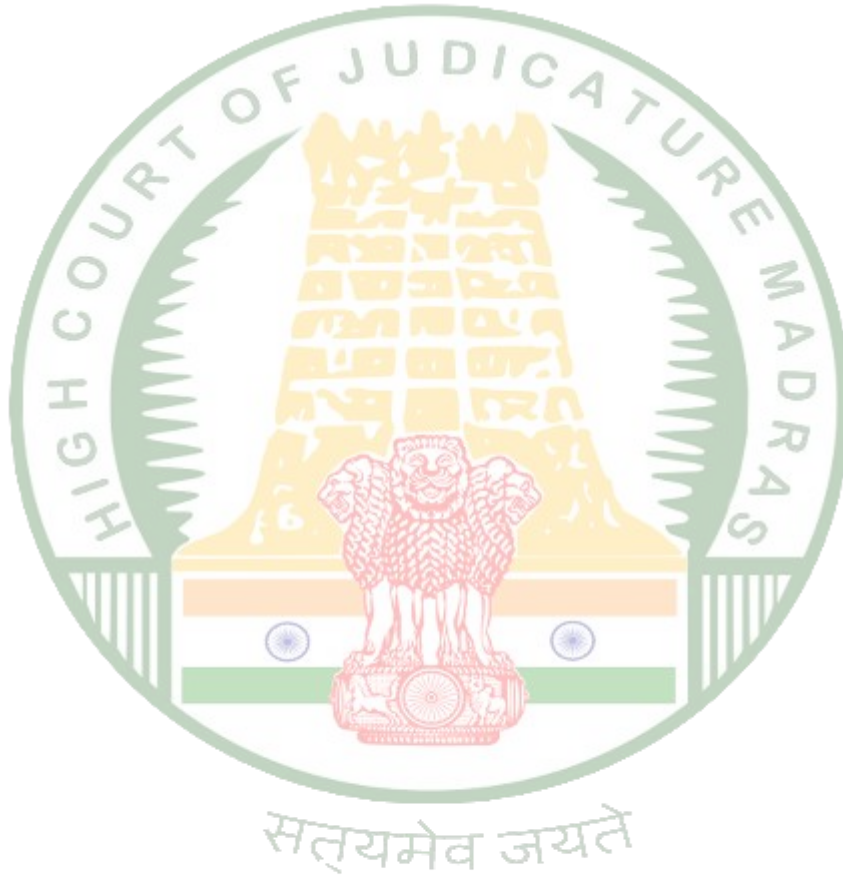


Pre-delivery Order made in

C.R.P.(PD).No.2044 of 2014

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