

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.07.2017

Coram

The Honourable Mr. Justice RAJIV SHAKDHER
and
The Honourable Mr. Justice ABDUL QUDDHOSE

Original Side Appeal Nos.153 to 156 of 2017
and
C.M.P.Nos.10762 to 10765 of 2017

M/s.Ponmari Enterprises Private Ltd.,
Rep. By its Director K.Malathi,
2/495-A, Thiruvalluvar Road,
Red Hills,
Chennai - 600 052.

... Appellant in
all the appeals/Plaintiff

Vs.

C.Sivasubramanian

... Respondent in
O.S.A.No.153/2017/Defendant

1. C.S.Rajamanickam

2. C.S.Thirugnana Sambandam

3. C.S.Meenakshi

... Respondents in
O.S.A.No.154/2017/Defendants

1. C.Siva Subramanian

2. C.S.Rajamanickam

3. C.S.Thirugnana Sambandam

4. C.S.Meenakshi

... Respondents in
O.S.A.No.155/2017//Defendants

1. C.S.Rajamanickam

2. C.S.Thirugnana Sambandam

... Respondents in
O.S.A.No.156/2017/Defendants

Prayer: Appeals filed under Order XXXVI Rule 1 of the O.S.Rules
read with Clause 15 of the Letters Patent to set aside the
judgement and order passed by the Ordinary Original Civil

Jurisdiction of this Court dated 12.01.2016 in C.S.Nos.38, 39, 41 and 42 of 2008 respectively.

For Appellant : Mr.A.K.Sriram
in all O.S.As for M/s.A.S.Kailasam and Asso.

For 1st Respondent : Mr.R.Subramaniam
in O.S.A.153 and 155/2017

C O M M O N J U D G E M E N T

(Judgement of the Court was delivered by RAJIV SHAKDHER,J.)

1. The captioned appeals, have been preferred, against the common judgement and order dated 12.01.2016, passed by the learned Single Judge.

1.1. By virtue of the impugned judgement and order, the learned Single Judge directed return of plaint in C.S.Nos.38, 39, 41 and 42 of 2008.

2. It is noted that the plaintiff in all the four suits referred to above, is a common entity i.e. M/s.Ponmari Enterprises Private Ltd. (in short 'PEPL'). The defendants in the suits are not identical, though, we are told that they are members of the same family.

3. Upon pleadings being completed, the Court framed the following issues in these matter, this is being:

"1. Whether this Court has got jurisdiction to try and dispose of the suit ?

2. Whether the plaintiff has been ready and willing to perform its part of the obligations as per agreement for sale, dated 26.04.2007 ?

3. Whether the defendant has committed breach of the terms of the agreement for sale, dated 26.04.2007 ?

4. Whether the cancellation of the registered agreement for sale by the defendant is legal, valid and binding on the plaintiff ?

5. Whether the plaintiff is entitled to specific performance for the agreement of

sale ? and

6. To what relief, the parties are entitled ?”

4. The learned Single Judge, as required, dealt with issue No.1, first, which pertained to jurisdiction of the Court in the first instance. The question which in effect concerned the Court was as to whether the suits instituted by PEPL were suits for land or not ?

4.1. The observations were made qua this issue, by the learned Single Judge after having considered a plethora of case laws. The learned Single Judge having considered facts obtaining in the case and the judgement on the issue came to the firm conclusion that the suits filed were, in effect, suits for land, which, admittedly, were situate outside the territorial jurisdiction of the Court.

4.2. It may be relevant to note that while the subject lands were situated outside the jurisdiction of the Court, it was the case of PEPL, both before the learned Single Judge and this Bench that the Court would have jurisdiction to entertain and try the suits on account of the following ingredients which formed part of the actions instituted (i) First, that a specific averment had been made in paragraph 17, of each of the complaints to the effect that PEPL would not claim possession of the subject land. (ii) Second, the prayer made in each of the suits, which, in substance, seeks only specific performance of the agreement for sale.

4.3. Based on these two facets, which according to PEPL, distinguishes the cases relied upon by the learned Single Judge, it is contended on behalf of the appellant that the action's instituted were not suits for land.

5. Mr.A.K.Sriram, learned counsel for the appellant argued that the conclusion reached by the learned Single Judge is erroneous in law. In support of his submission, the learned counsel placed reliance on the judgement of the Supreme Court rendered in Adcon Electronics Pvt. Ltd. Vs. Daulat and another, (2001) 7 SCC 698.

6. Before we proceed further, we may also indicate, what has come to light, at the appellate stage, which is that, the first respondent, Mr.C.Sivasubramanian in O.S.A.Nos.153 and 155 of 2017, which arise out of C.S.Nos.38 and 41 of 2008, has been declared insolvent.

6.1. The aforesaid fact, though, was not brought to the notice of the learned Single Judge by the said respondents.

6.2. As a matter of fact, the Official Assignee, has filed a set of papers, which is, indicative of the fact that in a

creditor's insolvency petition that is, I.P.No.35 of 2008, an order of adjudication dated 30.09.2011, has been passed, whereby, Mr.C.Sivasubramanian, has been declared an insolvent.

6.3. At this juncture, we may only observe that while we have noted the fact regarding Mr.C.Sivasubramanian's insolvency, this aspect, to our minds, would not make any material difference to the outcome of the appeals, which are placed before us, for adjudication.

7. Continuing with the narrative, the learned Single Judge made note of these very submissions, which evident upon perusal of the following extract from his judgement:

"22. It is settled principle of law that whether a suit is a "suit for land" or not, has to be determined only based on the averments made in the plaint with reference to the reliefs claimed therein. In this case, it is specifically admitted by both parties that the properties in all the four suits, are situated outside the jurisdiction of this Court, i.e. within the limits of Kancheepuram District. On a reading of the entire plaint in all the four suits, in order to determine whether the suits are "suits for land" or not, or they are suit simpliciter for enforcement of contract, the specific averments made in the plaints in paragraph 17 are extracted below:

"17. The plaintiff states that the suit property is located outside the jurisdiction of this Hon'ble Court and the plaintiff is not seeking possession of the property, but however the present suit has been laid as a suit simplicitor for enforcement of the contract which would not (sic.) involve adjudication of the title of the defendant. The plaintiff is also not seeking for control over the property forming the subject matter of litigation and in such circumstances, this Hon'ble Court shall have the jurisdiction to entertain the suit. The defendant is residing at Chennai and the advance sale consideration were also paid at Chennai and admittedly, the balance of convenience is also for institution of the present suit as against the

defendant herein in this Hon'ble Court. Since there is a constant threat of wrongful and fraudulent alienation of the suit property by the defendant, the plaintiff is obliged to file the present suit for enforcement of the contract simplicitor in this Hon'ble Court."

23. It is also useful to refer the prayer in all the suits, which are as follows:

Prayer in C.S.No.38 of 2008:-

"20. The plaintiff therefore prays for a Judgement and decree as against the defendant as under:

(a) Directing the defendant herein to specifically perform his part of the obligations arising out of the Agreement for Sale dt.26.04.2007 in respect of the suit schedule mentioned property situate at No.146 Keelavalam Village, Madurantakam Taluk, Kancheepuram District comprised in various Survey Numbers measuring an extent of 41.08 acres or thereabout, morefully described in the plaint Schedule 'A', and also the property situate at No.148, Kinar Village, Madurantakam Taluk, Kancheepuram District, comprised in Survey No.15 measuring an extent of 3.94 acres or thereabout, morefully described in the plaint Schedule 'B', on receipt of the balance sale consideration of Rs.5,27,24,000/- and execute a deed of sale or sales either in favour of the plaintiff or its nominee or nominees either in one lot or in pieces as the case may be on a date to be fixed by this Hon'ble Court OR in default direct an Officer of this Hon'ble Court to execute the deed of sale or sales in the name of the plaintiff or its nominee or nominees either in one lot or in pieces as the case may be, on behalf of the defendant on a date to be fixed by this Hon'ble Court on the plaintiff's depositing the balance sale consideration of

Rs.5,27,24,000/- payable by the plaintiff to the defendant as per the terms of the contract dt.26.04.2007,

(b) Grant such further or other reliefs, and

(c) Costs of the suit."

(emphasis is ours)

8. Pertinently, for the sake of brevity, we have not reproduced the averments made by PEPL in paragraph 17 in each of the complaints and the prayer sought thereof.

8.1. The reason for the same is that it is not in dispute that the averments made in paragraph 17 in each of the complaints is identical. Suffice it to state after recording the contentions with regard to the assertions of PEPL, that suits instituted are not suits for possession, the learned Single Judge, made the following observations in paragraphs 25 to 29 of the judgement after extracting the Tamil version of the clause appearing in the agreement for sale which requires the respondents / defendants to handover possession to PEPL:

"25.. In the above clauses in the agreements for sale executed between the plaintiff and the defendants in all the suits, it is specifically admitted by both parties that the possession was not handed over to the first party (plaintiff) by the second party (defendants) at the time of agreement. It is specifically agreed between the parties that the second party is liable to hand over the possession at the time of registration of the documents to the first party without any encumbrance. Thus, it is the defendants' obligation in the agreements for sale to hand over the possession to the plaintiff only at the time of registration of the sale deeds सतयमेव जयते

26. On a conjoint reading of the above stipulation and obligation specifically stated in the above agreements for sale, with the prayer made in the suits, it is seen that the plaintiff has prayed that the defendants herein may be specifically asked to perform their part of contractual obligation arising out of the agreements for sale, dated 26.04.2007 in respect of the suit schedule mentioned properties and to execute the sale deeds in favour of the plaintiff or its nominee or nominees, either in one lot or in pieces, as the case may be, fixed by this Court, or, in default, to direct the Officer

of this Court to execute the deed of sale or sales in the name of the plaintiff or its nominee or nominees, either one lot or in pieces, as the case may be, on behalf of the defendants on a date to be fixed by this Court on the plaintiff's depositing the balance sale consideration amounts specified in the plaints. Hence, on a reading of the above prayer in the suits, with the obligation fixed on the defendants in the agreements for sale, it is clear that the defendants have to execute the sale deeds and hand over the possession at the time of registration of the sale deeds.

27. Even though in paragraph 17 of the plaints, it is specifically mentioned that the suits are laid as suits-simpliciter for enforcement of the contract which would not (sic.) involve adjudication of title of the defendants and the plaintiff is not seeking for control over the properties forming the subject matter of litigation, on a reading of the entire prayer made in all the plaints, it is seen that the plaintiff wanted to enforce the obligation on the part of the defendants. It is to be noted that the plaintiff has specifically mentioned in the plaints, obligation, which includes handing over of possession at the time of execution and registration of the documents (sale deeds). Hence, on a reading of the entire plaint in all the four suits, along with the agreements for sale, it is clearly proved that even though the plaintiff has stated in the plaints that the plaintiff-Company is not seeking for possession of the properties from the defendants, but in the prayer column, the plaintiff has specifically wanted to enforce the obligation stipulated in the agreements for sale, which includes the handing over of the possession to the plaintiff at the time of execution and registration of the documents (sale deeds). In the prayer column in the plaints, the plaintiff has not specifically excluded the prayer of possession from the defendants at the time of registration of documents and the plaintiff simply stated that they wanted the entire obligation stated in the agreements for sale, which definitely includes seeking for possession of the properties from the

defendants at the time of registration of the documents.

28. Therefore, on a reading of the entire plaint in all the suits, this Court is of the considered view that even though in paragraph 17 of the plaints, the plaintiff is not seeking for possession of the suit properties from the defendants, from a reading of the prayer made in the suits, it is clear that the prayer includes enforcement of obligation on the part of the defendants and in case of failure, the plaintiff wanted to perform the contract by the Officer of the Court, which includes seeking for possession at the time of registration of the sale deeds.

29. Since the suits are for specific performance of the contract, which includes seeking for handing over of the possession by the defendants, definitely, the suits will come under the category of "suits for land".

(emphasis is ours)

9. In coming to the conclusion that the suits laid by PEPL would be 'suits for land', the learned Single Judge noticed the following judgements and set forth the extracts from the said judgements: Moolji Jaitha & Co. Vs. KS & W Mills Co., AIR 1950 FC 83 and Babu Lal Vs. Hazari Lal Kishori Lal, AIR 1982 SC 818.

9.1. This apart, we may also refer to the judgement referred to by the learned Single Judge in Eurotherm India Pvt. Ltd. Vs. Johnson Lifts Pvt. Ltd., 2014 (5) CTC 41 and B.Ratansingh Vs. P.G.Sekar, 2014 (4) CTC 735.

9.2. We may note that the ratio decidendi of these judgements is that 'suit for land' would be suit in which relief claimed, if granted, would directly affect the title or possession of the land. Having regard to the fact that, admittedly, there is a clause in the agreement for sale which requires the respondents / defendants to hand over possession of the lands in issue, we are in agreement with the view of the learned Single Judge that it would affect the possession of the land and hence the subject actions would be suits for land.

9.3. We must say, in fairness, Mr.A.K.Sriram, learned counsel for the appellants has brought to our notice another judgement of the Supreme Court rendered in Excel Dealcomm Private Limited Vs. Asset Reconstruction Company (India) Limited and others, (2015) 3 MLJ 483 (SC). The Supreme Court in this case distinguished the judgement rendered in Adcon Electronics Pvt. Ltd. Vs. Daulat, (2001) 7 SCC 698. The relevant observations made in this behalf, are recorded in paragraphs 11 to 14 of the said judgement:

"11. The suit for land is a suit in which the relief claimed relates to the title or delivery of possession of land or immovable property, [See:Adcon Electronics Pvt. Ltd. vs. Daulat and Anr., (2001) 7 SCC 698]. Further it is an established rule that to determine whether it is a suit for land, the Court will look into barely the Plaint and no other evidence, [Indian Mineral & Chemicals Co. and Others vs. Deutsche Bank, (2004) 12 SCC 376]. If by the averments in the plaint and prayers therein, it appears that the suit is one for land, it shall be so held and if it does not so appear, then the suit shall continue under leave granted under clause 12. In the present case, the prayer in the plaint was couched in following words:

"A decree for specific performance of the agreement for sale recorded in the document dated February 13, 2007 being Annexure "A" hereto by directing the Defendant no. 1 and 2 to issue in favour of the plaintiff Sale Certificate in respect of assets mentioned in Schedule 1 to Annexure A hereto and on as is where is basis in terms of the said agreement"

12. The learned counsel for the Respondent has very emphatically argued that this prayer is in effect a prayer for possession of the said properties since the procedure under the Rules for execution of the sale certificate, the transfer of possession is pre-requisite. Therefore, he has submitted that although, the possession is not asked for in direct words but that would be the obvious corollary to granting of the prayer. Further, another point which has been emphasized on behalf of respondent is that the prayer requires sale to be effected in terms of the Agreement, and therefore, the entire agreement may be read as a part of the prayer.

13. On the question of suit for specific performance of an agreement to sell being a suit for land, this Court has laid down a clear principle in Adcon Electronics Pvt. Ltd. Vs. Daulat Ram and Anr, (2001) 7 SCC 698, that a suit for specific performance simplicitor without a prayer for delivery of possession is

not a suit for land as Section 22 of the Specific Relief Act, 1963 categorically bars any Court to grant such relief of possession in a suit for specific performance unless specifically sought. In view of this judgement, in the present case, the only question for our determination in the plaint is whether a prayer for delivery of possession is sought or not ? The prayer sought is issuance of sale certificate which is provided in Appendix V to the Rules under SARFAESI Act. The sale certificate reads as follows:

"Whereas the undersigned being the authorised officer of the (name of the institution) under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and in exercise of the powers conferred under Section 13 read with Rule 12 of the Security Interest Enforcement Rules, 2002 sold on behalf of the (name of the secured creditor/institution) in favour of the (purchaser), the immoveable property shown in the schedule below secured in favour of the (name of the secured creditor) by (the names of the borrowers) towards the financial facility (description) offered by (secured creditor). The undersigned acknowledge the receipt of the sale price in full and handed over the delivery and possession of the scheduled property. The sale of the scheduled property was made free from all encumbrances known to the secured creditor listed

below on deposit of the money demanded by the undersigned."

14. It may be noted that the sale certificate sought under the prayer requires the delivery of possession of the suit property. Thus, we find that the prayer for delivery of possession was an implicit one in the present case. The prayer as sought in the plaint could not have been granted without the delivery of possession of the suit property as the sale certificate itself contemplates the delivery of the immovable property. Thus, in view of this we find that the Adcon Electronics would not apply as there was a prayer for delivery of possession in the present case. Therefore, we hold that the present suit was indeed a suit for land."

(emphasis is ours)

10. In our opinion a "meaningful" and a "non-formal" reading of the plaint including the prayer contained therein would have us come to the conclusion that the actions instituted are suits for land. Clever and adroit drafting would not have us veer to a different conclusion. The learned Single Judge's reference to the agreement for sale was made only to unravel as to how if the prayer made in the suits were to be granted it would impact the factum of possession of the subject lands. Therefore, for the aforesaid reasons, we are not inclined to interfere with the impugned judgement and order of the learned Single Judge. Accordingly, the impugned (common) judgement and order of the learned Single Judge dated 12.01.2016, is sustained. The appeals are dismissed. The Registry is directed to return the plaint in C.S.Nos.38, 39, 41 and 42 of 2008 to the plaintiff after making necessary endorsement on the plaints. The time accorded for the purpose of presenting the plaints before the appropriate forum would be three (3) weeks, which will commence from the date of receipt of a certified copy of the order passed today. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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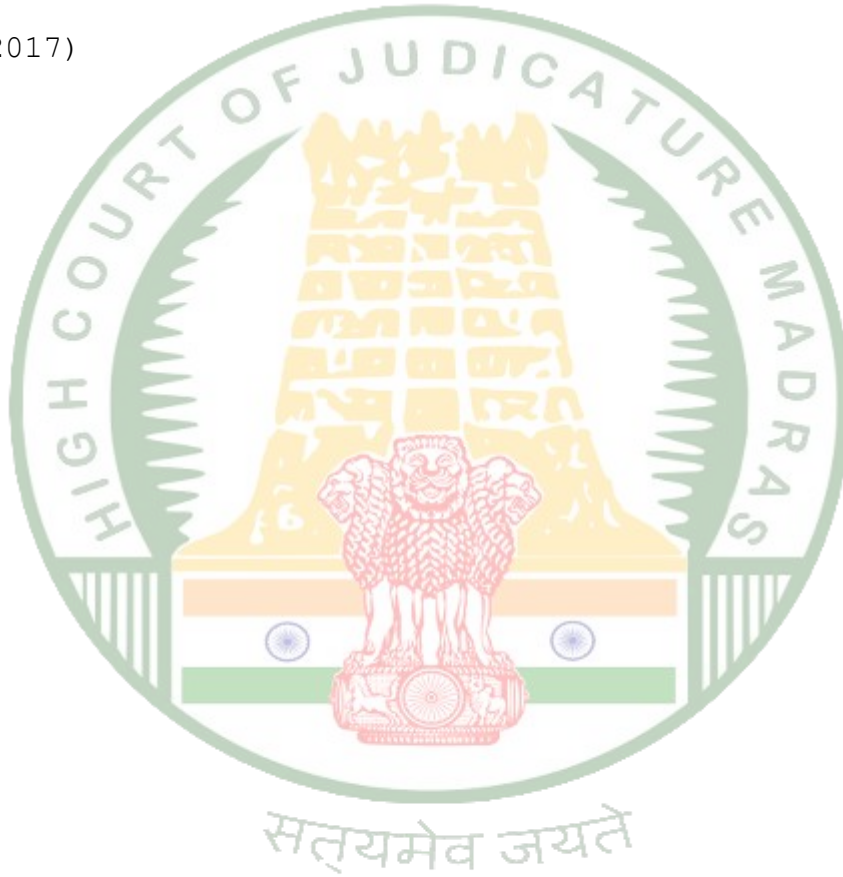
To

The Sub assistant Registrar,
Original Side,
High court, Madras.

+4cc to Mr.A.S.Kailasam&Associates, Advocate,S.R.No.51675 to51678

O.S.A.Nos.153 to 156 of 2017 and
C.M.P.Nos.10762 to 10765 of 2017

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