

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD)No. 248 of 2016
and
C.M.P No.1194 of 2016

1. Shanmukh N.Shah

2. Paresh N. Shah

.. Petitioners

Vs

R.K. Kumar

.. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, seeking to set aside the order dated 05.11.2015 passed in I.A. No. 125 of 2015 in O.S. No. 132 of 2014 on the file of the District Munsif Court at Ambattur and direct the plaint to be rejected.

For Petitioners : Mr. V. Manohar

For Respondent : Mr. R. Perumalswamy

ORDER

This Civil Revision Petition is filed seeking to set aside the order dated 05.11.2015 passed in I.A. No. 125 of 2015 in O.S. No. 132 of 2014 on the file of the District Munsif Court at Ambattur.

2. The learned counsel for the revision petitioners would submit that the respondent has filed the suit in O.S. No. 132 of 2014 for permanent injunction. The petitioners have filed an Interlocutory Application under Order VII Rule 11 of CPC on the ground that the cause of action set out in the plaint are all, with regard to alleged amount due for construction of the apartments. However, no relief has been prayed for, in respect of the cause of action, narrated in the plaint. Hence, the petitioners filed I.A. No. 125 of 2015 in O.S. No. 132 of 2014 before the trial court. The trial court considered and dismissed the said application by holding that prima facie no case has been made out by the applicants/ revision petitioners. Challenging the said order dated 05.11.2015, this revision has been filed.

3. According to the petitioners, the relief sought in the suit is for bare injunction without any basic relief and no injunction can be sought against the true or lawful owner. He further submitted that the relief as prayed in the suit, is not for any relief based on the pleadings and materials in the plaint. There is no cause of action for the suit but the point so raised was not properly appreciated by the court below and dismissed the application filed by the petitioners. Therefore, the order of the trial court is liable to be set aside.

4. The learned counsel for the respondent contended that the submission of the petitioners has been discussed in detail, by the trial court. The application filed under Order VII Rule 11 of CPC, by the petitioners has to satisfy the conditions under the said provisions of the CPC. The trial court has considered the decision in the case of ***N.Ravindran vs V.Ramachandran reported in 2011 (3) CTC 153.*** Hence, the court below has rightly dismissed the petition and that there is no warrant to interfere with the order dated 05.11.2015. No prima facie case has been made out by the revision petitioners and so the revision petition is liable to be dismissed.

5. In the above cited decision of the Hon'ble Supreme Court *reported in 2011 (3) CTC 153*, in paragraph 8, it is held as follows :-

“8. While finding that the cause of action for filing the suit for specific performance arose in November 2002, the learned single Judge in extenso referred to the averments in O.S.No.6514 of 2002 earlier filed by the appellant/plaintiff and the learned single Judge rejected the plaint mainly on the two grounds:- (i) suit is barred by limitation and (ii) suit is barred under Order II Rule 2 C.P.C. The learned Senior Counsel for appellant/plaintiff contended that the object of Order VII Rule 11 C.P.C. is to keep out of Courts frivolous litigations and while considering the application, Court has to find out only from the allegations made in the plaint and not beyond plaint averments to find out whether plaintiff's case is false or frivolous or barred under any law. ”

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10. The well settled position is that while considering the application under Order VII Rule 11 C.P.C., Court is not required to take into consideration the defence set up by the defendant in

his written statement or other documents. The question whether plaint discloses any cause of action and whether it is barred by any law is to be decided by looking at the averments contained in the plaint itself and not the defence set up in the written statement. While considering the application, the strength or weakness of the case of the plaintiff is not to be examined. It is fairly well settled that the Court has to find out from the allegations made in the plaint itself and not beyond it as to whether any vexatious or frivolous litigation has been initiated by the plaintiff. The Court cannot take into account materials beyond the plaint to declare that the case of the plaintiff is frivolous or is barred by any law.

11. The scope of Order VII Rule 7 C.P.C. has been elaborately considered in *Sopan Sukhdeo Sable v. Asstt. Charity Commr.*, (2004) 3 SCC 137, wherein the Supreme Court held as under:

"10. *In Saleem Bhai v. State of Maharashtra* ((2003) 1 SCC 557) it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can

exercise the power at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are germane: the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

11. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal ((1998) 2 SCC 70) it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V.

Satyapal (1977) 4 SCC 467) .

13. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill (1982) 3 SCC 487 only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

14. In Raptakos Brett & Co. Ltd. v. Ganesh Property ((1998) 7 SCC 184) it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.

15. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be

gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."

12. The above *Sopan Sukhdeo Sable* case, (2004) 3 SCC 137 has been referred to in the subsequent judgment - *Popat and Kotecha Property v. State Bank of India Staff Assn.*, (2005) 7 SCC 510. As held by the Supreme Court in *Popat and Kotecha Property v. State Bank of India Staff Assn.*, (2005) 7 SCC 510), the real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.

13. Keeping in view the aforesaid principles, Court has to find out whether the learned single Judge was right in rejecting plaintiff's suit for specific performance as barred under Order VII Rule

11(d) C.P.C. Plaintiff's suit for specific performance is based on the alleged understanding between the plaintiff and the defendant in January 1994 based on which the plaintiff is said to have paid advance of Rs.33,00,000/- out of the total sale consideration of Rs.46,00,000/-. In the plaint, the plaintiff has averred that he was always ready and willing to perform his obligation to pay the balance consideration of Rs.13,00,000/-. Alleging that inspite of assurance the defendant has not come forward to fulfil his obligation, in paragraph No.9 of the plaint, the plaintiff has averred as follows:

"On an enquiry it was learnt that the defendant had deputed several persons to inspect the suit property in the month of November 2002."

7. At this juncture, the learned counsel for the petitioners submitted that in the event of dismissal of the Revision petition, the petitioners undertake to file a written statement within a period of two weeks, before the court below and the same may be considered.

8. Considering the above decision and the submission of the

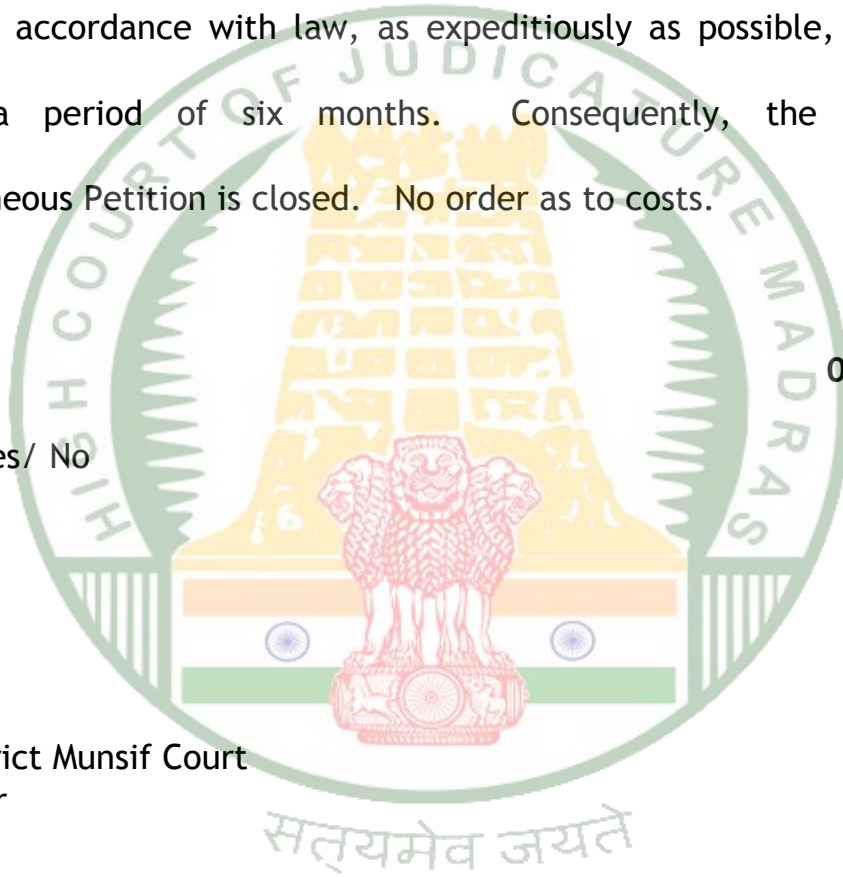
learned counsel for both sides, the Civil Revision Petition fails and the same is dismissed, with liberty to the petitioners to file a written statement, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the court below shall dispose of the same, in accordance with law, as expeditiously as possible, preferably within a period of six months. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

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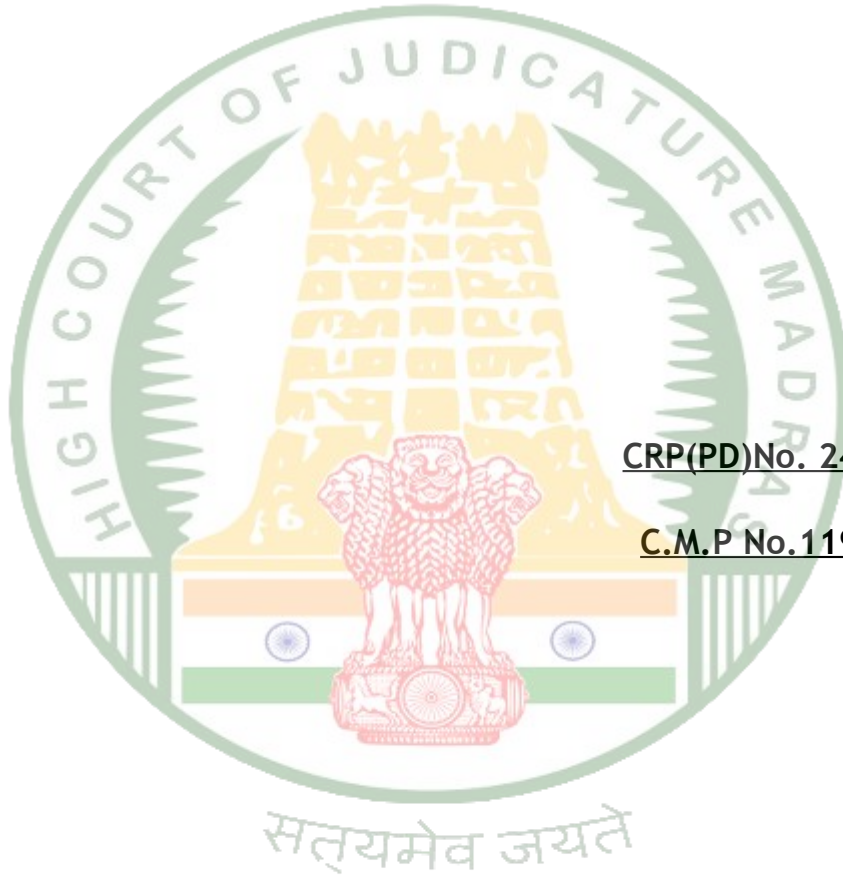
To

The District Munsif Court
Ambattur

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