



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD)No.451 of 2017

and

C.M.P(MD)No.2203 of 2017

P.Nagarajan

... Petitioner

vs.

B.Soundarapandi

... Respondent

Petition filed under Article 227 of the Constitution of India, against the order and decreetal order dated 29.09.2016 passed in I.A.No.138 of 2016 in O.S.No.109 of 2013 by the I Additional District Judge, Madurai.

For Petitioner

: Mr.D.Malaichamy

For Respondent

: Mr.Babu Rajendran

for Mr.M.R.Murugesan

ORDER

This revision is filed against the dismissal of the application to reject the plaint filed under Order 7 Rule 11 CPC.

2.The main contention of the revision petitioner/defendant is that the suit does not disclose any cause of action and the plaint has been cleverly couched in a manner, as if, there is a cause of action exists for the suit. Whereas, the alleged cause of action is illusionary one and not the real cause of action. The suit was filed in the year 2013, seeking the relief of declaration of title in respect of the suit property and delivery of possession. The suit was contested by the revision petitioner, by filing written statement, for which, the plaintiff has filed a reply statement. In the written statement filed by the revision petitioner, dated 27.04.2014, it has been specifically averred that there was an agreement of sale executed by Mr.S.Bose, who is the father of the plaintiff and pursuant to the said sale agreement, possession was handed over to the defendant and therefore, the defendant cannot be branded as a trespasser as pleaded in the plaint. The very suppression of the sale agreement by Mr.S.Bose and putting the defendant in possession of the property amount to misrepresentation of material fact which disentitle the plaintiff to pursue the suit. For the said averment, the plaintiff has also made a specific reply statement, denying the alleged agreement of

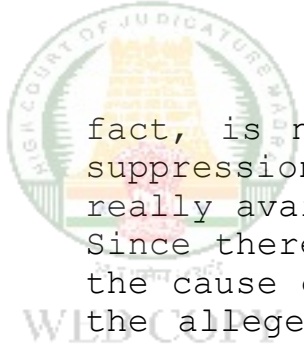


sale dated 30.11.2003, alleged to have been executed by the plaintiff's father Mr.S.Bose. The specific case of the plaintiff is that the said agreement might be a forged or concocted document. When he was residing at Usilampatti, the defendant by illegally trespassing into the suit property, took possession of the same.

3.Per contra, the case of the defendant is that there is an agreement of sale between himself and the father of the plaintiff Mr.S.Bose in 2003 and pursuant to the said agreement, he was put in possession of the property and therefore, he is not the trespasser. After filing of the written statement, denying the very cause of action of the sale agreement executed in favour of the defendant, the present application to reject the plaint has been filed. The Trial Court in its order, which is impugned before this Court, has considered the fact that a pre-suit notice has been sent to the defendant to vacate the suit premises and hand over the possession. Despite receipt of the notice, there was no reply on behalf of the defendant and thereafter, the suit was instituted to declare the ownership and to obtain recovery of possession. This *prima facie* discloses the cause of action and the contention of the petitioner that the cause of action is only illusory one, is incorrect.

4.Now, the counsel for the revision petitioner submits that in view of the judgment rendered by the Hon'ble Supreme Court in **Church of Christ Charitable Trust and Educational Charitable Society vs. Ponnamman Educational Trust**, reported in 2012 (4) SCC (Civ) 612, it is mandatory on the part of the plaintiff to aver all the material facts and to prove the same in order to succeed in the suit. Suppression of material fact through a cleverly drafted plaint, cannot be entertained by this Court and it should be nipped in the bud at the first hearing, by examining the parties under Order 10 of the Code. No doubt, if there is any deliberate and mala fide suppression of material fact, Court should be pro-active and prevent such abuse of process, but at the same time, if there is any material to show that there is a cause of action or there are facts traversed by the other side, Court cannot throw away the case at the threshold, without testifying the genuineness of the contra plea raised by the defendant and the plaintiff, as the case may be.

5.Here is a case, where the defendant claims that he was put in possession by a registered agreement of sale by the father of the plaintiff, which is totally denied by the plaintiff and he has also questioned the genuineness of the document relied on by the defendant. Under such circumstances, this Court is of the opinion that such facts which are controverted, cannot be decided summarily. The parties are liable to substantiate their plea, by letting in evidence. Mere allegation of suppression of material



fact, is not suffice to de-suit the plaintiff, on the ground of suppression of material facts. Whether such a material fact is really available has to be established in the manner known to law. Since there is a total denial on behalf of the plaintiff regarding the cause of action of agreement by Mr.S.Bose in the year 2003 and the alleged payment towards discharge of mortgage, the defendant cannot expect the Court to take his version as plausible to reject the plaint in toto at the threshold, without testifying the genuineness of the plea after full trial.

6. Therefore, this Court finds no merit in this revision petition. Accordingly, the revision petition is dismissed. The Trial Court is directed to frame appropriate issues, if not so far framed regarding the contentions raised in this revision petition, which forms part of the written statement already filed by the revision petitioner. No costs. Consequently, C.M.P (MD) No. 2203 of 2017 is closed.

sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The I Additional District Judge,
Madurai.

+1 cc to M/S.D.Malaichamy, Advocate in SR.No. 13137

+1 cc to M/S.Babu Rajendran, Advocate in SR.No. 12980

nbi

CSL/BS/15.03.2017 : 3P/4C

CRP (PD) (MD) No. 451 of 2017
07.03.2017