

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.10.2018

Pronounced on : 22.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

**CRP.(PD).No.2896 of 2016
and
C.M.P.No.14655 of 2016**

1.Mohala

2.Chitra

.. Petitioners

V.

1.M.Siva

2.S.Rani

3.The Commissioner,
Panruti Municipality
having office at Panruti,
Panruti Taluk,
Cuddalore District.

(R3 is not a necessary party
to this petition, hence given up)

.. Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.06.2016 made in I.A.No.335 of 2016 in O.S.No.15 of 2016 on the file of the learned District Munsif, Panruti.

For Petitioners : Mr.N.L.Rajah, Sr. Counsel
for Mr.P.Munusami

For Respondent : Mr.A.K.Kumarasamy, Sr. Counsel
Nos.1 & 2 for Mr.P.Kannan Kumar

ORDER

The petitioners/defendants 1 and 2 have filed the present revision against the rejection of their application filed under Order 7 Rule 11 of the Civil Procedure Code. The main ground raised before the trial Court for rejecting the suit is that the plaint averments do not disclose a cause of action.

2.Heard Mr.N.L.Rajah, learned Senior counsel for the petitioners and Mr.A.K.Kumarasamy, learned Senior counsel appearing on behalf of the respondents 1 and 2.

3.The learned Senior counsel for the petitioners submitted that the averments in the plaint do not disclose that the petitioners herein have a right over the suit property vis-a-vis., the interest of the defendants and that the suit has been filed at a surmise of a cause of action which is yet to arise. According to the learned Senior counsel, the alleged sale agreement dated 21.01.2004 entered between the plaintiff and one Malathiammal cannot be deemed to be a Deed of Conveyance. By placing reliance on Sections 54 & 55 of the Transfer of Property Act, 1882, the learned Senior counsel submitted that the alleged sale agreement between

the plaintiff and the Malathiammal do not confer any title or transfer of any interest in the suit property and the protection envisaged under Section 53 A of the Transfer of Property Act, also cannot be invoked against the petitioners herein, who are not the proposed vendors but only third parties to the agreement. It is his submission that the order of the trial Court, rejecting their application under Order 7 Rule 11 on the ground that these aspects could be decided only during the course of trial, is improper.

4. The learned Senior counsel for the respondents on the other hand submitted that the plaint averments clearly disclose the cause of action to maintain the suit and that the grounds raised by the petitioners are pre-mature, which can only be decided through proper appreciation of oral and documentary evidences. It is his submission that, when the plaintiff had realized that a sizeable portion of the property of Malathiammal was vacant, which ought to have been conveyed to the plaintiff, they had entered into a sale agreement on 21.01.2004. He also submitted that since the petitioners herein are contemplating to put up construction in the suit property, in which the plaintiffs have already entered into a sale agreement. Such construction would cause serious prejudice to the plaintiffs and would also result in multiplicity of proceedings and as such, he submitted that there was no infirmity in the findings of the

trial Court in rejecting the application filed under Order 7 Rule 11 of the Civil Procedure Code.

5.I have given careful consideration to the submissions made by the respective counsels.

6.For the purpose of invoking the provision of Order 7 Rule 11 of the Civil Procedure Code, the law has been well settled by the Hon'ble Apex Court in various decisions that, while considering the application under Order 7 Rule 11 of the Civil Procedure Code, the Court has to examine the averments in the plaint alone and nothing more. The decision reported in **2012 (8) SCC 701** in the case of **Ram V. Janak Singh and others** is one such judgment reiterating this aspect. With this legal proposition in mind, I shall now venture to analyse the grounds raised by both the learned Senior counsels.

7.Order 7 Rule 11 of C.P.C., empowers the trial Court to reject the plaint in various circumstances. Sub clause (a) of Rule 11 empowers the trial Court to reject the plaint, when the plaint averments do not disclose a cause of action. As such,it necessitates this Court to look into the plaint averments, to ascertain as to whether any cause of action is disclosed therein.

8.The suit is for the relief of permanent injunction restraining the defendants 1 and 2 from putting up construction in the B Schedule property, which is a vacant property, for which they had entered into an Agreement of Sale on 21.01.2004 with one Malathiammal. The property mentioned in Schedule A of the plaint is admittedly, the property belonging to the defendants 1 and 2. Since the plaint averments goes to indicate that they have entered into a sale agreement with Malathiammal and that the defendants 1 and 2 are attempting to put up a construction therein, the suit has been initiated. In other words, the only cause of action pleaded in the plaint for seeking the relief of permanent injunction is that the defendants 1 and 2 are attempting to put up construction in the B Schedule property for which the plaintiffs have entered into a sale agreement with Malathiammal.

9.The question that now arises for consideration is as to whether such a pleading can give raise to a cause of action to the plaintiffs for seeking the relief of injunction against the defendants herein, who are the owners of the property mentioned in Schedule A of the plaint and who are alleged to have attempted in putting up construction in B Schedule property and whether the plaintiffs can maintain the relief of permanent injunction against the statutory

authority from granting planning permission for construction in the B Schedule property to the defendants 1 and 2 on the ground that the plaintiffs holds a sale agreement for the said property.

10. An agreement to sell does not create any interest on the proposed vendee over the suit property. Section 54 of the Transfer of Property Act, provides that the title in an immovable property, valued at more than Rs.100/-, can be conveyed only by executing a registered Deed of Conveyance and that a *Contract for Sale* of an immovable property will not by itself create any interest or charge on such property.

11. Section 54 of the Transfer of Property Act reads as follows:-

"Sale" defined:- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made- Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a

registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.-A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property."

12. The Hon'ble Apex Court in a decision in ***Suraj Lamp and Industries Private Ltd., through Director V. State of Haryana and another*** reported in **2012 (1) SCC 656** had dealt with the scope of an agreement of sale and while relying upon another decision in ***Narandas Karsondas Vs. S.A. Kamtam & Another*** reported in **1977 (3) SCC 247** had held, that an agreement to sell will not qualify to the requirements of Sections 54 & 55 of the Transfer of Property Act and as such, it will not confer any title nor transfer any interest in the immovable property. The relevant portion of the order reads as follows:

"16. Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale

does not, of itself, create any interest in or charge on such property. This Court in *Narandas Karsondas v. S.A. Kamtam and Anr.* (1977) 3 SCC 247, observed:

32.A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in *Section 54* of the Transfer of Property Act. (See *Rambaran Prosad v. Ram Mohit Hazra*) [1967]1 SCR 293. The fiduciary character of the personal obligation created by a contract for sale is recognised in *Section 3* of the Specific Relief Act, 1963, and in *Section 91* of the Trusts Act. The personal obligation created by a contract of sale is described in *Section 40* of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein."

33.In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in *section 5* of Transfer of Property Act is used in the wider sense of conveying ownership.

...

37. ...that only on execution of conveyance ownership passes from one party to another...."

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter."

13. In the light of Section 54 of the Transfer of Property Act and the above decision of the Hon'ble Apex Court, restricting the scope of a sale agreement, it can only be concluded that the Sale Agreement dated 21.01.2004 through which the plaintiffs claims right over the B Schedule property cannot clothe them with any legal right.

14. Consequentially, it can also be said here that the protection granted under Section 53 A of the Transfer of Property Act cannot be extended to the plaintiffs to maintain the suit since the cause of action and the relief sought for in the plaint is against the persons, who are not the parties to the alleged Sale Agreement. Section 53A only protects the proposed transferee against the transferor in the sale agreement and such a protection cannot be exercised against the third party. In a decision of the Hon'ble Apex Court in **Rambhau Namdeo Gajre V. Narayan Bapuji Dhotra (dead) through Irs.** reported in **2004 (8) SCC 614**, this proposition was reiterated. The relevant portion of the said judgment is as follows:

"13. The agreement to sell does not create an interest of the proposed vendee in the suit property. As per Section 54 of the Act, the title in immovable property valued at more than Rs. 100/- can be conveyed only by executing a registered sale deed. Section 54 specifically provides that a contract for sale of immovable property is a contract evidencing the fact that the sale of such property shall take place on the terms settled between the parties, but does not, of itself, create any interest in or charge on such property. It is not disputed before us that the suit land sought to be conveyed is of the value of more than Rs. 100. Therefore, unless there was a registered document of sale in favour of the Pishorrilal

(proposed transferee) the title of the suit land continued to vest in Narayan Bapuji Dhotra (original plaintiff) and remain in his ownership. This point was examined in detail by this Court in *State of U.P. Vs. District Judge & Ors.*, 1997 (1) SCC 496, and it was held thus:

"Having given our anxious consideration to the rival contentions we find that the High Court with respect had patently erred in taking the view that because of [Section 53-A](#) of the Transfer of Property Act the proposed transferees of the land had acquired an interest in the lands which would result in exclusion of these lands from the computation of the holding of the tenure-holder transferor on the appointed day. It is obvious that an agreement to sell creates no interest in land. As per [Section 54](#) of the Transfer of Property Act, the property in the land gets conveyed only by registered sale deed. It is not in dispute that the lands sought to be covered were having value of more than Rs. 100.

Therefore, unless there was a registered document of sale in favour of the proposed transferee agreement-holders, the title of the land would not get divested from the vendor and would remain in his ownership. There is no dispute on this aspect. However, strong reliance was placed by learned counsel for Respondent 3 on [Section 53-A](#) of the Transfer of Property Act. We fail to appreciate how that section can at all be relevant against the third party like the appellant-State. That section provides

for a shield of protection to the proposed transferee to remain in possession against the original owner who has agreed to sell these lands to the transferee if the proposed transferee satisfies other conditions of Section 53-A. That protection is available as a shield only against the transferor, the proposed vendor, and would disentitle him from disturbing the possession of the proposed transferees who are put in possession pursuant to such an agreement. But that has nothing to do with the ownership of the proposed transferor who remains full owner of the said lands till they are legally conveyed by sale deed to the proposed transferees. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party like the appellant-State when it seeks to enforce the provisions of the Act against the tenure-holder, proposed transferor of these lands."

[Emphasis supplied]

There was no agreement between the appellant and the respondent in connection with the suit land. The doctrine of part performance could have been availed of by Pishorrilal against his proposed vendor subject, of course, to the fulfillment of the conditions mentioned above. It could not be availed of by the appellant against the respondent with whom he has no privity of contract. Appellant has been put in possession of the suit land on the basis of an agreement of sale not by the respondent but by Pishorrilal, therefore, the privity of contract is

between Pishorrilal and the appellant and not between the appellant and the respondent. The doctrine of part performance as contemplated in [Section 53-A](#) can be availed of by the proposed transferee against his transferor or any person claiming under him and not against a third person with whom he does not have a privity of contract.

14. The doctrine of part performance is rooted in equity and provides a shield of protection to the proposed transferee to remain in possession against the original owner who has agreed to sell to the transferee if the proposed transferee satisfies other conditions of [Section 53-A](#). It operates as an equitable estoppel against the original owner to seek possession of the property which was given to the proposed vendee in part performance of the contract. Appellant being a third party and not a privy to the transaction on which the estoppel rests can take no advantage of it."

15. In the present case, the plaint averments go to reveal that the plaintiffs had entered into the sale agreement with Malathiammal in connection with the B Schedule Property, the defendants herein, who are alleged to be the owners of A Schedule property are attempting to put up construction in the B Schedule property. The defendants 1 and 2 are neither a party nor privy to the agreement of sale. The law discussed above holds that

an Agreement of Sale, not being a Deed of Conveyance, will not confer any title to the plaintiffs or transfer any interest in the B Schedule Property and as such, when the plaintiffs have clearly indicated that their title over the B Schedule property is yet to be conferred, it necessarily follows that the cause of action is yet to arise. In the absence of any cause of action, there is no scope for trial in the present suit, which can only be termed to be vexatious and which requires to be nipped in the bud.

16. The trial Court had rejected the application on the ground that the defendants have not produced the planning permission for putting up construction in the B Schedule property and as such, had disbelieved the submissions on the right of the defendants to put up construction in the B Schedule property. It was further held that the issues with regard to the right of the parties over the B Schedule property could be decided at the trial. When the law has been well settled to reject the complaints of vexatious litigation when the averments do not disclose a cause of action, the trial Court ought to have considered these aspects with regard to the plaintiffs' claim of title over the Sale Agreement. As such, in my considered view, the rejection of the petitioners' application under Order 7 Rule 11 of the Civil Procedure Code is not proper.

17. For all the aforesaid foregoing reasons, I am of the view that the trial Court had not properly appreciated the scope of Order 7 Rule 11(a) of the Civil Procedure Code and therefore, the fair and decreetal order dated 16.06.2016 passed in I.A.No.335 of 2016 in O.S.No.15 of 2016 is set aside. Consequently, the plaint filed in O.S.No.15 of 2016 is hereby rejected from the file of the learned District Munsif, Panruti.

18. In the result, the Civil Revision Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

22.11.2018

Index : Yes

Order : Speaking

DP

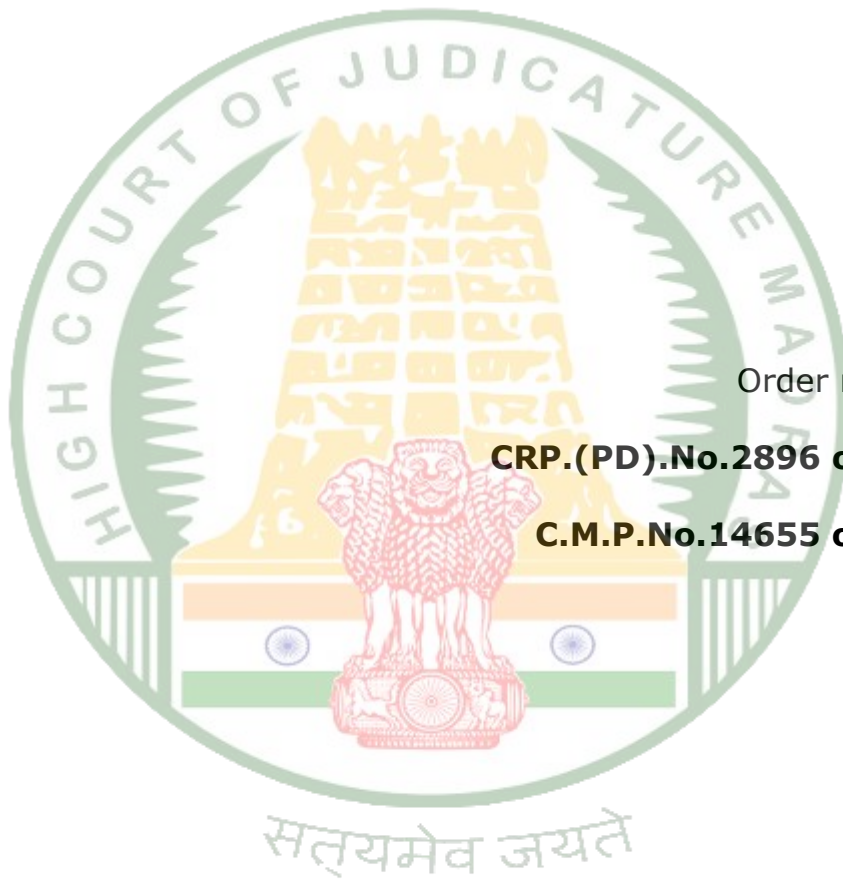
To

The District Munsif,
Panruti.

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M.S.RAMESH, J.

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Order made in

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