

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.7130 of 2018

ORDER:

This petition under Article 227 of the Constitution of India is filed questioning the order passed by the Additional District Judge, Hindupur, dated 26.11.2018 whereby the plaint was returned for non-compliance of the objection.

2. The plaintiff filed suit for specific performance of agreements of sale i.e., first agreement dated 23.05.2018 for Rs.77,66,000/-, and the other agreement for Rs.36,60,000/- in respect of Schedule A and B respectively, and the parties to the agreements are one and the same. The demand made by this petitioner is also one and the same, calling upon the defendants to receive balance of sale consideration and to execute registered sale deed as the defendant failed to comply with the legitimate demand, the plaintiff filed single suit for specific performance of contracts of sale to direct the defendants to execute registered sale deeds, on receipt of balance of sale consideration. But the trial Court took an objection and returned the plaint by order dated 22.11.2018 calling upon the petitioner/plaintiff to explain as to the maintainability of a single suit based on two agreements of sale. The counsel appearing in the trial Court represented the plaint by relying on Order II Rule 3 and judgment of the Apex Court in Iswar Bhai C. Patel Alias Bachu Bhai Patel v. Harihar Behera and another¹, but the trial Court again returned the plaint by the impugned order dated 26.11.2018 which is now under challenge before this Court on the ground that the trial Court did not advert to the law laid down by the Apex Court and Order II Rule 3 also, though a specific reference is made in

¹ (1999) 3 Supreme Court Cases 457

the re-presentation dated 25.11.2018 and the order is bereft of any reasoning and requested to set aside the order by exercising power of this Court under Article 227 of the Constitution of India.

3. Order VII Rule 11 deals with return of plaint under various circumstances. The same is extracted hereunder:

11. Rejection of plaint— The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;

4. Therefore, the Courts are vested with the power of returning the plaint at any stage of the suit, but under what circumstances the plaint can be returned is not explained. However, a single suit for specific performance is maintainable based on two agreements of sale when the parties to the agreements of sale are one and the same in both the documents though the schedule of property is different.

5. Order I Rule 3 deals with multifarious causes of action. Order I Rule 3 is extracted hereunder:

Who may be joined as defendants: -

All persons may be joined in one suit as defendants where –

- (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist

against such persons, whether jointly, severally or in the alternative; and

- (b) if separate suits were brought against such persons, any common question of law or fact would arise.

Order II Rule 3 is extracted hereunder:

“3. Joinder of causes of action: - (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.”

6. Here, two transactions or agreements of sale or series of transactions are alleged to exist between the parties. Therefore Order II Rule 3 permits impleading of the parties to the same transaction or series of transactions in one suit though the transactions are different.

7. But in the present case, the suit transactions i.e., agreements of sale were executed on the same day for two different properties for different amounts but they constitute a series of transactions and thereby they can be joined as parties to one suit.

8. Same question came up before the Apex Court in *Iswar Bhai* (1 supra) where the Supreme Court considered the scope of Order I Rule 3 and Order II Rule 3 and held in paragraph 14 as under:

“14. These two provisions, namely, Order 1 Rule 3 and Order 2 Rule 3 if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a party in a suit because there is

a cause of action against him and when causes of action are joined, the parties are also joined."

9. In view of the law declared by the Apex Court and the language used under Order II Rule 3, the suit for specific performance is maintainable against the defendants based on two agreements of sale, as the parties to the agreements are one and the same which constitute a series of acts or transactions. Therefore, the objection raised by the trial Court dated 26.11.2018 for return of the plaint is untenable for the purpose of deciding the present issue, however, the Court is at liberty to decide the same, if any objection as to maintainability of suit is raised, by framing appropriate issue, and therefore the objection is hereby set aside, while directing the trial Court to register the plaint, if it is otherwise in order. The Registry is directed to return the plaint, under proper acknowledgement, for presentation before the trial Court.

10. Accordingly, the civil revision petition is allowed. No costs. Pending miscellaneous petitions, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

06th December, 2018

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