

A.Nos.7144,4630,4631 of 2017 in C.S.No.374 of 2017 and
A.Nos.8230 of 2018, 289, 4273, 4274, 4632 of 2019 in C.S.No.640 of 2018

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A.Nos.7144, 4630, 4631 of 2017 in
in C.S.No.374 of 2017 and
A.Nos.8230 of 2018, 289, 4273, 4274, 4632 of 2019
in C.S.No.640 of 2018

N. SATHISH KUMAR,J.

COMMON ORDER

The following Applications are filed by the parties for the reliefs mentioned against them respectively:

S.No.	A.No.	C.S.No.	Filed by	Prayer
1	7144/2017	374/2017	5 th Defendant	To reject the Plaintiff
2	4630/2019	374/2017	Plaintiff	To amend the cause title
3	4631/2019	374/2017	Plaintiff	To implead the applicants as Plaintiffs 2 to 20
4	8230/2018	640/2018	Defendant	To reject the Plaintiff
5	289/2019	640/2018	Plaintiff	To grant leave to file documents
6	4273/2019	640/2018	Plaintiff	To grant stay of all further proceedings in O.S.No.6473 of 2017 pending before IV Asst.City Civil Court, Chennai.
7	4274/2019	640/2018	Plaintiff	To withdraw O.S.No.6473/2017 pending before IV Asst. City Civil Court, Chennai and to be tried along with C.S.No.640/2018
8	4632/2019	640/2018	Plaintiff	To amend the cause title.

A.No.7144 of 2017 in C.S.No.374 of 2017 and
A.No.8230 of 2018 in C.S.No.640 of 2018

2. Application No.7144 of 2017 in C.S.No.374 of 2017 is filed by the 5th Defendant who was subsequently impleaded in the suit in C.S.No.374 of 2017, to reject the plaint on the ground that the Plaintiff being a defunct society is disentitled to maintain the suit. Further the suit is filed based on the unregistered agreement which is not maintainable in the eye of law. The suit is nothing but abuse of process of law.

3. Application No.8320 of 2018 is filed by the sole defendant in C.S.No.640 of 2018 wherein it is the contention of the Applicant/Defendant that the plaintiff does not disclose cause of action to file the suit. The alleged agreement dated 6.5.1990 is forged and fabricated document. The Plaintiff claims to be a society has locus standi to file the suit and claim relief of specific performance of alleged

contract as the Plaintiff is not a body corporate and not a juristic person. The suit has been filed for the alleged cause of action that there is an attempt to sell the suit property to a third party in violation of alleged Clause 16 of the alleged suit agreement dated 06.05.1990. Whereas the entire suit there was no cause of action to institute a suit for the alleged Pre-emption. There was no allegation in the plaint that the Applicant/Defendant have sold the suit property. It is the contention of the applicant that the cause of action to institute a suit for the alleged pre-emption would arise only after the sale is complete and the suit has to be filed within one year from the date of registration of instrument of sale as per Article 97 of Limitation Act 1963. Further Pre-existing right of tenancy/lease etc., is a pre-requisite to confer right of pre-emption under contract. 1st Plaintiff society has no pre-existing tenancy right under contract to claim alleged right of pre-emption under Clause 16 of suit agreement dated 06.05.1990 and hence the Plaintiff society has no legal right seek specific performance of alleged right of pre-emption. Hence this application.

4. Mr.S.R. Ragunathan, learned Senior Counsel appearing for the Applicant in A.No.7144 of 2017 in C.S.No.374 of 2017 submitted that the suit has been filed by non-juristic person. Therefore the said suit is not maintainable. Further there is no cause of action to maintain the suit. Now the plaintiff sought for an amendment to implead 19 so called members of the society, out of whom 10 members have already executed lease agreement in favour of the Applicant/5th Defendant. Hence, it is the contention that the suit is nothing but abuse of process of law. On the date of suit there was no sale whatsoever taken place. Therefore, filing the suit to enforce the alleged right of pre-emption does not arise at all. To file a suit for pre-emption sale should have been much earlier than the suit. Hence, submitted that there is no cause of action for the suit and the same may be rejected.

5. In support of his submissions he placed reliance of the following judgments:

1. *Illachi Devi (dead) by Lrs. and others vs. Jain Society, Protection of Orphans India and*

others. [(2003) 8 SCC 413]

*2. Kumar Gonusab and others vs. Mohammed
Miyah [(2008) 10 SCC 153]*

6. Mr. Lakshminarayanan, learned counsel appearing for the Applicant in A.No.8320 of 2018 in C.S.No.640 of 2018 submitted that the alleged agreement of the year 1990 has been relied to file the suit in C.S.640 of 2018. The Plaintiff society has no pre-existing tenancy right under contract to claim alleged right of pre-emption under Clause 16 of the suit agreement. Therefore the Plaintiff society has no legal right to seek specific performance right of pre-emption. Further, it is his contention that amalgamation of cause of action cannot be done. He has also contended that the right of pre-emption would arise only after the sale is complete and the suit has to be filed within the time limit. Hence it is his contention that the suit is nothing but abuse of process of law and the same has to be rejected.

7. In support of his contention he placed reliance upon the

following citations:

1. *Radhakisan Laxminarayan Toshniwal v. Shridhar Ramachandra Alshi and Others* [**AIR 1960 SC 1368**]

2. *Sha-san Infrastructures vs. Thakur Corner Byabsayee Kalyan Samity and Others* [(**2010**) **3 Callt 79**]

8. Mr.T.V. Ramanujam learned Senior Counsel appearing for the Respondent/Plaintiff in both applications submitted that even assuming that the suit is premature that suit is maintainable. It may be a ground for dismissal and not a ground for rejection. It is his contention that originally the suit has been filed only against Defendants 1 to 4. The Complaint was presented on 2.5.2017. Whereas the Defendants 1 to 4 have sold the property to the 5th Defendant on 3.5.2017. Thereafter 5th Defendant was impleaded on 12.6.2017. Therefore, cause of action certainly available on the date of impleading of the 5th Defendant. Therefore, the contention of the 5th Defendant that the suit has to be rejected cannot be countenanced at this stage. The allegations found in the complaint alone to be seen to find out whether

or not there is a cause of action. Hence it is his contention that the suit has been filed to enforce Clause 16 of the agreement. Whether the agreement of the year 1990 is capable of enforcement or such specific clause is capable of enforcement cannot be gone at this stage. Hence it is his contention that the suit cannot be rejected merely on the ground that some mistakes in the drafting.

9. In support of his submissions he relied upon the following judgments:

1. *Virgo Industries (Eng) Private Limited vs. Venturetech Solutions Private Limited* **[2013(1) SCC 625]**

2. *Raghbinder Singh vs. Bant Kaur and others* **[2011 (1) SCC 106]**

3. *Vithalbhai (P) Limited vs. Union Bank of India* **[2005(4) SCC 315]**

4. *Bay Berry Aprtments (P) Ltd., Vs. Shoba and others* **[2006(13) CTC 692]**

*5. F.Jirani and others vs.Hajee Sir Ismail Wakf
Estate rep. by its Trustees [2010(3) CTC 692]*

*6. Chohotaben & Another vs.Kiritbha Jaikrishna Bai
Thakur & Another [2018 (6) SCC 422]*

*7. Saleem Bhai & Others vs. State of Maharashtra &
Others [2004(3)SCC 137]*

10. In C.S.No.374 of 2017 it is the case of the Plaintiff that the members of the Plaintiff's society were in possession and enjoyment of the property owned by Defendants 1 to 4 and they have also entered into agreement on 6.5.1990 in favour of the Plaintiff and Clause 16 of the said Agreement mandates that in the event of selling the property, the first right of purchase is to be given only to the first Plaintiff's society. The Plaintiff came to know that the Defendants 1 to 4 have entered into an agreement for sale with the 5th Defendant herein on 10.04.2017. Hence, to enforce the Clause 16 of the Agreement dated 06.05.1990 suit is filed. The suit in C.S.No.640 of 2018 is filed by Plaintiff against only one Defendant for similar relief to

enforce Clause 16 of the Agreement dated 6.05.1990. The rejection of the suit in C.S.No.374 of 2017 sought mainly on the ground that on the date of suit the property was not sold, the suit filed to enforce the pre-emption is not maintainable. Further the suit has filed by the Society is maintainable. Society is not a jurisdic person. The suit in C.S.No.640 of 2018 sought to be rejected on the ground that the Defendant has not sold his shares. Hence, the question of invoking the pre-emption right does not arise, therefore there is no cause of action. It is well settled that the suit can be rejected only on the following grounds set out under **Order VII, Rule 11 C.P.C.** which reads as follows:-

"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 returned 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;

(e) where it is not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff. "

11. Whether or not cause of action arose to maintain the suit has to be gathered from the entire averments of the plaint and also documents of the Plaintiff. To find out whether or not there is a cause of action what is germane for consideration is only the plaint pleadings and documents and not the pleadings nor the documents of the defendants. On perusal of the entire pleadings in both the suits clearly

indicate that the Plaintiffs have been in possession of the suit property as the members of the society formed in the suit property. The owner of the property is also entered into an agreement dated 6.5.1990. Wherein Clause 16 of the agreement is specifically agreed by the owners of the property that in the event of any attempt by owners for sale or lease the Plaintiff society will have first right of refusal. Now, the Plaintiff came to know that recently the 5th Defendant have entered into an agreement with the owners of the property. Therefore, the suit has been filed to enforce Clause 16 of the agreement dated 6.5.1990.

12. C.S.No.374 of 2017 was originally filed against the Defendants 1 to 4. It appears from records that the plaint was presented on 2.5.2017. After the suit was filed the sale deed was executed by the defendants 1 to 4 on 3.5.2007 in favour of the 5th Defendant. In view of such subsequent developments the Fifth Defendant was impleaded on 12.06.2017. Therefore, it cannot be contended that there was no cause of action in the suit. Though on the date of presenting the plaint the property was not sold to enforce

the right of pre-emption. But the fact remains that the property was sold during the pendency of the suit and the 5th Defendant was impleaded immediately. To enforce the right of Pre-emption the period of limitation is one year as per the Article 97 of the Limitation Act. The Plaintiff has impleaded the 5th Defendant who has purchased the property. The very suit of the plaintiff is to enforce the contract said to have been executed by the Defendants 1 to 4 in favour of the Plaintiff's society. Such being the position, merely on the ground that on the date of filing, the suit property was not sold it cannot be said that the suit was not maintainable and the right of pre-emption cannot be exercised. It is to be noted that the right of Pre-Emption has to be exercised within a period one year from the date of sale or from the date of possession was taken.

13. Article 97 of the Limitation Act reads as follows:-

<i>Art.</i>	<i>Description of suits</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
97	To enforce a right of preemption whether the right is founded on law or general usage or on special contract.	One Year	When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject matter of the sale does not admit of

<i>Art.</i>	<i>Description of suits</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
			physical possession of the whole or part of the property, when the instruments of sale is registered. The date of the final order.

14. But in this case immediately after the sale, 5th Defendant was impleaded. Therefore at this stage there cannot be a ground to reject the plaint. Though within one year from the date of passing of the property said to be taken by the purchaser, the second limb of Article 97 of the Limitation Act provides the period of one year where the subject matter of the sale does not admit of physical possession of work or part of the property then the instrument of sale is registered. Therefore, the purchaser in this case is rightly impleaded within a month.

15. It is another contention that the person seeking pre-emption should have such right not only at the time of sale of the land by the owner but also at the time of institution of suit for pre-emption. Whether or not such right exists cannot be gone into this stage. Court cannot make roving enquiry at this stage. All these can be gone

into only at the stage of trial and not in this application. Though right of pre-emption is weak right, that itself cannot be a ground to reject the suit in entirety at this stage. With regard to the competency of plaintiff to file a suit, i.e., suit has been laid by the Society represented the President is contrary to the Societies Registration Act and by-laws.

16. Mere irregularity in filing the suit is only a curable defect. On that ground alone the suit cannot be rejected at the threshold. Now the applications have been filed to amend the plaint. Further it is to be noted that the suit has been filed not only against the 5th Defendant but also other 4 defendants. Only 5th Defendant alone file the application to reject the plaint. Others have not filed any application. It is well settled that the plaint as a whole can be rejected under Order VII Rule 11 of C.P.C. There is no provision in the Civil Procedure Code for rejection of the plaint in part. Therefore, as long as the other defendants have not filed any application, merely on the ground that the suit has been instituted irregularly, the same cannot be a ground to reject the suit. Such a defect is curable. Further as already

indicated in C.S.No.374 of 2017 the sale deed was executed after the suit has been filed i.e. on 3.7.2017 and the 5th Defendant was impleaded immediately. Therefore, whether the right of pre-emption is available or it is a weak right, cannot be decided at this stage. All these facts are matter of evidence.

17. As far as the suit in C.S.No.640 of 2018 is concerned it is the main contention that the owner has not even made any sale in respect of share. Therefore right of pre-emption cannot be exercised as the property has not sold. It is to be noted that the suit has been filed to enforce the contract not strictly in the right of pre-emption alone. The main relief sought in the plaint is to enforce the contract particularly Clause 16 of the Contract. Even there is any attempt to sell or lease out the property the plaintiff should be given preferential right to take the property on lease. Therefore, when the suit is filed for specific performance of contract, I am of the view that the contention to reject the plaint cannot be countenanced. Therefore, this Court is of the view that merely because the suit was not instituted properly by the

President or other office bearers, such defect is only a curable defect. Further even at the time when the suit is filed, the suit is assumed to be premature, the same is not a ground to dismiss the suit. In this regard the Apex Court in **Virgo Industries (Eng) Private Limited vs. Venturetech Solutions Private Limited [2013(1) SCC 625]** has held as follows:

"15. Furthermore, according to the plaintiff, which fact is also stated in the plaints filed in C.S. Nos. 831 and 833, on the date when the aforesaid two suits were filed the relief of specific performance was premature inasmuch as the time for execution of the sale documents by the defendant in terms of the agreements dated 27.7.2005 had not elapsed. According to the plaintiff, it is only after the expiry of the aforesaid period of time and upon failure of the defendant to execute the sale deeds despite the legal notice dated 24.2.2006 that the cause of action to claim the relief of specific performance had accrued. The above stand of the plaintiff found favour with the High Court. We disagree. A suit claiming a relief to which the plaintiff may become entitled at a subsequent point of time, though may be termed as premature, yet, can not per se be dismissed to be presented on a future date. There is no universal rule to the above effect inasmuch as "the question of a suit being premature does not go to the root of the jurisdiction of the Court" as held by this Court in [Vithalbhai \(P\) Ltd. v. Union Bank of India](#)[6]."

18. Similarly, in ***Ragbinder Singh vs. Bank Kaur and Others*** [2011 (1) SCC 106] the Honourable Supreme Court has held that the premature suit may not be dismissed for such reason.

19. In ***Vithalbhai (P) Ltd., vs. Union Bank of India*** [2005 (4) SCC 315] the Honourable Apex Court has held that suit is not to be necessarily dismissed for having been filed prematurely.

20. In view of the above, this Court is of the view that the application filed by the 5th Defendant in C.S.No.374 of 2017 as well as the application filed by the sole defendant in C.S.640 of 2018 filed for rejection of the plaints are liable to be dismissed. Accordingly, **Applications filed for rejection of suits are dismissed.**

A.No.289 of 2019 in C.S.No.640 of 2018

21. This application only filed to file the additional documents. Mere filing of the documents will not amount to proof of contents. The

admissibility, proof and reliability are distinct acts. Therefore mere allowing the plaintiff to file these documents will not prejudice the other side. Accordingly this **Application is ordered.**

A.No.4274 of 2019 in C.S.No.640 of 2018

22. Since the suit also filed originally before City Civil Court by the Plaintiff and also sought an interim order. Interim order is also passed in favour of the Plaintiff. Thereafter similar suit also filed before this Court in CS.No.374 of 2017. Therefore, the plaintiff has filed this application seeks to transfer suit in O.S.No.6473 of 2017. Since the connected suits are pending before this Court and the parties are almost one and the same and the issues involved in the suits are also similar, in order to avoid conflict in judgments and also for the convenience of the parties, this Court is ordered to withdraw the suit in O.S.No.6473 of 2017 from the file of learned IV Assistant Judge, City Civil Court, Chennai and to transfer the same to the file of this Court and try along with C.S.Nos.374 of 2017 and 640 of 2018. Accordingly, this **Application is ordered.**

A.No.4630 of 2017 in C.S.No.374 of 2017 and

A.No.4632 of 2019 in C.S.No.640 of 2018

23. It is mainly submitted that the plaint has been originally filed in the society's name. Whereas the Defendants have taken a plea that only office bearers of the plaintiff society are entitled to file suit as per by-laws, therefore in order to cure the defect seek an amendment for long and short cause title in the plaint. Amendments sought to include the name of the President and his address. Heard both sides. As already discussed above the plaint originally filed by the society itself and it is only a curable defect, the amendment sought to include the name of the President and registered address no prejudice whatsoever would be caused to the respondents. Accordingly this court inclined to order these applications. Accordingly, these **Applications are ordered.**

A.No.4631 of 2017 in C.S.No.374 of 2017

24. This application has been filed to implead the members of the association. It is contended that to avoid any technical objection by the respondents, members of the society are necessarily be impleaded.

It is the contention for the learned counsel for the contesting respondent that out of 20 persons sought to be included in the plaint, majority of them have already executed lease deed in favour of the 5th Defendant. Therefore the impleadment of all the members not necessary. I am of the view that whether all the members are sought to be impleaded as plaintiff are really interested in the suit or supporting the defendant can be gone only at the stage of trial and not at this stage. Admittedly, the persons sought to be impleaded are said to be members of the society. The suit filed by the society for certain relief based on the agreement said to have been executed in the year 1990. Therefore, this Court is of the view that all the members in the society are necessary to be brought on record Accordingly the **Application is ordered.**

A.No.4273 of 2019 in C.S.No.640 of 2018

25. This application is filed to grant stay of all further proceedings in O.S.No.6473 of 2017 on the file of IV Assistant Court, City Civil Court, Chennai, pending transfer of the suit to this Court. Since the

above suit is ordered to be transferred to the file of this Court vide A.No.4274 of 2019 in C.S.No.640 of 2018, the application has become infructuous. Accordingly this **application is dismissed**.

26. In the result, Applications filed to reject the plaints and to grant stay of all further proceedings in the Original Suit pending before the IV Assistant City Civil Court, Chennai are dismissed and the Applications for amendment, grand leave to file documents, impleadment and to withdraw O.S.from the lower court and try along with these Civil Suits are ordered. For carryout amendment as Amended Plint copy by 13.12.2019.

25.11.2019

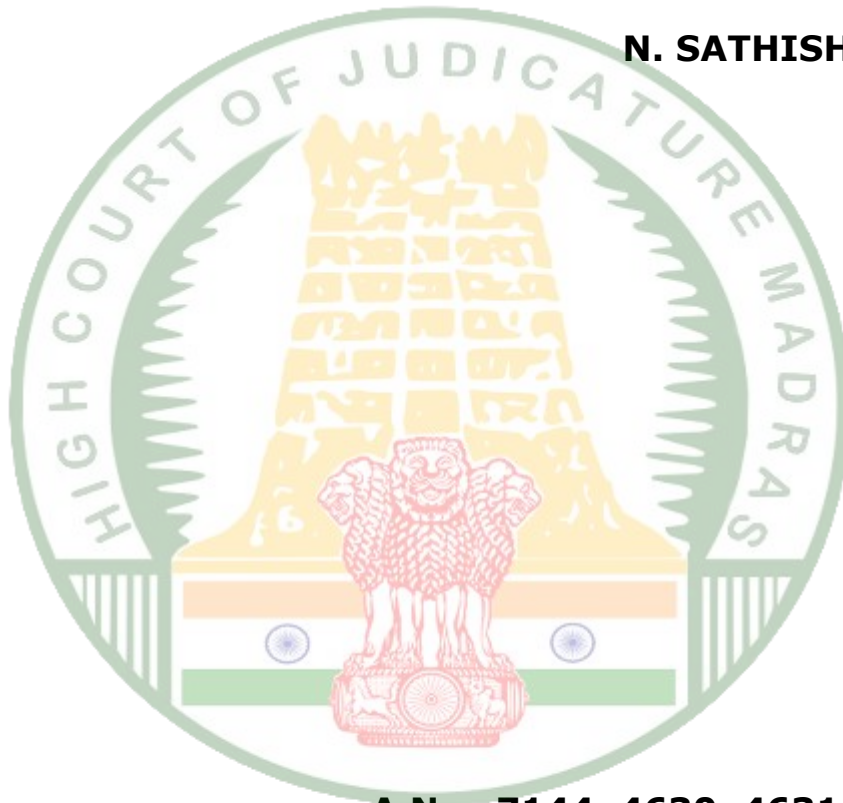
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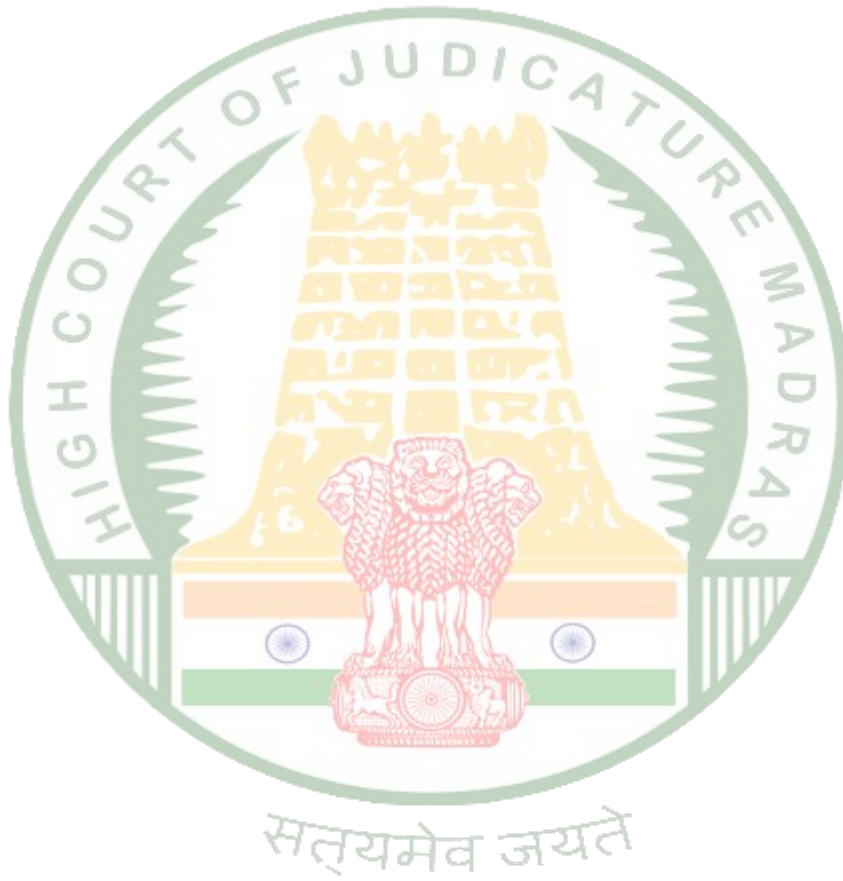


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