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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.02.2020
DELIVERED ON : 12.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.R.P.Nos.1359 & 1360 of 2018
and
C.M.P.No.7167 of 2018

Pugazhendhi ... Petitioner in both CRPs/
Petitioner/Defendant

Vs.

Subramanian ... Respondent in both CRPs/
Respondent/Plaintiff

Prayer in both the CRPs:

Civil Revision Petitions have been filed under Article 227 of the Constitution of India against the orders and decreetal orders made in I.A.No.1670 of 2014, dated 05.10.2017 and I.A.No.1998 of 2016, dated 03.02.2018 respectively in O.S.No.444 of 2014, on the file of the learned District Munsif, Perambalur.

For Petitioner : Mrs.AL.Ganthimathi

For Respondent : No appearance

Amicus Curiae : Mr.N.Manoharan

C O M M O N O R D E R

Civil Revision Petition No.1359 of 2018, has been filed against the order allowing the application filed by the respondent/plaintiff, under Order II Rule 2(3) of C.P.C. seeking leave to file a separate suit for specific performance subsequently.

2. For the sake of convenience, the parties are referred to as they are referred in the plaint.

3. The respondent/plaintiff filed the suit for permanent injunction restraining the petitioner/defendant from disturbing



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his possession in respect of the suit schedule property. The suit has been filed on the ground that, the defendant is the owner of the suit schedule property, and that he entered into an unregistered sale agreement with the plaintiff on 21.11.2012, agreed to sell the suit schedule property for a total sale consideration of Rs.6,70,00,000/-, and the same has to be paid before 21.03.2013. On the date of agreement, a sum of Rs.50,00,000/- was paid by the plaintiff to the defendant as advance and on the very same day itself the possession of the suit schedule property was handed over to the plaintiff by the defendant. That apart, the defendant also executed a Power of Attorney on 23.11.2012, to one Mr.Arunachalam being the nominee of the plaintiff for due execution of the sale deed and for completion of other formalities.

4. According to the plaintiff, after taking over possession of the suit schedule property, from the defendant he converted the same into residential plots, and entered into sale agreements with various people, and he has also received payments. Since the defendant has gone to a foreign country for his personal work, the plaintiff has been in constant touch with the defendant's Power Agent. That being so, the defendant without giving any notice to the plaintiff or to his Power Agent cancelled the Power of Attorney on 07.04.2013. The plaintiff, apart from paying a sum of Rs.2,97,60,000/- towards sale consideration has also incurred a sum of Rs.70,00,000/- towards development of the land into house sites.

5. According to the plaintiff, the defendant on 13.08.2014, with the help of rowdy elements threatened the plaintiff to vacate the land and handover possession to him. The plaintiff immediately gone to the police station and filed a complaint and the case is still pending. The defendant after receiving major portion of the sale consideration has started disturbing the possession of the plaintiff and taken steps to sell the house plots developed by the plaintiff to third parties. In the above circumstances, the plaintiff filed the present suit for permanent injunction.

6. Along with the suit, the plaintiff has filed an application under Order II Rule 2(3) C.P.C. seeking leave to file a separate suit for specific performance of the sale agreement dated 21.11.2012. The said application has been filed on the ground that the plaintiff after entering into the sale agreement, out of the total sale consideration of Rs.6,70,00,000/-, paid a sum of Rs.2,97,60,000/-, and has also issued a notice for specific performance of the contract, plaintiff has been arranging for funds for paying the remaining sale consideration and registration charges and it will take some time, as there is an immediate threat to the plaintiff's



possession as the defendant disturbing the possession of the plaintiff and creating third party interest over and above the sale agreement, at this stage, the plaintiff cannot file a specific performance suit, and therefore he filed the present suit for permanent injunction.

7. The present suit is not to elude filing the suit for specific performance, but a stop gap arrangement to protect his right and interest in the sale agreement as well as over the suit property, therefore, he sought for leave to file a separate suit for specific performance. That application was allowed by the Court below and now challenging the same the petitioner/defendant has filed C.R.P.No.1359 of 2018.

8. Civil Revision Petition No.1360 of 2018 has been filed against the order dismissing the application filed by the petitioner/defendant under Order VII Rule 11 of C.P.C. to reject the plaint in O.S.No.444 of 2014.

9. The application under Order VII Rule 11 of C.P.C. has been filed by the defendant on the ground that, the suit has been filed based on an unregistered and unstamped sale agreement, which is a forged document and also there is contradiction in the total sale consideration payable to the defendant. Further, according to the defendant the only remedy available to the plaintiff is to file a suit for specific performance and based on an unregistered sale agreement he cannot maintain a suit for permanent injunction. Hence, the plaint is liable to be rejected at the threshold. The above application has been dismissed by the Court below by an order dated 03.02.2018. Now, challenging the same the petitioner/defendant has filed C.R.P.No.1360 of 2018.

10. Even though notice has been served on the respondent/plaintiff and his name has also been printed in the cause list, none appeared for the respondent/plaintiff. Hence, this Court appointed Mr.N.Manoharan, Advocate as Amicus Curiae to assist the Court in disposing of the revisions.

11. Ms.AL.Gandhimathi, learned counsel appearing for the petitioner/defendant would submit that, the application filed by the respondent/plaintiff under Order II Rule 2(3) of C.P.C. is not at all maintainable, the only remedy available to the plaintiff is to file a suit for specific performance based on the alleged unregistered sale agreement and without seeking for that relief, the plaintiff cannot maintain the present suit for permanent injunction that to based on an unregistered sale agreement claiming possession under the same. According to the learned counsel, the reasons stated for seeking leave under Order II Rule 2 of C.P.C. is not a valid reason for granting



leave and the said application has been filed only to harass the defendant. Merely because the plaintiff has no sufficient funds for paying the Court fee for filing specific performance suit is not a valid ground to seek for leave to file a suit for specific performance at a latter point of time. Hence, according to the learned counsel the Court below ought not to have granted leave to the plaintiff.

12. Learned counsel further submitted that as the plaintiff claims possession of the suit property in part performance of the contract entered into between them under Section 53A of the Transfer of Property Act, based on an unregistered sale agreement, the suit is clearly barred. Hence, the suit itself is not maintainable and the same is liable to be rejected at the threshold. In support of her contention, she relied upon the following judgements:

"(i) Virgo Industries (Eng.) Private Limited Vs. Venturetech Solutions Private Limited reported in (2013) 1 SCC 625;

(ii) Rathnavathi Vs. Kavita Ganashamdas reported in (2015) 5 SCC 223,

(iii) Sucha Singh Sodhi (Dead) through LRs Vs. Baldev Raj Walia reported in (2018) 6 SCC 733,

(iv) Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar reported in (2018) 7 SCC 639, and

(v) Pramod Kumar Vs. Zalak Singh reported in (2019) 6 SCC 621."

13. Mr.N.Manoharan, Amicus Curiae submitted that the suit has been filed only for permanent injunction and the cause of action arises for filing the present suit is that, the possession of the plaintiff is being interfered with by the defendant. Even though the plaintiff is entitled for filing a suit for specific performance, the plaintiff has not filed the suit for specific performance immediately, but to protect his possession, he filed the present suit, which is on a different cause of action and therefore it cannot be said that the cause of action for filing the present suit and the cause of action for a specific performance suit is one and the same. Even though the provision of Order II Rule 2 of C.P.C. may not strictly apply to this case, out of abundant caution, the plaintiff has filed the application seeking leave, which has been allowed by the Court below.

14. The learned Amicus Curiae also relied upon a judgement of the Hon'ble Supreme Court in Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar reported in (2018) 7 SCC 639 and contended that the cause of action for filing the suit for permanent injunction is different from that of the suit for specific performance. He has also further relied upon another judgement of the Hon'ble Supreme Court in Rathnavathi Vs. Kavita



Ganashamdas reported in (2015) 5 SCC 223 to substantiate his contention.

15. That apart, the learned Amicus Curiae has also further relied upon a learned Single Judge decision of this Court in Palaniammal Vs. K.R.C.Anbalagan reported in 2013 (3) CTC 477 and contended that if the plaintiff claims possession under Section 53-A of the Transfer of Property Act, then the agreement should necessarily be registered under Section 17 of the Registration Act and based on an unregistered document, plaintiff cannot claim relief under Section 53-A of the Transfer of Property Act.

16. Further, with regard to the application filed under Order VII Rule 11 of C.P.C. the learned Amicus Curiae contended that the averments made in the plaint alone is germane and the contention of the defendant cannot be looked into and the Court below has rightly dismissed the application filed by the defendant.

17. I have considered the rival submissions and also perused the records carefully.

18. Civil Revision Petition No.1359 of 2018, has been filed against the order granting leave under Order II Rule 2 of C.P.C. enabling the plaintiff to file a separate suit for specific performance subsequently. The suit has been filed by the respondent/plaintiff for permanent injunction restraining the petitioner/defendant from disturbing his possession and not to alienate the suit schedule property. According to the plaintiff, he has entered into a sale agreement with the defendant for purchasing the suit schedule property on 21.11.2012, for a total sale consideration of Rs.6,70,00,000/- and paid a sum of Rs.50,00,000/- on the date of agreement, subsequently another sum of Rs.2,47,60,000/- has been paid to some third parties against whom the defendant has entered into separate sale agreements. According to the plaintiff, on the date of agreement, the possession of the suit schedule property has been given to him and a power of attorney was also executed by the defendant in favour of plaintiff's nominee. Thereafter, the plaintiff developed the suit schedule property into house sites by spending more than Rs.70,00,000/-. Now that the defendant is disturbing the plaintiff's possession of the suit schedule property and also taking steps to alienate the housing plots developed by the plaintiff to various third parties, the plaintiff has taken steps to get the sale deed executed and he has also issued notice to the defendant in this regard. That apart, the defendant also forced the third parties to return the money paid to the petitioner. The suit property sought to be alienated by the defendant pending sale agreement and the defendant also trying to create third party interest in it and



it will cause irreparable loss to the plaintiff. Therefore, he has filed the suit for permanent injunction. Along with the suit for permanent injunction, out of abundant caution the plaintiff has also filed an application under Order II Rule 2 of CPC seeking leave to file a separate suit for specific performance on the ground that, since the value of the suit property is more than Rs.6,00,00,000/-, the plaintiff is arranging for funds for paying the remaining sale consideration and also for registration charges, in the meantime, the defendant is entering into the suit schedule property and also creating third party interest by alienating the same to third parties. In the above circumstances, the present suit has been filed on a different cause of action, however with abundant caution, the plaintiff has filed the application under Order II Rule 2(3) of C.P.C. seeking leave to file a separate suit for specific performance subsequently. The Court below considering the above circumstances, allowed the application and granted leave. Now, that is sought to be challenged in the revision.

19. Before considering the rival submissions, it will be useful to refer to the relevant provisions viz., Order II Rule 2 of the Code of Civil Procedure:

“Order II Rule 2 : Suits to include the whole claim:

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.-- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs.-- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.-- For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”



20. Order II Rule 2(1) of the Code provides that every suit shall include the entire claim for which the plaintiff is entitled to make in respect of the cause of action. However, the plaintiff can relinquish any portion of his claim to bring the suit within the jurisdiction of any Court. Under Order II Rule 2(2) of the Code when the plaintiff omits or intentionally relinquish any portion of his claim he cannot maintain a separate suit for the omitted portion. Under Order II Rule 2(3) of the Code, the relief which the plaintiff is claiming in the second suit was available to him when the previous suit was filed and the cause of action pleaded in the previous suit and the second suit is also based on the same cause of action and on that cause of action the plaintiff was entitled to more than one relief, and the suit has been filed without leave obtained from the Court, then he cannot afterwards sue for the relief so omitted.

21. When the cause of action is not identical between the previous suit and the later suit, there is no scope for the application of Order II Rule 2 of C.P.C. The Constitutional Bench of the Hon'ble Supreme Court in Gurbux Singh Vs. Bhooralal reported in AIR 1964 SC 1810 has held as follows:

"6. In order that a plea of a bar under O. 2. r. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief, the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning....."



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22. In the judgement in Rathnavathi Vs. Kavita Ganashamdas reported in (2015) 5 SCC 223, the Hon'ble Supreme Court has held in paragraphs 26 and 27 as follows:

"26. One of the basic requirements for successfully invoking the plea of Order II Rule 2 of CPC is that the defendant of the second suit must be able to show that the second suit was also in respect of the same cause of action as that on which the previous suit was based. As mentioned supra, since in the case on hand, this basic requirement in relation to cause of action is not made out, the defendants (appellants herein) are not entitled to raise a plea of bar contained in Order II Rule 2 of CPC to successfully non suit the plaintiff from prosecuting her suit for specific performance of the agreement against the defendants.

27. Indeed when the cause of action to claim the respective reliefs were different so also the ingredients for claiming the reliefs, we fail to appreciate as to how a plea of Order II Rule 2 could be allowed to be raised by the defendants and how it was sustainable on such facts."

23. Recently, the Hon'ble Supreme Court in Sucha Singh Sodhi (dead) through LRs Vs. Baldev Raj Walia reported in (2018) 6 SCC 733 has held that the cause of action for filing a suit for specific performance of a sale agreement and the relief for permanent injunction are totally independent and one cannot include the other and vice versa. In paragraph 29, the Hon'ble Supreme Court has held as follows:

"29. Our answer to the aforementioned question is in favour of the plaintiffs (appellants) and against the defendants (respondents). In other words, our answer to the aforementioned question is that the plaintiff could not claim the relief of specific performance of agreement against the defendants along with the relief of permanent injunction in the previous suit for the following reasons.



trying to interfere with his possession, hence the present suit for permanent injunction has been filed.

28. The trial Court, taking into consideration that pending sale agreement, the defendant is taking steps to alienate the suit schedule property and also interfering with the possession of the plaintiff and also being satisfied with the reason that the defendant is taking steps to create third party interest, granted leave and it cannot be find fault with.

29. Further, argument has been advanced by the learned counsel appearing for the petitioner that, the suit has been filed based on an unregistered sale agreement and the possession has been handed over to him pursuant to the sale agreement, and hence he is seeking protection under Section 53(A) of the Transfer of Property Act. Hence, the plaintiff cannot rely upon the sale agreement and seek to protect his possession. Even though that submission is attractive, the prayer in the suit is not only seeking injunction restraining the defendant from interfering with his possession and also permanent injunction restraining the defendant from alienating the suit schedule property and create third party interest pending sale agreement. Even assuming that the suit for injunction is not maintainable based on an unregistered sale agreement, since yet another relief is also sought for in the suit, the suit cannot be partly rejected under Order VII Rule 11 of C.P.C.

30. The law is well settled that if on a meaningful reading of the plaint, it is manifestly vexatious or does not disclose any right to sue, the suit can be rejected at the threshold, and by a clever drafting plaintiff has created an illusory cause of action, even then, the plaint can be rejected. While, deciding an application under Order VII Rule 11 of C.P.C., the averments made in the plaint are only germane and the Court cannot look into either the written statement or any other materials produced by the defendant. The trial Court can exercise the power at any stage of the suit i.e., before registering the plaint or after issuing summons to the defendants or at any time before the conclusion of the trial. The plaint should be read as a whole and there cannot be any compartmentalisation or segregation of various paragraphs in the plaint. That apart, from a reading of the plaint as a whole, if it is seen that the suit is barred by limitation, then it is open to the Court to reject the same.

31. The Hon'ble Supreme Court in T.Arivandandam Vs. T.V.Satyapal and another reported in (1997) 4 SCC 467 has held as follows:



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"5.....The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C....."

32. In *Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others* reported in (2004) 3 SCC 137 the Hon'ble Supreme Court has held as follows:

"10. In *Saleem Bhai and Ors. v. State of Maharashtra and Ors.* (2003 (1) SCC 557) it was held with reference to Order VII 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 VII Rule 11 of the Code, the averments in the plaint are the 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 and Ors.* (1998 (2) SCC 70) it was held that the basic question to be decided while dealing with an application filed under Order VII 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 VII 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 VII Rule 11 of the Code taking care to see that



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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 X of the Code. (See T.Arivandandam v. T.V.Satyapal and Anr. (1977 (4) SCC 467)“

33. In Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust reported in (2012) 8 SCC 706, the Hon'ble Supreme Court has held as follows:

“10.A reading of the above provision also makes it clear that power under Order VII Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.”

34. In Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal reported in (2017) 13 SCC 174, the Hon'ble Supreme Court has held as follows:

“7. The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts



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and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

35. In the above circumstance, the Court below considering the entire materials has rightly dismissed the application filed under Order VII Rule 11 of C.P.C. and this Court does not find any infirmity in the same.

36. Considering all the above circumstances, I am of the view that there is no merit in both the revisions and both the revisions are liable to be dismissed and accordingly dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

37. Before parting with the order, I would like to record my appreciation for the valuable assistances rendered by Mr.N.Manokaran, Amicus Curiae to the Court in disposing of the C.R.Ps.

After pronouncing the order, Mrs.AL.Gandhimathi, learned counsel appearing for the petitioner would submit that pending revision, the limitation for filing the suit for specific performance has expired and the respondent cannot take advantage of the pendency of the revision to save limitation and suitable orders be passed.

2. As the revision has been filed against the order granting leave to file a suit for specific performance, and also to reject the plaint, it has nothing to do with the filing of a

