

C.R.P.(PD)Nos.2503 of 2016 and 236 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).Nos.2503 of 2016 and 236 of 2017
and C.M.P.No.12938 of 2016

Orders reserved on 01.10.2020	Orders pronounced on 16.10.2020
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U.Sangeetha .. Petitioner/1st Defendant
in both the CRPs.

Vs.

R.Ulagaperoli .. Respondent/Plaintiff
in C.R.P.No.1503 of 2016

1.R.Ulagaperoli .. 1st Respondent/Plaintiff

2.The Sub-Registrar
Sub-Registrar Office
Madurantakam.

3.The State of Tamil Nadu
Represented by its District Collector
Kancheepuram.

.. Respondents 2 and 3/Defendants 2 and 3
in C.R.P.No.236 of 2017

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 25.01.2016 and 22.06.2016 made in I.A.No.137 of 2015 and I.A.No.1454 of 2014 in O.S.No.266 of 2014 on the file of the District Munsif Court, Maduranthagam.

(In both CRPs.)

For Petitioner : Mr.S.Santhosh

For R1 : Mr.P.Thiagarajan

For R2 : Mr.T.M.Pappiah
Special Government Pleader

For R3 : Mr.A.Ansar
Government Advocate (CS)

COMMON ORDER

The matter is heard through “Video-Conferencing”.

Civil Revision Petitions are filed against the fair and decretal order dated 25.01.2016 and 22.06.2016 made in I.A.Nos.137 of 2015 and I.A.No.1454 of 2014 in O.S.No.266 of 2014 on the file of the District Munsif Court, Maduranthagam.

2.The parties are referred to as per their respective ranks in C.R.P.(PD) No.236 of 2017.

3.The petitioner is 1st defendant, 1st respondent is the plaintiff and the respondents 2 and 3 are the defendants 2 and 3 in O.S.No.266 of 2014 on the file of the District Munsif Court, Maduranthagam. The 1st respondent filed the said suit for permanent injunction restraining the petitioner from alienating or encumbering the suit property to third parties and restraining the 2nd respondent not to register any sale deed in respect of suit properties executed by the petitioner in favour of the third parties. The 1st respondent filed I.A.No.137 of 2015 under Order II Rule 2 of C.P.C. for permission to file a suit for specific performance against the petitioner at a later stage. The petitioner filed I.A.No.1454 of 2014 under Order VII Rule 11 of C.P.C. to reject the plaint in O.S.No.266 of 2014. While the said petition was pending, I.A.No.137 of 2015 filed by the 1st respondent for leave of the Court to sue the petitioner for specific performance of agreement of sale at a later stage was numbered and

taken up for hearing. The petitioner filed counter affidavit and sought for dismissal of the petition filed under Order II Rule 2 of C.P.C., on the ground that the 1st respondent has filed suit for injunction only based on the unregistered sale agreement dated 16.05.2012. He has not filed any suit for specific performance. The alleged unregistered sale agreement is created for threatening the petitioner. The Court ought to have decided the petition filed under Order II Rule 2 of C.P.C. for leave of the Court before the suit was taken on file.

4.The learned Judge considering the averments made in the affidavit, counter affidavit and the fact that the petition was filed on 12.05.2014 in the vacation Court along with plaint, before the suit was taken on file and that the Vacation Court failed to number the petition, passed orders, when the suit was taken on file, allowed I.A.No.137 of 2015. The learned Judge also held that the question of limitation for filing the suit for specific performance can be decided when the suit for specific performance is filed and allowed the petition.

5. Against the said order dated 25.01.2016 allowing the I.A.No.137 of 2015, the petitioner has filed C.R.P.(PD)No.2503 of 2016.

6. The petitioner filed I.A.No.1454 of 2014 under Order VII Rule 11 of C.P.C for rejection of plaint and in the affidavit, she contended that the 1st respondent has suppressed the material fact that the petitioner and 1st respondent are wife and husband and that the 1st respondent has not filed original agreement of sale and filed only xerox copy of the same. The alleged signature in the agreement of sale is forged. The suit filed for bare injunction without seeking relief of specific performance is not maintainable. The sale agreement never existed and the 1st respondent did not plead that he is always ready and willing to perform his part of the contract. The suit filed by the 1st respondent does not disclose any cause of action. The 1st respondent filed counter and opposed the said I.A.No.1454 of 2014. The learned Judge dismissed the said petition filed by the petitioner holding that the 1st respondent has filed original

agreement of sale, petition for permission to file suit for specific performance was allowed on 25.01.2016 and objection letter to the 2nd respondent and reply by the 2nd respondent discloses cause of action.

7. Against the said order of dismissal dated 22.06.2016 made in I.A.No.1454 of 2014, the petitioner has filed C.R.P.(PD) No.236 of 2017.

8. The learned counsel appearing for the petitioner in both the Civil Revision Petitions contended that the learned Judge in a mechanical manner allowed the petition filed under Order II Rule 2 of C.P.C without giving any reason. In the alleged unregistered agreement of sale, the sale consideration is fixed at Rs.3,71,03,000/- and the 1st respondent is not entitled to file a suit by paying Court fee of Rs.1,000/- by seeking permanent injunction without obtaining prior leave to file suit for specific performance at the later stage. The learned Judge failed to see that without seeking main relief of specific performance, the suit for permanent injunction is not maintainable and the 1st respondent is not

entitled for permission to file suit later for the main relief of specific performance. The 1st respondent has alleged that sale consideration is Rs.3,71,03,000/- and without paying Court fee of Rs.27,82,725/-, the 1st respondent is trying to prevent the petitioner from dealing with the property. The order of the learned Judge permitting to file a suit for specific performance at a later stage is contrary to the judgments of Hon'ble Apex Court as well as this Court. The learned Judge has allowed the petition in a mechanical manner by a cryptic order without giving opportunity to the petitioner. The alleged agreement of sale is dated 16.05.2012. The 1st respondent cannot even maintain a suit for specific performance after 15.05.2015. Even if the 1st respondent obtained leave to file a suit for specific performance, the main relief of specific performance is barred by limitation. Hence, the suit for equitable relief of injunction does not arise. The suit does not disclose any cause of action. The 1st respondent has not given any particulars of petitioner making arrangements to sell the property. The suit for injunction is only a counter blast for the divorce petition filed by the petitioner.

8 (a) The learned counsel appearing for the petitioner, In support of his contentions, relied on the following judgments:

(1) 2015 (2) CTC 129 (R.Chendilvel vs. G.Damodaran);

10. It is seen that under Order 2 Rule 2 CPC, omission to sue for one or several reliefs would be construed as relinquishment of the particular relief, unless leave is obtained from the court. However, no party to the suit can reserve the main relief, on account of payment of heavy court fee and file a suit for consequential relief, whereby reserving the main relief, under Order 2 Rule 2 CPC.

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18. In a suit for specific performance of agreement for sale, there could be ancillary relief of interim injunction, not to alienate or encumber the property, detrimental to the rights of the agreement holder till the disposal of the suit. However, without seeking the main relief of specific performance or seeking return of the advance amount and paying necessary Court fee, according to law, the first respondent / plaintiff would

not be entitled to file a suit, seeking permanent injunction against the proposed vendor, not to alienate or encumber the property and seek leave to file a comprehensive suit at later stage, namely, suit for specific performance. The Court below, has mechanically allowed the petition, by one word order "Permitted", which shows only the non-application of mind. As the first respondent / plaintiff has claimed right, based on an agreement of sale, the main relief could be seeking specific performance of agreement for sale and for which, he could have been ready and willing to perform his part of the contract, by paying the balance of sale consideration. However, it is seen that the suit has been filed by the first respondent, seeking only permanent injunction restraining the owner of the land, not to alienate or encumber the property. Hence, permitting the first respondent / plaintiff to file a suit in the name of comprehensive suit at a later stage should be construed only permitting the first respondent to circumvent the law, by not filing proper suit, based on the alleged agreement of sale.

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23. It is well settled that Order 2 Rule 2 of the

Code of Civil Procedure relates to relinquishment of part of claim, hence, if 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.

24. In the instant case, admittedly the suit was filed, based on a Memorandum of Understanding. In the xerox copy of the MOU available in the typed set, date is not available, however, it is stated that the unregistered Memorandum of Understanding was entered in the month of October 2012, for selling the suit schedule property for Rs.4,40,00,000/-. As per the Document, P.No.4, Sl.No.7, sale transaction shall be completed within a period of 90 days from the date of Memorandum of Understanding. However, in the suit, the first respondent / plaintiff has not prayed any relief for specific performance of the agreement, but the suit was filed only seeking permanent injunction restraining the petitioner / first defendant from selling or alienating the property to any third party. He has notionally valued the suit for the relief of court fees at Rs.1,000/- under Section 27(c) of the Tamil Nadu Court Fee and Suits Valuation Act.

25. As per Order 2 Rule 2 CPC, plaintiffs cannot seek leave to file the main suit later on, on account of the necessity of paying proper court fee and simply file a suit for permanent injunction, not to alienate the property. In the instant case, the first respondent / plaintiff, simply filed the suit, stating the value of the suit claim for the relief of court fees at Rs.1,000/- as per the Section 27(c) of Tamil Nadu Court Fee and Suits Valuation Act, though the value of the property is Rs.4.4 crores and filed application seeking leave to file a comprehensive suit for specific performance at later stage. Seeking leave for the main relief as per the alleged cause of action is not legally sustainable, since relief of specific performance of the agreement would be the main relief or proper relief in the suit and interim injunction restraining the other party, not to alienate would be an interim prayer, till the disposal of the suit.

26. It has been categorically held by the Hon'ble Supreme Court in the decision reported in 2012 (5) CTC 359 (cited supra), that the cause of action in the later suit must be the same as that in the first suit and the rule engrafts on a laudable principle that discourages / prohibits vexing the defendant again and again by filing multiple suits except in a situation where one of the

several reliefs, though available to a plaintiff, may not have been claimed for a good reason for the plaintiff for not filing the suit, seeking specific performance of the contract. Merely filing a suit, seeking bare permanent injunction, not to alienate the property based on an agreement for sale would not be legally maintainable, as it would show that the plaintiff is interested in gaining time, without being ready and willing to perform his part of the contract.

27. As the relief sought for in the suit is based on an alleged agreement for sale, seeking leave for the main relief of filing suit for specific performance, but filing only a suit for permanent injunction to restrain the other party to the alleged agreement from alienating or selling the property to any third party is not legally maintainable, as per Order 2 Rule 2 of the Code of Civil Procedure. The Court below, without considering the plea of the plaintiff and the defence raised by the respondent, simply passed one word order, "Permitted", which is totally erroneous, that shows only the non-application of the mind by the Court below. When the main relief should be for seeking specific performance of the agreement, as per the pleadings in the plaint, the said main relief cannot be reserved by any party, in order to

avoid payment of heavy court fee and file a suit, seeking bare permanent injunction, not to alienate or sell the property to any third party, would certainly be against the laudable principle of preventing vexatious litigations again and again against the defendant, as held by the Hon'ble Apex Court. Hence, this Court is of the view that the impugned order has been passed by the Court below against law and the same is liable to be set aside, to meet the ends of justice.”

(2) AIR 2001 Delhi 220 (**Kamal Kishore Saboo Vs. Nawabzada Humayun Kamal Hasan Khan**);

“9. From the aforesaid averments in plaint in the first suit filed by the appellant, it is clear that appellant had pleaded that the respondent was not adhering to the terms of Agreement to Sell. With intention to cheat and defraud the appellant he was not performing his part of the contract. He had not done the needful in spite of legal notice dated 24th June, 1996. Not only this, even it was pleaded that he was trying to sell the properties to some other party. Thus according to the averments contained in the said plaint itself cause of action for seeking relief of specific performance had ripened as

according to the appellant respondent had failed to perform his part of the contract. Still the appellant chose to file the suit claiming relief of permanent injunction only when on the basis of aforesaid bundle of facts, he could also claim the relief of specific performance as well. Once he omitted to claim the relief of specific performance, second suit for this relief is clearly not maintainable in view of provisions of sub-Rule-3 of Rule-2 Order-II of CPC which read as under:

2. Suit 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."

(3) 2012 (5) CTC 359 (Virgo Industries (Eng.) P. Ltd. v. Venturetech Solutions P. Ltd.);

"11. The cardinal requirement for application of the provisions contained in Order II Rule 2(2) and (3), therefore, is that the cause of action in the later suit must be the same as in the first suit. It will be wholly unnecessary to enter into any discourse on the true meaning of the said expression, i.e. cause of action, particularly, in view of the clear enunciation in a recent judgment of this Court in the *Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman v. Ponnamman Educational Trust represented by its Chairperson/Managing Trustee*. The huge number of opinions rendered on the issue including the judicial pronouncements available does not fundamentally detract from what is stated in *Halsbury's Law of England, (4th Edition)*. The following reference from the above work would, therefore, be apt for being extracted herein below:

Cause of Action" has been defined as meaning simply a factual

situation existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the Plaintiff to succeed, and every fact which a Defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular action the part of the Defendant which gives the Plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action.

12. In the instant case though leave to sue for the relief of specific performance at a later stage was claimed by the Plaintiff in C.S. Nos. 831 and 833 of 2005, admittedly, no such leave was granted by the Court. The question, therefore, that the Court will have to address, in the present case, is whether the cause of action for the first and second set of suits is one and the same. Depending on such answer as the Court may offer the rights of the parties will follow.

13. A reading of the plaints filed in C.S. Nos. 831 and 833 of 2005 show clear averments to the effect that after execution of the agreements of sale dated 27.7.2005 the Plaintiff received a letter dated 1.8.2005 from the Defendant conveying the information that the Central Excise Department was contemplating issuance of a notice restraining alienation of the property. The advance amounts paid by the Plaintiff to the Defendant

by cheques were also returned. According to the Plaintiff it was surprised by the aforesaid stand of the Defendant who had earlier represented that it had clear and marketable title to the property. In paragraph 5 of the plaint, it is stated that the encumbrance certificate dated 22.8.2005 made available to the Plaintiff did not inspire confidence of the Plaintiff as the same contained an entry dated 1.10.2004. The Plaintiff, therefore, seriously doubted the claim made by the Defendant regarding the proceedings initiated by the Central Excise Department. In the aforesaid paragraph of the plaint it was averred by the Plaintiff that the Defendant is "finding an excuse to cancel the sale agreement and sell the property to some other third party. In the aforesaid paragraph of the plaint, it was further stated that "in this background, the Plaintiff submits that the Defendant is attempting to frustrate the agreement entered into between the parties.

14. The averments made by the Plaintiff in C.S. Nos. 831 and 833 of 2005, particularly the pleadings extracted above, leave no room for doubt that on the dates when C.S. Nos. 831 and 833 of 2005 were instituted, namely, 28.8.2005 and 9.9.2005, the Plaintiff itself had claimed that facts and events have occurred

which entitled it to contend that the Defendant had no intention to honour the agreements dated 27.7.2005. In the aforesaid situation it was open for the Plaintiff to incorporate the relief of specific performance along with the relief of permanent injunction that formed the subject matter of above two suits. The foundation for the relief of permanent injunction claimed in the two suits furnished a complete cause of action to the Plaintiff in C.S. Nos. 831 and 833 to also sue for the relief of specific performance. Yet, the said relief was omitted and no leave in this regard was obtained or granted by the Court.

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* MANU/SC/0195/2005 : 2005 (4) SCC 315. In the aforesaid case this Court has taken the view that whether a premature suit is required to be entertained or not is a question of discretion and unless "there is a mandatory bar created by a statute which disables the Plaintiff from filing the suit on or before a particular date or the occurrence of a particular event", the Court must weigh and balance the several competing factors that are required to be considered including the question as to whether any useful purpose would be served by dismissing the suit as premature as the same would entitle the Plaintiff to file a fresh suit on a subsequent date. We may usefully add in this connection that there is no provision in the Specific Relief Act, 1963 requiring a Plaintiff claiming the relief of specific performance to wait for expiry of the due date for performance of the

agreement in a situation where the Defendant may have made his intentions clear by his overt acts.”

(4) AIR 1977 SC 2421 (T.Arivanandam Vs. T.V. Satyapal and Another);

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. 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 Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear 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. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation cam

be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."

9.The learned counsel appearing for the 1st respondent contended that as per the agreement of sale entered into between the petitioner and 1st respondent, the petitioner has to measure the property agreed to be sold and execute the sale deed in favour of the 1st respondent. The petitioner without complying the said condition is trying to sell the property to the third party. In view of the attempts of the petitioner to alienate the property, the 1st respondent has filed suit for permanent injunction reserving his right to file the suit for specific performance. Along with plaint, the 1st respondent has filed I.A.No.137 of 2015 for leave of the Court to file a suit for specific performance at a later stage. The Court by mistake has not taken the said petition along with the suit and it was subsequently numbered. The learned Judge considering the

materials, allowed the said petition granting leave to the 1st respondent to file a suit for a specific performance at a later stage. The reason given by the learned Judge for allowing the said petition is valid.

9(a) The learned counsel appearing for the 1st respondent further contended that as far as C.R.P.(PD).No.236 of 2017 is concerned, the 1st respondent in the plaint has stated that petitioner is trying to alienate the property to third parties. The 1st respondent has sent a letter to the 2nd respondent not to register any sale deed in respect of the suit properties. The 2nd respondent has sent a reply to the notice. The 1st respondent has made averments with regard to cause of action for the suit for permanent injunction in Para No.5 of the plaint. The petitioner sold major portion of the suit properties and now cannot say that there is no cause of action. In a petition for rejection of plaint, only the averments in the plaint is the criteria and only when the plaint does not disclose any cause of action, the plaint can be rejected. The averments in the affidavit filed in support of the petition to reject the plaint or written statement cannot be

considered for rejection of plaint. The reason given by the learned Judge for allowing the I.A.No.137 of 2015 and dismissing I.A.No.1454 of 2014 are valid and prayed for dismissal of both the Civil Revision Petitions.

9(b) The learned counsel appearing for the 1st respondent, in support of his contentions, relied on the following judgments:

(i) (2015) 11 SCC 12 (Inbasakaran and another vs. S.Natarajan (dead) through legal representatives)

“3.Pursuant to the sale agreement, the plaintiff took possession of the suit property and completed the construction. According to the plaintiff, the defendant had been representing to the plaintiff that he has not yet got the sale deed executed in his favour from the Housing Board but attempted to forcibly take possession of the building constructed on the suit property by the plaintiff. So the plaintiff filed a suit being OS No. 445 of 1985 on 11-9-1985 for permanent injunction restraining the defendant herein from taking forcible possession of the building constructed in the suit property. Pending the aforesaid suit, a few days after the plaintiff on 25-4-1986 filed the aforesaid suit for specific performance being OS

No. 252 of 1986.

4.The defendant pleaded in his written statement that the agreement dated 19-1-1984 is not a valid document and the plaintiff cannot maintain the suit as he had relinquished his right. It is also stated that the agreement was executed when the defendant was not the owner of the site and any sale by the defendant was prohibited as per the terms and conditions of the lease-cum-sale agreement entered into with the Housing Board and so the agreement in question is void, inoperative and opposed to law. The defendant also denied the payment of Rs 1,00,000 in cash as advance as alleged by the plaintiff. Even with respect to the averment in the plaint that the plaintiff was permitted to put up construction in the suit site, the same is denied. The defendant also denied that the plaintiff put up construction at his own cost. The defendant further denied that the plaintiff was given possession of the suit property and claimed that he never handed over possession of the property to the plaintiff at any point of time. It is alleged that the plaintiff is not entitled to a decree for specific performance because the agreement dated 19-1-1984 no longer subsists. It is further alleged that the subsequent suit being OS No. 252 of 1986 for specific performance is

barred under Order 2 Rule 2 of the Code of Civil Procedure because the plaintiff who instituted the earlier suit OS No. 445 of 1985, should have included the relief for specific performance and, in any event, could not have filed OS No. 252 of 1986 without any leave of the court.

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12.Mr K. Parasaran, learned Senior Counsel appearing for the appellant-plaintiffs, assailed the impugned judgment [*S. Natarajan v. Inbasagaran* First Appeal No. 665 of 2001, decided on 30-4-2004 (Mad)] passed by the High Court as being erroneous in law as also in facts. The learned counsel firstly drew our attention to the agreement to sell dated 19-1-1984 and submitted that the respondent-defendant put a condition in the said agreement that the sale deed shall be executed by the defendant in favour of the plaintiff only after getting transfer of the leasehold plot in his favour by the Housing Board. However, pending transfer of the property by the Housing Board in favour of the respondent-defendant, the rowdy elements of the defendant threatened the appellant-plaintiff to dispossess him from the building constructed by the

plaintiff. In order to restrain and prevent the defendant, the appellant filed a suit for injunction being OS No. 445 of 1985 seeking a prohibitory order restraining the respondent from dispossession of the plaintiff.

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14.Mr Parasaran submitted that from bare reading of the plaints in two suits, it would be apparently clear that cause of action of each of the two suits by the plaintiff was quite different and distinct and the same would not attract the provisions of Order 2 Rule 2 CPC. Mr Parasaran further submitted that the trial court had categorically held that the provisions of Order 2 Rule 2 shall have no application in the facts and circumstances of the case. Mr Parasaran then drew our attention to the agreement dated 19-1-1984 and the codicil sale agreement dated 31-4-1984 to show that the period of sale agreement between the appellant-plaintiff and the respondent-defendant was further extended in anticipation of the transfer of the property by the Housing Board in favour of the defendant. Lastly, it was contended that the provision of Order 2 Rule 2 CPC does not apply where the two suits are filed on different causes of action and the counsel relied upon the decision of this Court in *Gurbux Singh v. Bhooralal* [*Gurbux Singh*

v. *Bhooralal*, AIR 1964 SC 1810 : (1964) 7 SCR 831] , *Kewal Singh v. Lajwanti* [*Kewal Singh v. Lajwanti*, (1980) 1 SCC 290] and *Lakshmi v. E. Jayaram* [*Lakshmi v. E. Jayaram*, (2013) 9 SCC 311 : (2013) 4 SCC (Civ) 436] .

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29. In the instant case, as discussed above, suit for injunction was filed since there was threat given from the side of the defendant to dispossess him from the suit property. The plaintiff did not allege that the defendant is threatening to alienate or transfer the property to a third party in order to frustrate the agreement. ”

(ii) The learned counsel also relied on the judgment reported in (2019) 13 SCC 372 (*Urvashiben and another vs. Krishnakant Manuprasad Trivedi*) and submitted that the Hon'ble Apex Court has held that to find out the cause of action, the averments in the plaint alone has to be considered.

10. Mr.T.M.Pappiah, the learned Special Government Pleader appearing for the 2nd respondent submitted that no relief is sought for against the 2nd respondent herein and hence, prayed for dismissal of C.R.P.(PD)No.236 of 2017 with regard to the 2nd respondent.

11. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent, learned Special Government Pleader appearing for the 2nd respondent and the learned Government Advocate appearing for the 3rd respondent and perused the entire materials on record.

12. The 1st respondent has filed the suit in O.S.No.266 of 2014 on the file of the District Munsif Court, Madhuranthagam, against the petitioner for permanent injunction based on the unregistered agreement of sale dated 16.05.2012 alleged to have been entered into between the petitioner and the 1st respondent. As per the said agreement, the 1st

respondent is entitled to specifically enforce the said agreement, if the petitioner fails to perform her part of the agreement and fails to execute the sale deed in favour of the 1st respondent. The 1st respondent has not filed the suit for specific performance, but has filed I.A.No.137 of 2015 under Order II Rule 2 of C.P.C., for leave of the Court to file the suit for specific performance against the petitioner at a later stage. The reason given by the 1st respondent is that as per the agreement of sale, the petitioner has to measure the suit property and execute the sale deed in favour of the 1st respondent, but the petitioner without complying with the said condition is trying to alienate the suit property. The 1st respondent has not placed any material in the present suit to show that he was ready and willing to pay the balance sale consideration and get the sale deed executed in his favour. The 1st respondent has also not placed any material to show that he called upon the petitioner to measure the suit property, receive the balance consideration and execute the sale deed in his favour. There is nothing on record to show that petitioner refused to measure the suit property, receive the balance sale consideration and

execute the sale deed. In paragraph 15 of the judgment reported in **2012 (5) CTC 359 (cited supra)**, it has been held that the plaintiff cannot reserve certain relief in the first suit stating that the said relief is premature and he can seek for said relief in a later suit. Whether the suit is prematured or not can be decided only by the Court and if it is decided that the suit is premature, plaintiff can be granted leave to file a suit later, on the same cause of action.

13. On the other hand, the petitioner has denied execution of sale agreement and alleges the 1st respondent has forged her signature. It is the further contention of the petitioner that suit for permanent injunction filed by the 1st respondent is only a counter blast for the divorce petition filed by her. From the materials on record, it is seen that the present suit for permanent injunction is based on the agreement of sale and 1st respondent even at that time had right to file the suit for specific performance. The relief of specific performance is the main relief and relief of permanent injunction is only a consequential relief. The

intention of incorporating Order II Rule 2 of C.P.C. is to prevent multiplicity of proceedings and making the defendants to face the vexatious suit and more than one suit. The 1st respondent cannot be allowed to circumvent the law, especially when the substantial Court fee is payable for the relief of specific performance. In paragraph Nos.10, 18, 23 and 25 of the judgment reported in **2015 (2) CTC 129** (*cited supra*) relied on by the learned counsel appearing for the petitioner, this Court has elaborately considered this issue and has held that the Court cannot exercise its discretion to file comprehensive suit at a latter stage in order to avoid paying Court fee and circumvent law. This Court has held that petition for leave to file comprehensive suit at a later stage is not maintainable. The ratio in the said order is squarely applicable to the facts of the present case. In the judgment reported in **2015 (11) SCC 12** (*cited supra*) relied on by the learned counsel appearing for the 1st respondent, whether the leave can be granted under Order II Rule 2 of C.P.C. to file a comprehensive suit later was not an issue before the Hon'ble Apex Court in the suit filed for permanent injunction and no

finding was rendered. The issue of Res-judicata was only considered in the said judgment.

14. From the order of the learned Judge, it is seen that the learned Judge has not considered the reason given by the 1st respondent for leave to file the suit for main relief of specific performance. Without considering the averments in the affidavit and counter affidavit, the learned Judge has allowed I.A.No.137 of 2015 and thereby failed to exercise the power conferred on him as per Order II Rule 2 of C.P.C. The learned Judge has not considered the scope of Order II Rule 2 of C.P.C. The learned Judge has allowed the petition only on the ground that the said petition was filed along with the suit and issue of limitation for filing of the suit for specific performance can be considered, when such a suit is filed. The above reason is erroneous. The Court must exercise its jurisdiction properly. For the above reason, the impugned order of the learned Judge in I.A.No.137 of 2015 is perverse and the same is liable to be set aside and it is hereby set aside.

C.R.P.(PD).No.236 of 2017:

15. The petitioner sought for rejection of plaint filed by the 1st respondent for permanent injunction on five grounds including the ground that plaint does not disclose any cause of action. It is the contention of the learned counsel appearing for the petitioner that the 1st respondent has not given any details with regard to allegation that petitioner is trying to alienate the suit property. The plaint can be rejected for any one of the conditions mentioned in Order VII Rule 11 of C.P.C. The petitioner has filed petition for rejection of plaint stating that there is no cause of action for the suit. The contention of the learned counsel appearing for the 1st respondent that only averments in the plaint can be considered in the petition filed under Order VII Rule 11 of C.P.C. for rejection of plaint is held to that effect in number of judgments including the judgment reported in **2019 (13) SCC 372**. At the same time, it is also well settled that cause of action should not be illusory and specific details for cause of action should be mentioned in the plaint. A cleverly drafted

plaint cannot be entertained, when proper cause of action is not mentioned in the plaint.

16. In the present case, the 1st respondent has made bald averments that the petitioner for the past two months is trying to alienate the suit property. Except this statement, there is no other details about the efforts of the petitioner to alienate the property. When the petitioner was trying to alienate the suit property, the 1st respondent has not given any explanation for not filing the suit for permanent injunction immediately and waiting for two months for initiating the said suit. At the time of arguments, the learned counsel appearing for the 1st respondent submitted that the petitioner sold major portions of the suit property. The petitioner has not filed any document to prove the same.

17. Considering the averments in the plaint in its entirety, especially in para-5 of the plaint, which reveals that cause of action with regard to alienation by the petitioner mentioned therein is only an illusory one and has been mentioned only to create a cause of action. The

letter sent to 2nd respondent by the 1st respondent will not be a part of cause of action as the plaint lacks particulars with regard to alienation by the petitioner. The learned Judge has not properly appreciated the averments in the plaint in its entirety, especially as to why the 1st respondent waited for 2 months for filing the suit for permanent injunction only and erroneously dismissed the I.A.No.1454 of 2014 filed by the petitioner under Order VII Rule 11 of C.P.C. for rejection of plaint. For the above reasons, the order of the learned Judge is perverse and is liable to be set aside and it is hereby set aside.

18. In the result, both the Civil Revision Petitions are allowed. I.A.No.1454 of 2014 is allowed and the plaint is rejected. Consequently, the connected Miscellaneous Petition is closed. No costs.

Index : Yes
Internet : Yes
Speaking/Non-Speaking order
gsa/krk/kj/rgr

16.10.2020

C.R.P.(PD)Nos.2503 of 2016 and 236 of 2017

V.M.VELUMANI, J.

gsa/krk/kj/rgr

To

The District Munsif,
Madhuranthagam.



**Common order made in
C.R.P.(PD)Nos.2503 of 2016 and 236 of 2017
and C.M.P.No.12938 of 2016**

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