IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Judgment Reserved On 17.12.2020	Judgment Pronounced On 23.12.2020

O.S.A.No.271 of 2020
and
C.M.P.No.13368 of 2020
in
A.No.6611 of 2018
in
C.S.No.380 of 2018

S.Thakeer Ali .. Appellant

-vs-

1.Mr.S.M.Gutha

2.Mrs.Umar Banu

3.M/s.Steel World,
Rep., by Mr.Azad,
No.80/87 Part, MKN Road,
Guindy, Chennai-600 032.

4.Mr.Azad

5.Mr.S.Mohideen Abdul Khader

6.M/s.S.N.S.Enterprises,
Rep., by Mr.S.Syed,
No.625, M.K.N.Road,
Guindy, Chennai-600 032.

7.M/s.Popular Steel,
No.625, M.K.N.Road,
Guindy, Chennai-600 032.

8.M/s.Karur Vysya Bank,
Rep., by its Branch Manger,
No.269, M.K.N.Road,
Alandur, Chennai-600 016.

9.M/s.Hameed Trading Company,
No.625, M.K.N.Road,
Guindy, Chennai-600 032. .. Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of Letters Patent against the order dated 28.01.2020 made in Application No.6611 of 2018 in C.S.No.380 of 2018

A.No.6611 of 2018:The application filed under order 7 Rule II (a) & (d) of CPC r/w section 11 of the Commercial courts commercial Division and Commercial Appellate Divisions of High Courts Act 2015 to reject the plaint's not maintainable in law and on facts with exemplary cost of the Applicants.

CS.No.380 of 2018:The Plaintiff therefore prays for a Judgment and Decree against the defendants and in favour of the Plaintiff.

a) Directing the 1st to 7th defendants to pay a sum of Rs.3,00,00,000/-(Rupees Three Crors Only) to the plaintiff being the plaintiffs share in the estimated profit in the said firms and concerns with interest at the rate of 18% per annum from the date of filing of the suit till the date of realization of the same.

b) By directing the 1st and 2nd defendants to disclose and render accounts of all the immovable properties purchased by them from and out of the profits made from M/s.Popular steels and from and out of the funds misappropriated from M/s.Hameed Tradings and M/s.Steel World, M/s.S.N.S.Enterprises.

c) Granting permanent injunction restraining the 1st to 7th defendants from operating the Account No.1104135000001431 in the name and style of M/s.Steel World Current Account with the 8th defendant namely M/s.Karur Vysa Bank, Alandur, Chennai-600 016, without consent of the Plaintiff.

d) Granting permanent injunction restraining the 1st to 6th defendants from alienating or encumbering the schedule mentioned properties more fully described in the schedule of property and pass such further orders.

e) The defendant may be directed to pay the cost of suit.

f) And that this Hon'ble Court may be pleased to grant any other relief or relief's to the Plaintiffs as it may deem fit and proper in the circumstances of the case and thus render justice.

For Appellant : Mr.T.Ramachandran

For Respondent : Mr.Om Prakash, Senior Counsel for M/s.S.Anuradha Balaji

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JUDGMENT
(Heard though Video Conference)

T.S.Sivagnanam, J.

This appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent is directed against the order dated 28.01.2020 passed in Application No.6611 of 2018 in C.S.No.380 of 2018.

2.For easy reference, the appellant and respondents will be referred as the plaintiff and defendants respectively as per their rank in the civil suit.

3.The appellant is the plaintiff in the said suit, which was filed for a judgment and decree to direct defendants 1 to 7 to pay a sum of Rs.3,00,00,000/- to the plaintiff being his share in the estimated profit in the firms and concerns together with interest at 18% per annum; to direct defendants 1 and 2 to disclose and render accounts of all the immovable properties purchased by him from and out of the profits of defendants 3, 6, 7 and 9; to grant him a decree of permanent injunction restraining defendants 1 to 7 from operating the bank account standing in the name of the 3rd defendant in the 8th defendant bank; and for granting a decree of permanent injunction restraining defendants 1 to 6 from alienating or encumbering the suit schedule property.

4.The applicants in A.No.6611 of 2018 are close relatives. The 1st defendant is the brother of the plaintiff, the 2nd defendant is the sister-in-law of the plaintiff, the 4th defendant is the brother-in-law of the plaintiff, the 5th defendant is a family friend and, the 6th defendant is a concern in the name and style of “SNS Enterprises” represented by Mr.S.Syed, who is the elder brother of the plaintiff.

5.The plaintiff would state that his father passed away in the year 1991 leaving behind a cash reserve of Rs.5,00,000/-. At the relevant time, the plaintiff and the 1st defendant were not employed and in the year 1996, with the said money, they established a business under the name and style "Popular Steel", the 7th defendant. The plaintiff would state that though the said concern was projected as a proprietary concern, run by his brother, the 1st defendant, the plaintiff was actively involved in it and developed the business and the turnover increased.

6.It is the further case of the plaintiff that the 1st defendant assured him that he will be treated as working partner and payment for the service rendered will be made by giving 1/3rd of the profit. The plaintiff is stated to have established another concern under the name and style "Hameed Trading Company", the 9th defendant. Though the plaintiff was its proprietor, since the 1st defendant was his elder brother, he controlled the affairs of the 9th defendant. After a period of time, a partnership firm was established under the name and style "M/s.Steel World", the 3rd defendant in which, the 4th defendant, the brother-in-law of the plaintiff and, the 5th defendant, a common family friend were indicted as partners along with the plaintiff and the 1st defendant. The place of business being, the same place, where the plaintiff was carrying on business under the name and style of the 9th defendant.

7.Further, the plaintiff would state that the 1st defendant, taking advantage of the relationship with the plaintiff, was interfering with the affairs of the business of partnership firm "M/s.Steel World", the 3rd defendant and it would be relevant to place on record that the 1st defendant has married the sister of the 4th defendant and both of the defendants were not only close with each other, but would not even oppose one another. The plaintiff would further state that because of his ability and active work, the business grew and the monies were received by the 1st defendant sharing the plaintiff and that his share will be given by properly investing the same in various assets. The 1st defendant, being the elder brother of the plaintiff, he had no reason to suspect the 1st defendant. However, the plaintiff was betrayed and all monies earned in the three businesses were diverted by the 1st defendant. It is stated that the relationship got strained in the year 2014 and this the plaintiff attributes to the conduct of the 1st defendant and he blames himself for having trusted and believed his elder brother, the 1st defendant and, defendants 4, 5 and 6 all of them have cheated the plaintiff.

8.In paragraph 11 of the plaint, the details of the properties which have been purchased from the diverted funds have been listed out. Further, the plaintiff would state that the bank passbook was snatched away from the plaintiff and he was not allowed in access to the management of the business and therefore, he requested the 8th defendant bank to furnish the details of the bank transaction done by the 3rd defendant, to furnish the copy of the partnership deed, which was given to the bank when the account was opened in the name of the 3rd defendant partnership firm and also to furnish the statement of accounts. However, the 8th defendant bank has not furnished the information sought for to the plaintiff. Therefore, the plaintiff would state that he is entitled to be paid a sum of Rs.3,00,00,000/- being his share in the estimated profit of the three businesses and also for other reliefs.

9.In paragraph 17 of the plaint, the cause of action for filing the suit has been set out stating that the plaintiff and defendants are partners in the 3rd and 7th defendants and that the defendants failed to pay any amount to the plaintiff. When he issued legal notice to the defendants on 22.10.2016, which was replied by the counsel for the defendants on 10.05.2017 and that there was no settlement reached and once again a detailed notice dated 23.12.2017 was issued to all the defendants, but the 1st and 2nd defendants alone received the same on 26.12.2017 and the remaining defendants refused to receive the same and that the defendants are trying to alienate the suit property and therefore, left with no other option, he has come forward by filing this suit for accounts and recovery of money.

10.Defendants 1 to 7 filed Application No.6611 of 2018 under Order VII Rule 11 of the Code of Civil Procedure (for brevity "CPC") read with Section 11 of the Commercial Courts, Commercial Division and Commercial Appellate Divisions of High Courts Act, 2015. This application was to reject the plaint as not maintainable in law. In the affidavit filed in support of the said application, the defendants have raised five contentions first of which being that there is no cause of action for the suit which is clear on a plain reading of paragraph 17 of the plaint; secondly, the plaintiff has clubbed various cause of actions without the leave of the Court and therefore, the suit is not maintainable for clubbing of various cause of actions; thirdly, it is contended that the suit is barred for misjoinder of parties and liable to be dismissed; the fourth ground being that the suit is barred by limitation and therefore, the plaint is liable to be rejected; and the fifth ground being that there is no territorial jurisdiction for this Court to entertain the suit. The plaintiff filed his counter to the said application and resisted the prayer for rejection of the plaint.

11.The learned Single Bench by the impugned order has allowed the application and rejected the plaint. Aggrieved by the same, the plaintiff is on appeal before us by way of this appeal.

12.We have heard Mr.T.Ramachandran, learned counsel for the appellant/plaintiff and Mr.Om Prakash, learned Senior Counsel for Ms.S.Anuradha Balaji, learned counsel for the 1st respondent/1st defendant.

13.The Court while allowing the application and rejecting the plaint, has observed that while considering an application under Order VII Rule 11 CPC for rejection of a plaint, the Court has to look into the pleadings averred in the plaint to get prima facie satisfied whether, the suit is fit for trial or it is barred by any law. After mentioning this legal position, the Court has observed that the entire averments are based on the premise that the plaintiff and the defendants are brothers and they were doing businesses under the name and style "Popular Steel" (7th defendant), "M/s.Hameed Trading Company" (9th defendant), "M/s.Steel World" (3rd defendant) and "M/s.SNS Enterprises" (6th defendant) and admittedly none of the concerns are registered as partnership firms. Further, the Court has observed that the only document in the plaint is the reply notice given by defendants 2 and 4 and one Mr.Nizar wherein, it is admitted that the plaintiff was a partner in the firm M/s.Steel World (3rd defendant), but there is no evidence to show that the plaintiff has invested substantial amount for the development of M/s.Steel World or on 30.12.2014, the plaintiff was forced to retire from the partnership firm, but they have no intention to settle the amount. Further, the Court has faulted the plaintiff for not having disclosed the fact and the deed executed by him on the said date.

14.Further, the Court observed that the plaintiff has raised a point that he was forced to sign in blank papers and by taking advantage of the same, they have shown as if he has resigned from the partnership, but this averment is not disclosed in the plaint and the plaintiff should have filed a suit for declaring the said deed as null and void and therefore, the Court holds that the cause of action stated in the plaint does not give any right to the plaintiff to try the matter and if the alleged partnership firm was dissolved on 30.12.2014, the suit is barred by limitation, since it was presented only on 10.03.2018. Further, it was observed that if the said deed is to be declared as null and void, then there should have been prayer to the said effect and since there is no such relief sought for, the Court cannot proceed further on the premise that there was partnership business relationship between the plaintiff and the defendants and, to sustain the present suit, in the application filed for rejection of the plaint, the defendants would state that a compromise deed dated 18.11.2016 was entered into and the plaintiff had voluntarily signed the same confirming the factum of his retirement on 30.12.2014 from the 3rd defendant firm. Therefore, the defendants would state that if there is cause of action accrued to the plaintiff on 30.12.2014, the suit should have been filed within three years from the date of such retirement and therefore, it is barred by limitation. Further, the defendants have denied all the other averments made in the plaint. Therefore, on a reading of the affidavit dated 29.08.2018 filed in support of Application No.6611 of 2018, one gets an impression that it is the written submission filed by the defendants. Since certain facts have been brought in by way of affidavit filed by the defendants, it has necessitated that plaintiff to file counter affidavit. In the counter affidavit, the plaintiff has stated that the alleged compromise deed dated 18.11.2016 was taken by force and threat. Further, it is submitted that only on the strength of the partnership deed, the bank account was opened in the name of the 3rd defendant in the 8th defendant bank and therefore, the plaintiff has sought for copy of the bank details, copy of the partnership agreement, etc., which the 8th defendant bank has not furnished to the plaintiff.

15.Certain other facts have also been brought in. Though it may be true that the plaintiff has not mentioned about the compromise deed said to have been executed in the year 2016, this has been brought out by the defendants in the affidavit filed in support of the application to revoke the plaint. Therefore, the plaintiff has taken a stand that such an agreement was obtained by coercion and threat. Further, the plaintiff has also referred to the reply notice sent by the 1st and 2nd defendants wherein, they have candidly admitted that the plaintiff was a partner in the 3rd defendant company and all three of them viz., the plaintiff, the 1st and 2nd defendants have invested in the partnership firm. Thus, there appears to be a family dispute and the question would be as to whether the plaint could have been rejected for the reasons set out by the defendants in the application.

16.Order VII Rule 11 CPC deals with rejection of plaint and 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;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped;

(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; and

(f) where the plaintiff fails to comply with the provisions of Rule IX Order 7 CPC.

17.The legal principle which can be culled out from the various decisions of the Hon'ble Supreme Court and this Court as to the scope of application of Order VII Rule 11 are to the effect 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, the Court should exercise its power under Order VII Rule 11 CPC. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11. The power to reject a plaint under Order VII Rule 11 ought not to be exercised except any clear cut case and, if there is any serious question to be decided, then the suit has to proceed further.

18.The power under Order VII Rule 11 can be exercised when the plaint is read as a whole, it does not disclose material facts giving rise to a cause of action, which can be entertained by a Civil Court, it may be rejected in terms of order VII Rule 11. The Court can look into only plaint allegations and the documents submitted by the plaintiff himself, but cannot look into the defendant's defence. In other words, actual or probable defence cannot be looked into at the stage when an application under Order VII Rule 11 is considered. To put it differently, the Court has to scrutinise the averments/pleas in the plaint and the pleas taken by the defendants in the written statement are corley irrelevant and the matter is to be decided only on the plaint averments.

19.Bearing the above legal principle in mind, if we examine the averments set out in the application for rejection of the plaint filed by the defendants, we could clearly see that certain new facts have been brought in which appears to have not been stated when the reply notice was sent by defendants 1 and 2 dated 22.05.2017. Therefore, the Court while considering whether the plaint has to be rejected, cannot go by the averments set out in the affidavit filed in Application No.6611 of 2018 wherein the defendants have stated that the suit is barred by limitation because the plaintiff had retired from partnership.

20.The plaintiff's case in the plaint is that he is a partner and he does not have the copy of the partnership deed and therefore, addressed the 8th defendant bank to furnish him the copy as also the other bank details of the 3rd defendant firm because the account was opened by furnishing partnership deed. Therefore, in our considered view, the plaint could not have been rejected by referring to the averments made by the defendants in their application with regard to certain factual aspects, which has been disputed by the plaintiff in the counter affidavit filed to the said application. When defendants 1 and 2 at the first instance have admitted that the plaintiff was also one among the three partners, the suit should proceed further to enable the parties to place their evidence both oral and documentary before the Court and then a decision should be arrived at. Therefore, the plaint could not have been rejected by taking note of an averment made in the affidavit filed in support of Application No.6611 of 2018 filed by the defendants to reject the plaint, which averment was denied by the plaintiff in his counter affidavit. If these averments are taken into consideration and the plaint is rejected, it will fall foul of the fundamental principle which has to be borne in mind while rejecting a plaint under Order VII Rule 11 CPC.

21.The cause of action is a bundle of facts and the plaintiff has set out as to in what circumstances he was driven to the Court to file the suit against the defendants. Therefore, it will be too early a stage for the Court to express an opinion that the suit claim is solely based upon the reply notice given by defendants 1 and 2. In any event, the suit being between the family members, the cause of action cannot always be confined to a legal aspect alone, as other facts also would come into play in a suit filed within the family. Therefore, we are of the view that this issue also is a mixed question of fact and law and, could not be a reason to reject the plaint. Clubbing of cause of action, misjoinder of parties are to be agitated when the suit is taken up for trial. Therefore, we are of the considered view that in the facts and circumstances of the case, the plaint could not have been rejected at the threshold.

22.In the result, the appeal is allowed and the order in Application No.6611 of 2018 in C.S.No.380 of 2018 dated 28.01.2020 is set aside and the plaint is restored to the file of the Court to be tried in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

abr

To
The Sub Assistant Registrar
Original Suit
High Court, Madras

+2 ccs to M/s.S.Arunradha Balaji Advocate sr 42795

O.S.A.No.271 of 2020

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