

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.11.2020

Pronounced on: 02.12.2020

Coram:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRP(PD)No.4911 of 2014

and

M.P.No.1 of 2014

Jabeena Yacoob Ali

... Petitioner/Sole Defendant

Vs.

Navanit Narayanan

...Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the dismissal Order dated 14.10.2014 in I.A.No.13870 of 2013 in O.S.No.2361 of 2013 on the file of the VI Assistant City Civil Court at Chennai.

For Petitioner : Mr.V.Ayyadurai, Senior Counsel

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed by the petitioner/defendant against the dismissal of his application in I.A.No.13870 of 2013 in O.S.No.2361 of 2013 on the file of the VI Assistant Judge, City Civil Court, Chennai, dated 14.10.2014.

2. The respondent herein had filed a suit in O.S.No.2361 of 2013 on the file of the VI Assistant Judge, City Civil Court, Chennai, for the relief of permanent injunction restraining the petitioner herein from alienating the suit property and also for permanent injunction restraining the petitioner herein from interfering with his peaceful possession and enjoyment of the suit property. The petitioner/defendant had filed an application in I.A.No.13870 of 2013 under Order VII Rule 11 of CPC to reject the plaint. The learned VI Assistant Judge, City Civil Court, Chennai, by the Order dated 14.10.2014, had dismissed the said application. Feeling aggrieved, the petitioner/defendant has filed the present Civil Revision Petition.

3. Since the notices which were sent to the respondent by RPAD (private notice) returned as 'Door locked/No such person', this court passed an order for substituted service by paper publication. Accordingly, paper publication has been effected and produced and the name of the respondent/plaintiff also printed in the cause-list, but he has not appeared either in person or through counsel and hence, after hearing the arguments of Mr.V.Ayyadurai, the learned Senior Counsel for the petitioner/defendant and perusing the materials filed along with this petition, Order is being passed in this petition,

4. The learned Senior Counsel for the petitioner has submitted that as per Section 31 of the Specific Relief Act, declaratory relief should have been asked, but in this case, the respondent has not asked declaratory relief and hence, the suit for bare injunction is not maintainable. He further submitted that this is the third suit on the same cause of action. He further submitted that the respondent herein had already filed two suits in O.S.Nos.9254 of 2011 and 173 of 2012 restraining the defendants therein from dealing with the suit property

based on the power of attorney executed by him but without cancelling the said power of attorney. He further submitted that since he filed these suits successively, the present suit is barred under Order II Rule 2 of CPC. He further submitted that the respondent had suppressed the material fact in the plaint as regards the agreement dated 07.07.2010 for exchange of the suit property and thereafter mutually agreed to sell the suit property in favour of the petitioner herein. He further submitted that in the present suit, the power of attorney has not been added as a party and hence, the suit is bad for non-joinder of necessary party. He further submitted that the averments made in the plaint would go to show that the plaintiff had executed the power of attorney deed on receipt of Rs.72 lakhs from his agent and that the said power of attorney is coupled with interest, as such attracts Section 202 of the Contract Act and therefore, the power of attorney deed cannot be revoked. He further submitted that the conduct of the respondent/plaintiff would clearly show that the aforesaid suit is an abuse of process of law and without considering the aforesaid facts, the trial court had dismissed the application filed by the petitioner herein under Order VII Rule 11 of CPC and therefore, he prayed to allow this CRP and allow the application in I.A.No.13870 of

2013 and reject the plaint in O.S.No.2361 of 2013 on the file of the VI Assistant Judge, City Civil Court, Chennai.

5. In support of the aforesaid contentions, the learned Senior Counsel for the petitioner has relied upon the decision in ***R.T.Gurumoorthy and another Vs. M/s.Meenakshi Engineering Works (A.No.35 of 2020 in C.S.No.689 of 2019).***

6. A perusal of the typed set of papers filed by the petitioner/defendant would show that the respondent herein had filed a suit in O.S.No.2361 of 2013 on the file of the VI Assistant Judge, City Civil Court, Chennai, against the petitioner herein for permanent injunction restraining her from alienating the suit property and also to restrain her by means of permanent injunction from interfering with his peaceful possession and enjoyment of the suit property. In the plaint filed in the said suit, he has stated that he is the owner of the suit property by virtue of the sale deed dated 18.04.2006. He further submitted that he also purchased $\frac{1}{4}$ th undivided share in adjoining property at Door No.644, Anna Salai, Thousand Lights, Chennai-6 and was in contract to buy the

remaining $\frac{3}{4}$ th undivided share from other family members of the sellers. He further stated that exploiting his financial need, the petitioner's husband offered a sum of Rs.50 lakhs as loan against the security of original title deeds. He further offered to invest as loan amount of Rs.25 lakhs and use his expertise and man power to structurally modify the property to annexe with adjoining property to give a more aesthetic and value added look. He also stated as to secure his loan and investment, the petitioner's husband obtained in addition to demand pro-note, original title deeds in respect of the suit property, as security and also obtained a General Power of Attorney registered on 20.12.2010. He further stated that the petitioner's husband became close friend to the owner of the adjoining property at Door No.644, Anna Salai, Chennai-6, due to their religious affinity, in which, he already purchased $\frac{1}{4}$ th undivided share and was in further contract to get sold the remaining $\frac{3}{4}$ th undivided shares at pre-fixed price and hence he filed a suit in O.S.No.9254 of 2011 on the file of the VIII Assistant Judge, City Civil Court, Chennai and obtained ad-interim injunction in I.A.No.20634 of 2011 restraining the owner of the said property from alienating interest in $\frac{3}{4}$ th undivided shares. He also stated that he filed another suit in O.S.No.173 of 2012 on

the file of the VI Assistant Judge, City Civil Court, Chennai, against the petitioner's husband restraining him on his behalf from acting on the basis of the power of attorney dated 20.12.2010 and also from creating any encumbrance over the suit property based on the said power of attorney dated 20.12.2010 and also restraining him from interfering with his peaceful possession and enjoyment of the suit property. He further stated that when he was examined as PW1 in O.S.No.173 of 2012, the petitioner's husband had produced a sale deed stating that he already sold the suit property to his wife namely the petitioner herein. He further stated that since he already filed a suit in O.S.No.173 of 2012 to restrain the petitioner's husband from using the said power of attorney and during pendency of the said suit, he executed a sale deed in favour of the petitioner herein, it has become necessary for him to file the present suit.

7. According to the petitioner herein, the respondent herein entered into a deed of exchange of the suit property with her on 07.07.2010 but the respondent had suppressed the said fact in his plaint. The respondent herein, in his counter statement, had denied the allegation that he executed the agreement for exchange with the petitioner herein.

According to him, only an 'exchange agreement' was entered and not 'exchange deed'. It is well settled that for disposing of the application filed under Order VII Rule 11 of CPC, the plaint averments alone germane and not the defence set up by the defendant.

8. In *Popat and Kotecha Property Vs. State Bank of India Staff Association*, (2005) 7 SCC 510, the Hon'ble Supreme Court has held that the disputed questions cannot be decided in the application filed under Order VII Rule 11 of CPC. In this case, as already pointed out that the petitioner's contention is that the exchange deed was executed on 07.07.2010 between herself and the respondent herein, but according to the respondent, it was only an agreement for exchange of the property and not exchange deed. Therefore, the said question cannot be decided in the application filed under Order VII Rule 11 of CPC.

9. The next contention of the petitioner is that in view of Section 31 of the Specific Relief Act, without seeking declaratory relief, the suit for bare injunction is not maintainable. As per Section 31 of the Specific Relief Act, any person against whom a written instrument is void or

voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

10. In this case, according to the respondent, the petitioner's husband had obtained the power deed only as a security for the amount advanced by him. It is not the case of the respondent that the said document is either void or voidable. Therefore, the petitioner cannot insist the respondent to seek relief to declare the said power deed as void or voidable.

11. Admittedly, the respondent herein had filed a suit in O.S.No.173 of 2012 against the petitioner's husband restraining him from using the said power of attorney and during pendency of the said suit, the petitioner's husband had executed the sale deed in favour of the petitioner herein on 20.01.2012. The question as to whether the petitioner's husband can execute a valid sale deed in favour of the petitioner during pendency of the aforesaid suit can be decided only after

taking evidence in the suit. Further, for filing the present suit, cause of action arose only subsequent to the filing of the suit in O.S.No.173 of 2012 and therefore, the contention of the petitioner that the present suit is barred under Order II Rule 2 of CPC, cannot be accepted. Since serious disputed questions arose in the suit, the said questions cannot be decided in the petition filed under Order VII Rule 11 of CPC. The petitioner can very well put forth her case by filing written statement and by adducing evidence during trial. Therefore, this court does not find any merit in this Civil Revision Petition and the same is liable to be dismissed.

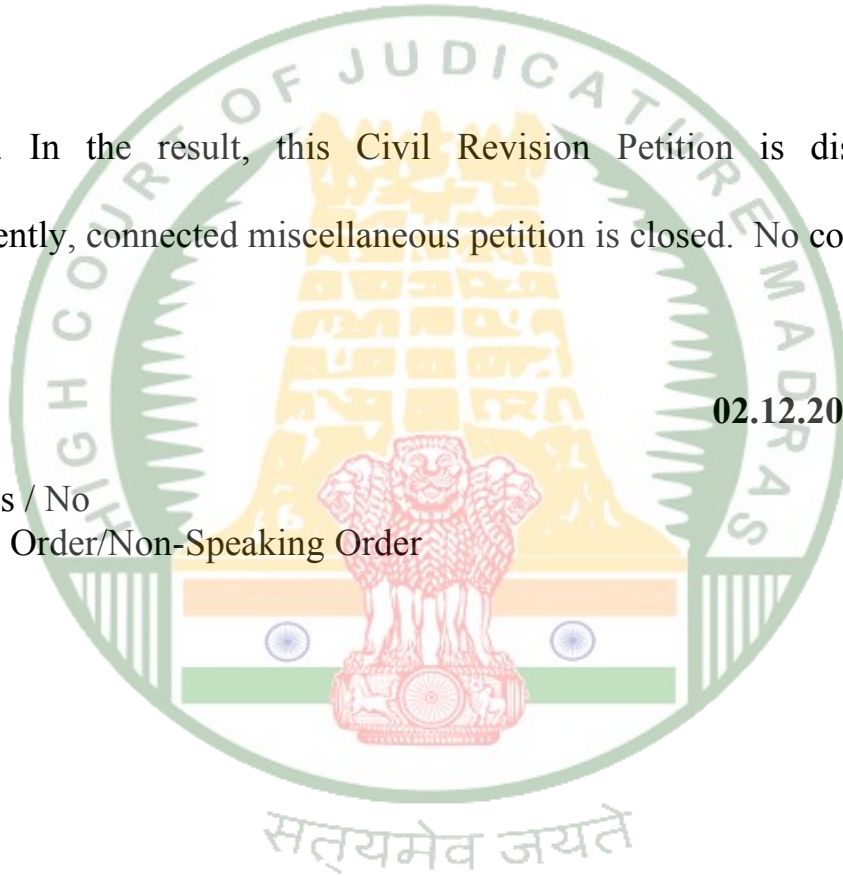
12. In ***R.T.Gurumoorthy and another Vs. M/s.Meenakshi Engineering Works*** (cited supra) a suit was filed to declare the decree passed in O.S.No.2395 of 1966 is illegal, void, inoperative and not binding on the plaintiff. This court after considering the fact that the plaintiff therein was the successor-in-interest of one of the defendants in O.S.No.2395 of 1966, he is not entitled to question the judgment and decree passed in that suit. Further, it was not pleaded any fraud. Further, the said suit was filed after 30 years and taking into consideration the

said facts, this court has held that the said suit is barred by limitation, *resjudicata* and no cause of action. Whereas in the case on hand the facts are totally different. Hence, the aforesaid decision will not apply to the facts of this case.

13. In the result, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

02.12.2020

Index:Yes / No
Speaking Order/Non-Speaking Order
gv



To

The VI Assistant City Civil Court,
Chennai.

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P. RAJAMANICKAM., J.

gv



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