

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 12TH DAY OF OCTOBER 2020

THE HON'BLE MS. JUSTICE P.T.ASHA

A.No.8521 of 2019
in
C.S.No.588 of 2018

B.R.Srinivasa Rao,
S/o.B.Rajaiah,
No.S-4, 6th Avenue, Anna Nagar,
Chennai-600 040.

..Plaintiff

-Versus-

1.Cauvery Trust Hospital,
Rep. by its Dr.P.Maruthi Rao,
No.36, Ponnai Kinaru Street,
Villivakkam, Chennai 600 049.

2.Mr.B.R.Lakshmi
Wife of Dr.B.R.Shankar,
Partner of Cauvery Trust Hospital,
No.47, Jayanthi Nagar,
Kolathur, Chennai 600 099.

3.Dr.B.R.Shakunthala,
Wife of Dr.P.Maruthi Rao,
No.U-1, 3rd Main Road,
Anna Nagar, Chennai-600 040.

4.Dr.P.Maruthi Rao,
S/o. P.Anjaiah,
Partner of Cauvery Trust Hospital,
No.U-1, 3rd Main Road,
Anna Nagar, Chennai -600 040.

5.Dr.B.R.Shankar,
Son of B.Rajaiah
Partner of Cauvery Trust Hospital,
No.47, Jayanthi Nagar,
Kolathur, Chennai-600 099.

6.Mrs.R.Padmavathi
Wife of Mr.B.R.Srinivasa Rao,
Partner of Cauvery Trust Hospital,
No.U-1, 3rd Main Road, Anna Nagar,
Chennai-600 040.

..Defendants

A.No.8521 of 2019:

1.Mr.B.R.Lakshmi
Wife of Dr.B.R.Shankar,
Partner of Cauvery Trust Hospital,

2.Dr.B.R.Shankar,
Son of B.Rajaiah
Partner of Cauvery Trust Hospital,
Both residing at No.47, Jayanthi Nagar,
Kolathur, Chennai-600 099.

..Applicant

-Versus-

1.Mr.R.Srinivasa Rao,
S/o.B.Rajaiah,
No.S-4, 6th Avenue, Anna Nagar,
Chennai-600 040.

2.Cauvery Trust Hospital,
Rep. by its Dr.P.Maruthi Rao,
No.36, Ponnan Kinaru Street,
Villivakkam Chennai 600 049.

3.Dr.B.R.Shakunthala,
Wife of Dr.P.Maruthi Rao,
No.U-1, 3rd Main Road,
Anna Nagar, Chennai-600 040.

4.Dr.PMaruthi Rao,
 Son of B.Rajaiah,
 Partner of Cauvery Trust Hospital,
 No.U-1, 3rd Main Road,
 Anna Nagar, Chennai -600 040.

5.Mrs.R.Padmavathi
 Wife of Mr.B.R.Srinivasa Rao,
 Partner of Cauvery Trust Hospital,
 No.U-1, 3rd Main Road Anna Nagar,
 Chennai-600 040.

..Respondents

Application praying that this Hon'ble Court be pleased to reject the
 plaint in C.S.No.588 of 2018.

This Application coming on this day before this Court for hearing,
 the Court made the following order:

The above application has been filed by the 2nd and 5th defendants
 seeking to reject the plaint in C.S.No.588 of 2018 on the ground that the
 dispute has its genesis in a partnership agreement dated 01.04.2003 entered
 into between the applicants and the respondents herein. The applicants
 would contend that the said partnership deed has an arbitration clause which
 clearly states that any dispute between the partners relating to its
 interpretation, operation or investment of any of the terms and conditions of
 the deed shall be referred to the adjudication of the arbitrators appointed by
 consent of the parties to the deed.

2. The applicants have also raised the defense of limitation and would submit that a mere perusal of the averments in the plaint would clearly state that the suit has been filed after a delay of twelve years as the settlement deed in favour of the 1st respondent / plaintiff is dated 26.08.2008 and this suit for damages has been instituted after the 1st respondent has lost several rounds of litigation. The applicants would further submit that the 2nd applicant had vacated the premises as early as in September 2015 and therefore the allegations that he is squatting on the property is totally contrary to the truth. The applicants would further submit that a counter claim has been filed in C.S.No.238 of 2009 which is filed for rendition of true and proper accounts of partnership firm. Considering the fact that the application is one for rejecting the plaint, the contents of the plaint is briefly narrated herein below.

3. The 1st respondent / plaintiff has filed a suit in C.S.No.588 of 2018 for recovery of a sum of Rs.1,08,00,000/- together with future interest at the rate of 24% per annum for the sum of Rs.1,08,00,000/- which is the amount that is due towards the rental arrears as per the fair rent fixed. It is the case of the 1st respondent that the property which is the subject matter of the lease in favour of the 2nd respondent firm originally belonged to

Ranjaiah had purchased a landed property and constructed a building thereon. The entire building and land was leased to the 1st defendant who is the 2nd respondent in this application on a monthly rental of Rs.8,000/- which was subsequently increased to Rs.9,000/- considering the relationship between the parties. The father Ranjaiah had not reviewed the rent though the adjacent property was fetching a monthly rental of Rs.130 per Sq.ft.

4. The said Ranjaiah executed a registered settlement deed dated 26.08.2008 in favour of the 1st respondent herein. Apart from being the owner of the property, the 1st respondent was also a partner in the 2nd respondent firm. Therefore, he did not increase the monthly rent.

5. The 1st respondent would further contend that the applicants herein had filed a suit for permanent injunction in O.S.No.770 of 2009 before the City Civil Court against the 1st respondent and respondents 3 to 5 herein. Another suit for specific performance was filed by the applicants in O.S.No.8449 of 2010 against the 1st respondent, his father and the 1st applicant herein. Both the suits were dismissed for default on 13.10.2009 and 02.07.2012 respectively, against which neither has the applicants taken out an appeal nor have they taken an application for restoring the suit. The Judgement has therefore attained finality.

6. The 1st respondent has been advised to claim a sum of Rs.1,08,00,000/- from the applicants and other respondents for the use and occupation of the building and land for commercial purpose at the rate of Rs.3,00,000/- per month. The 1st respondent herein has filed R.C.O.P.No.2338 of 2009 against the applicants and the other respondents herein for eviction on the ground of owner's occupation, which was dismissed stating that the 1st respondent was also a partner in the 2nd respondent firm. The appeal was also dismissed.

7. Thereafter, C.R.P.No.858 of 2015 has been filed and is pending before this Court. This Civil Revision Petition would not act as a bar for the 1st respondent to claim damages. The 1st respondent had demanded the payment vide his letter dated 14.07.2017 addressed to the applicants and the other respondents calling upon them to make a payment of Rs.1,08,00,000/-. Though the 1st respondent was entitled to claim damages for use and occupation for eight years, considering the relationship the amount was restricted only to a period of three years prior to the demand notice. Respondents 2 to 5 informed the 1st respondent that they are ready to pay the arrears of rent within a period of ten months. However, the applicants did not respond to this notice. Therefore, the present suit has been filed.

8. On receiving the summons, the applicants have come forward with the instant application on the grounds narrated in paragraph nos.1 & 2.

9. Ms.R.J.Radhika, learned counsel who made submissions on behalf of the applicants would contend that the applicants and the respondents are partners of the 2nd respondent firm and it is the 2nd respondent firm that is in occupation of the premises. The 1st respondent is also a partner in the 2nd respondent firm. Therefore, the 1st respondent is bound by the terms of the partnership agreement. Clause 18 of the partnership deed dated 01.04.2003 would provide for an arbitration in the event of any dispute amongst the parties. She would therefore contend that since the parties are bound by this agreement they are therefore bound by the arbitral clause. The suit cannot be proceeded with and the parties have to necessarily be referred to arbitration. She would rely upon the following Judgements in support of her case:

1. Mr.Tim Boyd Vs. Mr.Kesiraju Krishna Phani and others – C.S.No.682 of 2014

2. Shaukathussain Mohammed Patel Vs. Khatunben Mohmmedbhai Polara – Civil Appeal No.8197 of 2019.

10. Per contra, Mr.VRagupathy, learned counsel making his submission on behalf of the 1st respondent / plaintiff would submit that the

but has been instituted by the 1st respondent in his capacity as an owner of the property for recovery of unpaid rents. He would therefore submit that the question of the suit originating from the partnership agreement is totally a fallacious submission. He would submit that the invocation of the Jurisdiction of this Court is very much in order and the application deserves to be dismissed.

11. Heard the learned counsels and perused the plaint and the partnership deed which has been filed along with the application for rejecting the plaint and also perused the Judgements submitted by the learned counsel for the applicants.

12. The suit has been filed for recovery of money due from the 2nd respondent firm which is a lessee in respect of the property of the 1st respondent herein. It is no doubt true that the 1st respondent is a partner of the 2nd respondent partnership firm. However, the occupation of the premises by the 2nd respondent firm is only in its capacity as a lessee and not by reason of the 1st respondent being a partner of the firm.

13. It is seen from the plaint that even when the father was alive and prior to the settlement in favour of the 1st respondent, the father had leased out the property and was collecting rent. Further, the arguments that the 2nd

respondent firm is in occupation of the premisses only by reason of the partnership agreement is an issue which has to be gone into during trial particularly when the rent control proceedings have been initiated by the 1st respondent and the same is pending revision.

14. It has been time and again held by the Honourable Supreme Court and this Court that while considering an application for rejecting the plaint, the Court should only be guided by the averments contained in the plaint. A perusal of the plaint would clearly makes out a cause of action for filing the suit and the contention raised by the applicants are issues which needs to be decided during trial and evidence. The Judgements relied upon by the applicants does not have any relevance to the point in issue.

15. In the result, the application is dismissed. The applicants are directed to file their written statement on or before 18.11.2020.

WEB COPY

Sd./-P.T.AJ
12/10/2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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JJ 19/10/2020