IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 18.02.2020

Order Pronounced on : 12.05.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P.No.3861 of 2018
and
C.M.P.No.5832 of 2019

J.B. Franklin ... Petitioner/2nd Defendant

Vs.

1. Vishwaksen Industries Pvt.Ltd.,
rep. by its authorized signtory/M.D. Vijayakumar,
No.2-2, - 18/54, DD Colony,
Bagh Amberpet, Hyderabad 500013 ...1st Respondent / Plaintiff

2. K. Onodera, Power Agent
of J.B.Franklin Mills @ Bhatavatchalam,
M.D.M/s. Happy Granites India Pvt. Ltd.,
East cost chambers, 92, G.N. Chetty,
T.Nagar, Chennai 600 007 ...2nd Respondent/1st Defendant

Prayer :- This Civil revision has been filed under Article 227 of the Constitution of India to allow the Civil Revision Petition and set aside the fair and decreetal order passed by the III Additional District Judge, Kallakurichi, on 30.10.2018 in I.A.No.55 of 2018 in O.S.No.15 of 2018.

For petitioner : Mr. S. Gomathinayagam,
Senior Counsel for
Mrs. N.Samundeeswari

For first respondent: Mr. V.P.Sengottuvel,
for Mrs. T.Dharani

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O R D E R

This Civil Revision has been filed against the order dismissing the petitioner's application to reject the plaint filed under Order VII Rule 11 CPC.

2. The petitioner is the second defendant in the suit. The first respondent/ plaintiff, has filed a suit for specific performance directing the defendants to execute the Sale deed pursuant to the Sale Agreement dated 26.03.2008. Pending suit petitioner, filed an application to reject the plaint and the same has been dismissed by the trial Court. Now, challenging the same , the present revision has been filed.

3. For the sake of convenience the parties are referred to as per their rank in the trial Court.

4. The first respondent/plaintiff, filed a suit in O.S.No.15 of 2018, on the file of the III Additional District Court, Kallakurichi, on the ground that, the suit schedule properties originally belongs to the petitioner/2nd defendant, and the second defendant executed a Registered Power of Attorney dated 27.07.2005, in favour of the first defendant to sell the property. Pursuant to the said Power of Attorney, the first defendant sold a portion of the suit schedule property to the plaintiff, also agreed to sell the remaining portion of the property to the plaintiff, and received a sum of Rs.11,07,000/- towards the sale consideration, also executed a sale agreement cum receipt dated 26.03.2008. According to the plaintiff, the entire sale consideration has been paid to the defendants and they have to execute the sale deed. However, when the plaintiff approached the first defendant to fix a date for executing the sale deed, the first defendant informed them that, they will fix a date in January 2016, but, they failed to do so. Thereafter, the plaintiff was unable to meet the defendants as they were not available. Hence, the plaintiff issued a legal notice, but the same was returned as the defendants left their residence without instructions. In the said circumstances, the suit has been filed for the above said relief.

5. Pending suit, the second defendant filed an application under Order VII Ruled 11 CPC, to reject the plaint stating that, he is the absolute owner of the suit schedule property and due to ill-health, he executed a power of attorney in favour of the first defendant, on condition that a sum of Rs.10 Crores should be paid by the second defendant to the first defendant within six months from the date of execution of power of attorney. But, the second defendant failed to pay the amount. Hence, the first defendant directed the second defendant not to execute any sale deed based on the power of attorney. Thereafter, the

plaintiff issued a legal notice on 19.03.2008, then only the second defendant came to know about all those transactions. According to the second defendant, the Power of Attorney was not in force, and the first defendant has no authority to enter into a sale agreement, it is not binding on the second defendant. It is further stated that the suit is also barred by limitation, and the suit has been filed based on the copy of the sale agreement executed on 26.03.2008 between the first defendant and the plaintiff, and the said sale agreement is a forged one, and the plaintiff cannot act upon the sale agreement after 10 years. That apart, the sale agreement was not registered and it is inadmissible in evidence in view of Section 49 of the Registration Act, as the Registration is compulsory under Section 17 of the Registration Act. As the time is essence of the contract for performance of Agreement of the sale, and the suit ought to have been filed within 3 years, under Article 54 of the Limitation Act. The Sale Agreement cum receipt was said to have issued on 26.03.2008, however the suit was filed on 13.03.2018 and it is barred by limitation. That apart, there is no cause of action arises for the suit. The suit was filed on 13.03.2018 only thereafter, the legal notice was issued on 19.03.2018, and there is no pleading regarding the legal notice in the plaint. Hence, the suit is liable to be rejected. The trial Court after considering the rival submissions, by an order dated 30.10.2018 dismissed the application. Now challenging the same, the present revision has been filed.

6. Mr.S.Gomathinayagam, the learned Senior Counsel, appearing for the petitioner would vehemently contended that the suit is barred by limitation, even though the sale agreement said to have been executed by the first defendant/ Power of Attorney, in the year 2008, the suit has been filed only in the year 2018, after 10 years, which is hit by Article 54 of the Limitation Act, and absolutely, there is no averments in the plaint regarding the delay in filing the suit. As the time is essence of Contract, under Article 54 of the Limitation Act, the suit ought to have been filed within 3 years. But, the suit was filed 10 years later, without any explanation whatsoever. The learned Senior counsel would further submit that, a perusal of the alleged sale agreement, which is filed along with the plaint, it could be seen that the agreement is only signed by the first defendant. However, the plaintiff being a purchaser has not signed in the sale agreement, hence, the Contract is not concluded between the parties. In the said circumstances, sale agreement itself is invalid and based on that invalid sale agreement, the plaintiff can not maintain a suit. It is further contended that under Section 17(1-A) of the Registration Act, the Sale agreement should necessarily be registered and admittedly, the said sale agreement is an unregistered one and based on the unregistered sale agreement, the plaintiff cannot

maintain the suit. That apart, the suit did not disclose any cause of action. Hence, the suit should necessarily be rejected at the threshold, and the Court below without considering the same mechanically rejected the application.

7. Mr.V.P.Sengottuvel, the learned counsel for first respondent/plaintiff, would submit that, admittedly the first defendant is the power of attorney of the second defendant. Based on the Power of Attorney, the first defendant has entered into a sale agreement with the plaintiff and also received the entire sale consideration, on the date of sale agreement the Power of Attorney was in force and only by virtue of a valid power of attorney, the first defendant had executed the sale agreement. Hence, now it is not open to the second defendant to contend that the agreement is not a valid one. It is further contended by the learned counsel that, so far the limitation is concerned, there is no time fixed in the agreement for execution of sale deed. As per Article 54 of the Limitation Act the suit has to be filed within 3 years from the date of refusal. In the instant case, despite the notice issued by the plaintiff, the defendants did not come forward to perform the contract, and the suit has been filed within time and it is not barred by limitation. That apart, the question of limitation is mixed question of law and fact, and it has to be decided only at the time of trial and that dispute cannot be decided at this stage. The sale agreement has been executed in the year 2008, at that time registration of sale agreement was not compulsory and hence there is no bar for filing the suit based on the unregistered sale agreement. It is also not necessary that the purchaser of the property should sign in the sale agreement. All these issues have to be decided at the time of trial, and on that ground, the plaint cannot be rejected under Order 7 Rule 11 CPC.

8. I have considered the rival submissions and perused the materials available on records carefully.

9. 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.

10. It is a suit for specific performance. The suit has been filed based on the sale agreement executed by the first defendant, who is the power of attorney of the second defendant on 26.03.2008. According to the plaintiff, on the date of execution of the sale agreement, the entire sale consideration has been paid and the plaintiff has also continuously requested the defendants to fix a date for execution of the sale deed. Finally, the first defendant agreed to execute the sale deed in the month of January 2016. But he failed to do so. Thereafter, legal notice has been issued by the plaintiff on 19.12.2017 by a registered post, but the same was returned stating that the first defendant left the address without any intimation. As the first defendant refused to perform the part of the contract, ultimately, the suit was filed in the year 2018.

11. The first contention of the learned Senior Counsel for the petitioner is that the suit is barred by limitation. According to the petitioner, under Article 54 of the Limitation Act, the suit ought to have been filed within a period of 3 years, and the suit is barred by limitation. The question of limitation is a mixed question of law and fact. However, a meaningful reading of the plaint shows that the suit is barred by limitation and the suit can be rejected at the threshold, for deciding the same, the averments made in the plaint alone can be considered, and the contention of the defendants cannot be taken into consideration at this stage. Under Article 54 of the Limitation Act, when the date is fixed the agreement for performance, the limitation commences from the date on which the performance is mentioned and suit should be filed within three years from that date, and if no date is fixed, the period of three years has to be calculated from the date when the plaintiff has the notice of refusal. In the instant case, according to the plaintiff, no time is fixed for performing the contract. However, the plaintiff requested the first defendant to execute the sale deed, and even though the defendant agreed to execute the sale deed in the month of January 2016, he did not come forward. Thereafter, in the year 2017, a legal notice has been issued and the same has been returned and hence, in the year 2018, the suit has been filed within 3 years. Hence, from the averments made in the plaint, it could be seen that the suit has been filed within a period of 3 years from the date of refusal of performance of contract. However, it is for the plaintiff to establish all those contention during the trial, and at this stage, the plaint cannot be rejected as barred by limitation based on the

contention of the defendants.

12. Very recently the Hon'ble Supreme Court in Urvashiben v. Krishnakant Manuprasad Trivedi reported in 2019 (13) SCC 372 has held in paragraphs 15 and 20 as follows:

> "15. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC. Equally, it is well settled that for the purpose of deciding application filed under Order 7 Rule 11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. Article 54 of the Limitation Act, 1963 prescribes the limitation of three years, for suits for specific performance. The said Article reads as under:

Description of suit	Period of limitation	Time from which period begins to run
*	*	*
54. For specific performance of a contract	3 years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

> From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under Order 7 Rule 11, same is to be considered from the facts of each case, looking at the averments made in the plaint, for the purpose of adjudicating such application.
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> 20. By applying the aforesaid principles in the judgments relied on by Shri Dushyant A. Dave, learned Senior Counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under Order 7 Rule 11 CPC.

> It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that the suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under Order 7 Rule 11(d) CPC.”

13. The learned senior counsel relying upon the judgment of the Hon'ble Supreme Court of India in a case reported in (2007) 10 SCC 59 (Ram Prakash Gupta Vs. Rajiv Kumar Gupta and others), wherein the Hon'ble Supreme Court has held that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected . In the instant case, as stated earlier, necessary averments made in the plaint regarding the execution of sale agreement, and also refusal of the defendants to execute the sale deed. Hence, the judgment relied upon the learned Senior Counsel is not applicable to the fact of the case on hand.

14. The learned Senior Counsel also relied upon another judgment of the Hon'ble Supreme Court reported in 2007 (5) SCC 614 (Hardeshores (P) Ltd /vs/ Hede and Company), wherein the Hon'ble Supreme Court has held that by considering the averments made in the plaint and if it does not disclose the cause of action and limitation, it is liable to be rejected. In the present case, the plaint has disclosed the cause of action and also limitation, and this judgment also not applicable to the facts of the present case. In these circumstances, the contention of the learned senior counsel cannot be countenanced.

15. The next limb of argument of the learned senior counsel is that, the sale agreement is necessarily to be registered under Section 17(1-A) of the Registration Act and based on the unregistered sale agreement, the plaintiff cannot maintain the suit and hence, it should be rejected. It was disputed by the learned counsel appearing for the respondent by contending that the agreement was in the year 2008, as the sale agreement is not creating any right or title, and it does not required registration under Registration Act. Even under Section 17(1-A) of the Registration Act, the agreement needs to be registered, if the possession is handed over as per Section 53-A of the Transfer of Property Act after amendment of the Registration Act 2001. Hence, the Agreement need not be registered. It is settled

law that the sale agreement itself does not create any right or title and it is not covered under Section 2(10) of the Stamp Act. Hence, it does not require any registration under Registration Act as no right has been created in respect of immovable property. Even under Section 17(1-A) of the Registration Act, the sale agreement is to be registered if the possession has been handed over as per the Section 53-A of the Transfer of the Properties Act, after the amendment to the Registration Act in the year 2001 under the Tamil Nadu Act 48 of 2001. That apart, whether the document is compulsorily registrable or not is an issue to be decided at the time of trial and at this stage, this issue cannot be decided, and on that basis the plaint cannot be rejected.

16. The next and final contention of the learned Senior Counsel is that in the alleged Sale Agreement, only the first defendant power of attorney alone has signed, and the purchaser, namely, the plaintiff had not signed in the agreement. Hence, there is no consensus ad idem between the parties, and there is no concluded contract between the parties, hence, the agreement itself is void and it cannot be enforced. But the contention cannot be countenanced for the simple reason that, it is a settled law that, if the owner of the property has signed in the agreement and executed in favour of the purchaser it is enough for claiming right under the document and the plaintiff need not sign in the document. In similar circumstances, this Court in 2014 (1) CTC 603(Muthukrishna Gounder /vs/ Gowri and other) held as follows :

> " So far as the finding of the Lower Appellate Court that the plaintiff had not signed Ex.A1-Agreement and therefore, there is no consensus ad idem and therefore, the said document cannot be relied upon is concerned, the Hon'ble Apex Court and this Court in various judgments have repeatedly held that if the owner of the property had signed the agreement executed in favour of the purchaser is sufficient for claiming right under the said document. In the case on hand, though the plaintiff had not signed Ex.A1 document, he is entitled to claim right under the document for the reason that the owner of the document himself had executed the said document in favour of the plaintiff. "

17. A perusal of the agreement, which is part of the plaint, it could be seen that the first defendant, who is the power of attorney of the 2nd defendant/owner of the property, has duly signed in the sale agreement cum receipt, and he has also

not disputed that signature. In the said circumstances merely because, the purchaser, namely, the plaintiff herein failed to sign in the document, it cannot be said that there is no concluded contract and based on that the plaintiff cannot maintain the suit. Considering all those circumstances, the trial Court rightly rejected the petitioner's application. I find no illegality or irregularity in the order passed by the Court below. I find no merit in the revision and the same is liable to be dismissed.

18. Accordingly, the Civil Revision Petition is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mrp

To

The III Additional District Court,
Kallakurichi.

Order in
C.R.P.No.3861 of 2018 and
C.M.P.No.5832 of 2019

PP(CO)
GS(06/08/2020)