



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2020

CORAM

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THE HON'BLE MR.JUSTICE M.GOVINDARAJ

**A.S. (MD).NO.27 OF 2019
AND C.M.P. (MD) NO.1301 OF 2019**

K.C.Chandrasekaran

: Appellant/Plaintiff

vs.

1.M.Mohammed Ansari

2.M.Mohammed Shamsudeen

3.M.Mohammed Rafiq

: Respondents/Defendants

PRAYER :- Appeal Suit filed under Section 96 of the Code of Civil Procedure praying to set aside the judgment and decree dated 17.06.2016 in I.A.No.45 of 2012 in O.S.No.7 of 2011 on the file of the learned Additional District Judge, Pudukkottai.

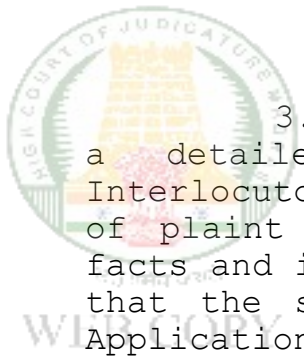
For Appellant : Mr.A.S.Kailasam

For Respondents : No Appearance

J U D G M E N T

Challenging the order passed by the Court below in rejecting the plaint under Order 7 Rule 11 of the Code of Civil Procedure, the present Appeal has been preferred.

2. The plaintiff is the appellant. The plaintiff filed a suit for specific performance of sale contract. The case of the plaintiff is that he wanted to invest his money in agricultural lands. The transaction was facilitated by two Mediators, namely, Selvam and Murugesan. After inspection of several properties, the plaintiff agreed to purchase the property belonging to the defendants. The second defendant and other defendants entered into a sale agreement on 05.10.2007. Out of the total sale consideration of Rs.23,02,011/-, the plaintiff paid a major portion of sale consideration to the tune of around Rs.18,02,011/- on four occasions. When the agreement was in force, the defendants attempted to alienate the property and hence, the plaintiff issued a legal notice on 22.10.2008. Since the defendants failed to respond to the same, the plaintiff filed the above suit for specific performance.



3. The defendants have denied the plaint averments and filed a detailed written statement. Thereafter, they filed an Interlocutory Application under Order VII Rule 11 CPC for rejection of plaint on the grounds of limitation, suppression of material facts and improper valuation. It is the contention of the defendants that the suit is hit by Order II Rule 2 CPC. The Interlocutory Application filed for rejection of plaint was allowed by the Trial Court.

4. Inveighing the order of rejection of plaint, the learned counsel for the appellant would contend that the order passed by the Trial Court is beyond the scope of Order VII Rule 11 CPC. In so far as the rejection of plaint is concerned, the averments made in the plaint alone shall be considered. Whereas, the Trial Court, relying on the averments made in the written statement has decided the issue. Not only that, even before deciding the issue, the Trial Court has pre-determined the same. The issues of limitation as well as ingredients of Order II Rule 2 CPC cannot be applied for rejection of plaint. Those grounds may be applicable to the dismissal of the suit and not for rejection of plaint.

5. In support of his contention, the learned counsel for the appellant would rely on a judgment of the Hon'ble Supreme Court in ***RATHNAVATHI VS. KAVITA GANASHAMDAS [2015 (5) SCC 223]***.

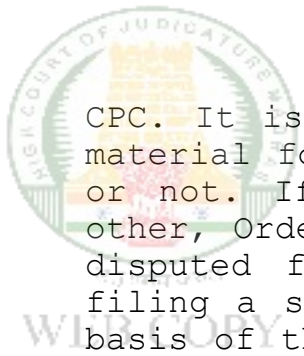
6. Heard the submissions made on either side and perused the materials available on record.

7. At the outset, it is well settled principle that for rejecting a plaint, the averments made in the plaint alone are germane for consideration and the averments made in the written statement or any other pleadings cannot be considered for this purpose.

8. It is relevant to note that the Trial Court has framed the following point for consideration for rejecting the plaint:-

"Whether this suit is barred by limitation for suppressing the pendency of earlier suit before District Munsif -cum- Judicial Magistrate Court, Keeranur, for seeking permanent injunction for the same cause of action against these petitioners/defendants as filed by the respondent/plaintiff in violation to legal provisions of Or.II R.2(3) of CPC?"

9. A mere perusal of the above point for consideration would go to show that the Trial Court has traversed beyond the plaint averments and relied on the averments made in the written statement. Such course of action is contrary to the well settled principles of law and it is beyond the scope of Order VII Rule 11

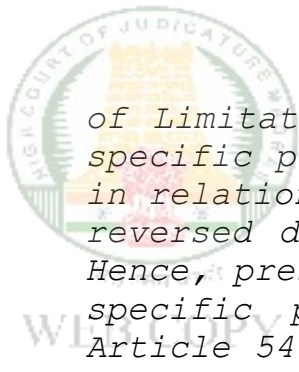


CPC. It is well settled that the causes of action of the suits is material for deciding as to whether Order II Rule 2 CPC will apply or not. If the causes of action are different from one suit to other, Order II Rule 2 CPC cannot be applied, without eliciting the disputed facts, for, as held by the Hon'ble Supreme Court, for filing a suit for injunction, the cause of action would be on the basis of the threat to the title or of encumbrance of the property or dispossession. On the other hand, the suit for specific performance would be based on non-performance of one of the parties in performing his/her part of contract. Whether the causes of action differs or not? and whether two or more suits filed by the party are on the same causes of action or not? can be decided after examining the factual aspects and the impact of law on the issue. The Hon'ble Supreme Court in **RATHNAVATHI VS. KAVITA GANASHAMDAS [2015 (5) SCC 223]** has held as under:

"Contract - Specific performance of agreement - Applicability of bar - Order II Rule 2 of Civil Procedure Code, 1908 - Respondent-Plaintiff filed two suits for specific performance of agreement and grant of permanent injunction in relation to suit house against Appellants-Defendants - High Court reversed decree of Trial Court and decreed both suits in appeal - Hence, present appeal - Whether bar contained in Order II Rule 2 of Code was attracted so as to non-suit Plaintiff from filing suit for specific performance of agreement - Held, bar contained in Order II Rule 2 of Code was not attracted because of distinction in cause of action for filing two suits - So far as suit for permanent injunction was concerned, it was based on threat given to Plaintiff by Defendants to dispossess her from suit house - So far as cause of action to file suit for specific performance of agreement was concerned, same was based on non performance of agreement by 2nd Defendant in Plaintiff's favour despite giving legal notice to 2nd Defendant to perform her part - Both suits were, therefore, founded on different causes of action and hence could be filed simultaneously - Indeed even ingredients to file suit for permanent injunction were different than that of suit for specific performance of agreement - Defendants failed to show that second suit was also in respect of same cause of action as that on which previous suit was based - Basic requirement in relation to cause of action was not made out - Further, effect of execution of sale deed in Plaintiff's favour by Defendants would obviously result in cancellation of contract of sale of suit house between Owner/2nd Defendant and Subsequent Purchaser/1st Defendant - Contract between them stood frustrated due to impugned decree because now 2nd Defendant would not be in position to sell suit house to 1st Defendant though she had received sale amount from 1st Defendant for such sale of suit house in her favour - Direction was made upon 2nd Defendant to refund such sale amount to 1st Defendant - Appeal disposed of.

Limitation - Specific performance - Barred by time - Article 54

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of Limitation Act, 1963 - Respondent-Plaintiff filed two suits for specific performance of agreement and grant of permanent injunction in relation to suit house against Appellants-Defendants - High Court reversed decree of Trial Court and decreed both suits in appeal - Hence, present appeals by 1st and 3rd Defendants - Whether suit for specific performance was barred by limitation prescribed under Article 54 of Act - Held, time was not essence of agreement for its performance and parties too did not intend that it should be so - Time to perform agreement was not made an essence of contract by parties - As even after making balance payment after expiry of lease period, 2nd Defendant/Owner had to make efforts to transfer land in name of Plaintiff - That apart, no specific clause was found in agreement, which provided for completion of its execution on or before any specific date - Mere reading of Article 54 of Act would show that if date was fixed for performance of agreement, then non-compliance of agreement on date would give cause of action to file suit for specific performance within three years from date so fixed - However, when no such date was fixed, limitation of three years would begin when Plaintiff had noticed that Owner had refused performance of agreement - High Court rightly appreciated evidence for recording findings in Plaintiff's favour that she was ready and willing to perform her part of agreement - Suit for specific performance was not barred by limitation - Findings of High Court upheld - Appeal disposed of."

10. From a reading of the above judgment, it is well settled that the causes of action is material to determine the applicability of bar under Order II Rule 2 CPC and it shall not be merely on pleadings. In so far as the sale agreement is concerned, time is the essence of contract. It is the date of knowledge as to when one party refused to perform the duty in his part of contract is crucial to give rise to a cause of action for instituting a suit for specific performance. This factum cannot be decided merely on pleadings. The issue of limitation in these cases is a mixed questions of facts and law and it can be decided only after elaborate trial.

11. In the instant case, the Trial Court has framed the point for consideration as to whether the suit is barred by limitation for suppression of pendency of the earlier suit and in violation of Order II Rule 2 (3) CPC by itself proves that the Trial Court travelled beyond the plaint and adverted as to the factum of previous suit and its pendency as well as the question of limitation, Order II Rule 2 CPC from the averments made in the written statement. When those averments are not available in the plaint, such a point for consideration ought not to have been framed. The above said issues can be decided on merits only after elaborate trial. Therefore, I am of the considered opinion that the framing of the above point for consideration itself is beyond the scope of Order VII Rule 11 CPC and the rejection of plaint applying



Bar of Limitation and Order II Rule 2 CPC is also outside the jurisdiction.

12. In such circumstances, the order dated 17.06.2016 passed in I.A.No.45 of 2012 in O.S.No.7 of 2011 by the learned Additional District Judge, Pudukkottai, stands set aside and the matter is remitted to the Trial Court for further proceedings.

13. In fine, the Appeal Suit is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/
Assistant Registrar(CS-II)

/True copy/

/ /2021
Sub Assistant Registrar(CS-)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Additional District Judge,
Pudukkottai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1.CC TO Mr.T.Pon Ramkumar, Advocate in SR No.24818

A.S.(MD) .NO.27 OF 2019
09.12.2020

SML/TK
PK/29.01.2021 : 5P/5C