



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On :20.01.2019

Delivered On :11.03.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)No.955 of 2019

and

C.M.P. (MD)Nos.5412 and 11037 of 2019

R.Vijayalakshmi

.. Petitioner / Defendant

Vs.

Abdul Rahman

.. Respondent / Plaintiff

Prayer: This Civil revision petition is filed under Article 227 of Constitution of India, to call for the records relating to the suit in O.S.No.163 of 2019 on the file of the District Munsif Court, Madurai Town and to strike off the same as illegal not maintainable.

For Petitioner : Mr.Ajmal Khan, Senior Counsel

For M/s.Ajmal Associates

For Respondent : Mr.R.R.Kannan

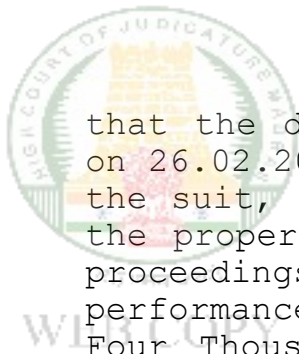
ORDER

Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in O.S.No.163 of 2019 on the file of the District Munsif Court, Madurai Town.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.163 of 2019 for a relief of bare injunction. To strike off the suit, the petitioner herein has preferred this revision petition.

4. The case of the revision petitioner is that the suit is not maintainable. The sale deed and other documents are invalid. There cannot be an unregistered sale agreement subsequent to 17.05.2015. The sale agreement is invalid and unenforceable. Instead of filing the suit for specific performance, the plaintiff sought for a remedy of permanent injunction. The suit is filed for bare injunction under Order 2 Rule 2 of CPC. The defendant and her sons sold the property to A.K.Ahamed on 26.02.2019 and the allegation



that the defendant interfered with the possession of the plaintiff on 26.02.2019 and on 19.03.2019 is absolutely wrong. After filing of the suit, the plaintiff has unlawfully trespassed into a portion of the property on 31.03.2019 and the purchaser initiated a criminal proceedings. Instead of paying the Court fee for specific performance which would be Rs.8,94,000/- (Rupees Eight Lakhs Ninety Four Thousand only), the plaintiff had paid only Rs.30/- (Rupees Thirty only) as Court fee for an injunction suit. A sale agreement cannot create any interest in the immovable property. Possession was never handed over to the plaintiff. An order of rejection passed under Order 7 Rule 11 of CPC is subject to an appeal under Section 2 of CPC r/w Section 96 of CPC and therefore, invoking Article 227 of the Constitution is necessary to strike off the plaint.

5. On the side of the petitioner, it is stated that the alleged agreement is said to have been written in a letter pad which is alleged to have been signed by the husband of the defendant. The alleged consideration for the sale agreement is Rs.2,98,00,000/- (Rupees Two Crores and Ninety Eight Lakhs only) and allegation as to the payment of a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as advance are all false. The allegation of the plaintiff is that he paid Rs.16,00,000/- (Rupees Sixteen Lakhs only) on 09.05.2016 and possession was handed over to him on that date is false. All the unregistered documents and the alleged sale deed are fabricated documents. The husband of the deceased died on 14.07.2016. Only three years, thereafter the plaintiff has come forward with the suit for a prayer of bare injunction stating that the defendant and his men with Police and goondas trespassed into the suit properties. The alleged receipt for part payment was on 09.05.2016 but the seal in the stamp paper was of the year 2014 and the possession is said to have been handed over, on the basis of receipt, the plaintiff has to file a suit for specific performance and not for bare injunction. The suit has been filed three years after the death of defendant's husband and the suit is barred under Article 54 of Limitation Act and the suit is hit under Order 2 Rule 2 of CPC.

6. The learned counsel for the petitioner would rely upon the judgement passed by the Hon'ble Supreme Court in the case of **Virgo Industries (Eng.) Private Limited v. Venturetech Solutions Private Limited** reported in **(2013) 1 Supreme Court Cases 625**, wherein it is stated as follows:

"9. Order II Rule 1 requires every suit to include the whole of the claim to which the plaintiff is entitled in respect of any particular cause of action. However, the plaintiff has an option to relinquish any part of his claim if he chooses to do so. Order II Rule 2 contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to



make. If the plaintiff so acts, Order II Rule 2 of CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order II Rule 2 (2) does not contemplate omission or relinquishment of any portion of the plaintiff's claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the Court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave of the Court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order II Rule 2 (2) and (3) of the CPC that the aforesaid two sub-rules of Order II Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situations where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit provided that at the time of omission to claim the particular relief he had obtained leave of the Court in the first suit.

10. The object behind enactment of Order II Rule 2 (2) and (3) of the CPC is not far to seek. The Rule engrafts a laudable principle that discourages/prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the Court which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons. The situations where the bar under Order II Rule 2 (2) and (3) will be attracted have been enumerated in a long line of decisions spread over a century now. Though each of the aforesaid decisions contain a clear and precise narration of the principles of law arrived at after a detailed analysis, the principles laid down in the judgment of the Constitution Bench of this Court in *Gurbux Singh v. Bhooralal*[2] may be usefully recalled below:



"In order that a plea of a bar under O. 2. r. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar." The above principles have been reiterated in several later judgments of this Court. Reference by way of illustration may be made to the judgments *Deva Ram & Anr. v. Ishwar Chand & Anr.*[3] and *M/s. Bengal Waterproof Ltd.*

v. M/s Bombay Waterproof Manufacturing Co. & Anr.[4]"

7. The learned counsel for the petitioner would rely upon the judgement passed by this Court in the case of **Thirugnanasambandam v. Kannan and others** reported in **2018 (6) CTC 198**, wherein it is stated as follows:

"36. It is the contention of the learned counsel for the defendants that the sale agreement provides that the property was handed over pursuant to the agreement and as such, in view of the amendment to Section 17(1-A) of the Registration Act, the document is inadmissible in evidence. In view of the said contention of the learned counsel for the defendants, it would be appropriate to extract Section 17(1-A) of the Registration Act, which reads as follows:-

"17. Documents of which registration compulsory:-
(1).....

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or



after such commencement then, they shall have no effect for the purposes of the said Section 53-A."

It is significant to note that the above Section clearly provides that the contracts to transfer for consideration any immovable property for the purpose of Section 53-A of the Transfer of Property Act shall be registered and if they have not been registered, then they shall have no effect for the purpose of Section 53-A of the Transfer of Property Act.

37. Section 53-A of the Transfer of Property Act clearly provides that if an agreement holder was put in possession of the property and he was having an instrument of transfer that has not been completed in the manner known to law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee in respect of the property of which the transferee has taken or continued in possession other than a right expressly proved by the terms of the contract. Therefore, it is clear that Section 53-A of the Transfer of Property Act is a defending provision under which a transferee can defend his possession against the transferor who wanted to claim possession from the transferee and for defending such action against the transferor the contract is required to be registered. Hence, the claim benefit under Section 53-A of the Transfer of Property Act, the contract has to be registered"

8. The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of **N.A.Chinnasamy and another v. S.Vellingirinathan** reported in **2013 (6) CTC 809**, wherein it is stated as follows:

"The Hon'ble Supreme Court in the decisions referred to above has categorically ruled that where there is abuse of process of Court or filing the suit itself is contrary to justice and against public policy, this Court has to exercise its power under Article 227 of the Constitution. If it is a frivolous or vexatious suit, as per the pleadings of the plaint and the Court process is being waster, this Court has to exercise its power under Article 227 of the Constitution of India to strike off the plaint."

9. The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **State Bank of India v. Gracure Pharmaceuticals Limited** reported in **(2014)**



3 Supreme Court Cases 595, wherein it is stated as follows:

"11.The abovementioned decisions categorically lay down the law that if a plaintiff is entitled to seek reliefs against the defendant in respect of the same cause of action, the plaintiff cannot split up the claim so as to omit one part to the claim and sue for the other. If the cause of action is same, the plaintiff has to place all his claims before the Court in one suit, as Order 2 Rule 2 CPC is based on the cardinal principle that the defendant should not be vexed twice for the same cause.

12.Order 2 Rule 2 CPC, therefore, requires the unity of all claims based on the same cause of action in one suit, it does not contemplate unity of distinct and separate causes of action. On the abovementioned legal principle, let us examine whether the high Court has correctly applied the legal principle in the instant case."

10.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of **Southern and Rajamani and 33 others v. R.Srinivasan and others** reported in **2010 (4) CTC 690**, wherein it is stated as follows:

"From the cumulative reading of the decisions referred to supra, it is easily discernible that Article 227 of the Constitution of India can be invoked by every High Court under the guise of superintendence, on the following grounds:

- (a) to prevent abuse of process of law
- (b) to prevent miscarriage of justice
- (c) to prevent grave injustice
- (d) to establish both administrative as well as judicial power of high Court."

11.It is stated that instead of filing a suit for specific performance, the plaintiff has filed the suit for bare injunction and he obtained an interim stay order. There is no chance for the plaintiff to have obtained possession on the alleged payment of Rs.65,00,000/- (Rupees Sixty Five Lakhs only). At any event, the plaint is not maintainable and it is to be strike off.

12.On the side of the respondent, it is stated that the documents are only receipts for payment. In the document, it is clearly stated that there was an intention of the sale and acceptance of payment and all the relevant ingredients were available in the document. In the document, both the parties have signed and the agreement was entrusted to the plaintiff. Non filing of a suit for specific performance, it will not affect the rights of the defendant in claiming possession. The duty is cast upon the petitioner to prove that there is an abuse of law.



13.The learned counsel for the respondent would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others v. Tuticorin Educational Society and another** reported in 2019 (5) CTC 696, wherein it is stated as follows:

"Secondly, the high Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of Supervisory jurisdiction of the high Court. In A. Venkatasubbiah Naidu v. S.Chellappan and others, 2000 (4)CTC 358 (SC) : 2000 (7) SCC 695, this Court held that 'though no hurdle can be put against the exercise of the Constitutional powers of the high Court, it is a well recognized principle which gained judicial recognition that the high Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy'."

14.The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of **A.Kaleur Rahman and 9 others v. P.Kannan** reported in 2019 (6) CTC 263, wherein it is stated as follows:

"Bar of Civil Court jurisdiction - Suit or proceedings before Civil Court barred, if injunction sought for to prevent or direct action to be taken by any authority under Act - suit for bare injunction restraining them from granting connection falls within bar of Section 145."

15.The case of the petitioner is that the respondent filed a suit for bare injunction on the basis of an unregistered sale agreement. The suit in O.S.No.163 of 2019 was filed by the respondent/plaintiff for a relief of permanent injunction. The allegation of the respondent is that on 17.05.2015, there was an agreement of sale between the respondent and the husband of the plaintiff and the sale consideration was fixed as Rs.2,98,00,000/- and the plaintiff paid Rs.5,00,000/- as advance on 17.05.2015 and thereafter, a sum of Rs.60,00,000/- was paid by the plaintiff. On 04.06.2016, an agreement was executed in the form of receipt, by which possession of the property was entrusted with the plaintiff and that the defendant has made an attempt to dispossess him from the suit property on 26.02.2019 and on 19.03.2019.

16.The case of the revision petitioner is that the alleged agreement dated 17.05.2015 and 09.05.2016 are unregistered and fabricated documents. The possession was not entrusted to the



plaintiff. Only after the filing of the suit, the plaintiff trespassed into the suit property on 31.03.2019 with the help of police and goondas. Even if the entire averments made in the plaintiff was taken as true, the course available to the plaintiff is only for specific performance not for injunction. The leave to file a suit for specific performance was not reserved by the plaintiff in the plaint. The present suit is barred under Order 2 Rule 2 of CPC. The bare injunction suit on the basis of an unregistered sale agreement is not maintainable under Section 17(a) of the Registration Act. The Order 11 Rule 7 of CPC is not a bar for seeking a remedy under Article 227 of Constitution of India.

17.An agreement for sale of immovable property is to be registered. Under Section 17(g) and 17(1)(a) of the Registration Act, an unregistered document is invalid in evidence. Claim of the plaintiff is that possession was handed over to him on the basis of an unregistered document. The petitioner has admitted that after the filing of the suit, the plaintiff has trespassed into the property and encroached a portion of the property. In short, the defendant admitted the possession of the plaintiff in a portion of the suit property. The prayer is only for bare injunction and the defendant admitted the possession of the plaintiff in a portion of the suit property whether the plaintiff is in rightful possession or in possession as a trespasser has to be decided in the suit. The petitioner can raise all the above said points before the trial Court at the time of trial.

18.Hence, at this juncture, there is no reasons sufficient enough to interfere in the order of the trial Court. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The District Munsif, Madurai.

+1 CC to M/s.J.VISWANATHAN, Advocate (SR-11114[F]

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-11354[F]

C.R.P. (PD) (MD)No.955 of 2019

11.03.2020

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