

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.07.2021

PRONOUNCED ON: 30.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 963 of 2021

And

C.M.P.No. 7758 of 2021

S.Heerachand Jain ... Petitioner/Petitioner/2nd Defendant

-Vs-

T. Namasivayam ... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 29.01.2021 made in I.A.No.1 of 2019 in O.S.No. 4708 of 2018 on the file of the XVI Assistant City Civil Court, Chennai.

For Petitioner : Mr. S.Heerachand Jain
Party-in-person

For Respondent : Mr. Shah and Shah

ORDER

This Revision Petition has been filed by the 2nd defendant in O.S. No.4708 of 2018, pending on the file of the XVI Assistant City Civil Court, Chennai, aggrieved by the order dated 29.01.2021 dismissing the application in I.A. No.1 of 2019 filed by him under Order VII Rule 11 CPC to reject the plaint.

2. O.S. No. 4708 of 2018 has been filed by the respondent herein seeking a judgment and decree in the nature of permanent injunction restraining the defendants from interfering with peaceful possession and enjoyment of a shop portion in the name and style of Vijaya Sundhari Chats measuring 100 sq.ft., in No. 81/39, Avathana Pappair Street, Choolai, Chennai 600 012, except by due process of law.

3. In the plaint it had been stated that the 1st defendant, S. Mekala was the absolute owner of the property and that the plaintiff, T. Namasivayam entered into an unregistered lease agreement with her on 30.06.2010 and had paid an advance of Rs. 2,50,000/- (Rupees two lakhs and fifty thousands only). When the lease expired on 29.06.2015, the 1st

defendant demanded a further sum of Rs. 2,50,000/- (Rupees two lakhs and fifty thousands only) and the plaintiff paid the said sum and entered a fresh lease agreement. The plaintiff claimed tht he had been running the shop without disturbance for the past eight years.

4. It had been further stated on 01.08.2018, the 1st defendant requested the plaintiff to give the original lease agreement for production before the Income Tax Officials. It was given by him but was not returned by the 1st defendant.

5. It had been further stated that on 04.09.2018, the 2nd and 3rd defendants entered the shop with several other persons and threw everything inside outside and threatened that they would lock the shop. It is under these circumstances that the suit had been filed seeking permanent injunction from unlawful dispossession.

6. Along with the plaint, 6 photographs and gas receipts alone had been filed as documents.

7. The revision petitioner/2nd defendant entered appearance and filed I.A. No. 1 of 2019 under Order VII Rule 11 CPC seeking to reject the plaint.

8. In the affidavit filed in support of the application, the revision petitioner/2nd defendant had a separate set of facts to narrate.

9. He claimed that he filed C.S. Nos. 561 of 2002 and 562 of 2002 for specific performance of agreements of sale with respect to the suit property against G. Selvamurthy and G. Ashok Kumar. The suits were decreed by judgment dated 01.03.2004. Sale Deed was also executed by the Assistant Registrar (O.S.I) and registered as Document No. 346 of 2005 in the office of the Sub Registrar, Purswalkam on 06.01.2005. Original Side Appeals in O.S.A. Nos. 273 of 2005 and 274 of 2005 were dismissed on 22.02.2008. Special Leave Petitions in SLP (Civil) Nos. 18842 and 18843 of 2008 were also dismissed on 06.12.2013. He had filed E.P. Nos. 127 of 2005 and 128 of 2005 for delivery of possession. The Master, High Court, Madras, on 14.06.2018 directed execution of warrant for delivery of

possession by breaking open of locks and also granted police protection. The Bailiff submitted a report dated 14.09.2018 that while executing the warrant, a tenant, Namasivayam (the plaintiff in O.S. 4708 of 2018) sought three days' to vacate and later on 10.09.2018 handed over vacant possession and also gave a letter acknowledging the same. The Execution Petitions were then posted before the Master on 26.09.2018 and the counsel for Namasivayam appeared and after considering the submissions made and the report of the Bailiff, the Master terminated E.P. Nos. 127 of 2005 and 128 of 2005 by order of even date.

10. It had been further stated by the revision petitioner that the very same Namasivayam, then created a fictitious person in the 1st defendant, Mrs. Mekala, claiming that she was the owner of the property, whereas the defendants in the Civil Suits, G. Selvamurthy and G. Ashok Kumar were the actual owners of the property. It is was stated that the plaint in O.S. No. 4708 of 2018 contains pleadings false to the knowledge of the plaintiff.

11. It had been further stated that subsequent to taking possession, the revision petitioner had obtained permission from the authorities to

demolish the building and had also demolished the building. It is claimed that the plaintiff, Namasivayam filed I.A. No. 3 of 2019 in this regard and it is therefore imputed that he was well aware of the truthful facts and that therefore the cause of action pleaded was false the plaint should have been rejected.

12. Heard arguments advanced by the revision petitioner who appeared as party-in-person and M/s. Shah and Shah, learned counsels for the respondent.

13. For the sake of convenience, the parties shall be referred as plaintiff and 2nd defendant. The 2nd defendant in O.S. No.4708 of 2018 is the revision petitioner and the plaintiff in O.S. No. 4708 of 2018 is the respondent. The 2nd defendant had filed I.A. No. 1 of 2019 to reject the plaint in O.S. No. 47-8 of 2018 under Order VII Rule 11 CPC. That application had been dismissed by the XVI Assistant Judge, City Civil Court, Chennai, leading to the filing of this Revision Petition by the 2nd defendant.

14. In *Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and Others* reported in (2020) 7 SCC 366, the Honourable Supreme Court had held as follows:-

“23.1. We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:

“11. Rejection of plaint.—The plaint shall be rejected in the following cases—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the

evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315, followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is

meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding

the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. *In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

23.11. *The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I*

Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a complaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the complaint itself. For the said purpose, the averments made in the complaint in their entirety must be held to be correct. The test is as to whether if the averments made in the complaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In *Hardesh Ores (P) Ltd. v. Hede & Co.* [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The complaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the complaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. **D. Ramachandran v.**

R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941].

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315, followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998)

2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.

24.1. In Swamy Atmananda v. Sri Ramakrishna Tapovanam [Swamy Atmananda v. Sri Ramakrishna Tapovanam, (2005) 10 SCC 51] this Court held : (SCC p. 60, para 24)

“24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited

to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

24.2. In *T. Arivandandam v. T.V. Satyapal* [*T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467] this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)

“5. ... The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing....”

24.3. Subsequently, in *ITC Ltd. v. Debts Recovery Appellate Tribunal* [*ITC Ltd. v. Debts Recovery Appellate Tribunal*, (1998) 2 SCC 70] this

Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

*24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in **Madanuri Sri Rama Chandra Murthy v. Syed Jalal** [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.”*

[Emphasis Supplied]

15. In **K.Akbar Ali Vs. K.Umar Khan and Others** reported in **2021 SCC OnLine SC 238**, the Hon’ble Supreme Court observed as follows:-

“5. It is well settled that while considering an application under Order VII Rule 11 of the CPC, the question before the Court is whether the

plaint discloses any cause of action or whether the suit is barred by any law, on the face of the averments contained in the plaint itself. While considering an application under Order VII Rule 11 of the CPC the Court is not to look into the strength or weakness of the case of the plaintiff or the defence raised by the defendant.

.....

 7. In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in **ITC v. Debts Recovery Appellate Tribunal** reported in (1998) 2 SCC 70: **AIR 1998 SC 634**, **clever drafting creating illusions of cause of action are not permitted in law** and a clear right to sue should be shown in the plaint. Similarly the Court must see that **the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint**. Moreover, the provisions of Order VII Rue 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.

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12. It is patently clear from a meaningful reading of the plaint in its entirety that the plaintiff has no cause of action against the first defendant being the owner of the suit property, the Power of Attorney being patently invalid. The inter-se dispute between the heirs of the deceased-Defendant No. 1 will not confer any right on the petitioner as his claim is based upon a pre-emption agreement executed by a power of attorney, which does not authorize the attorney to deal with the property of the said defendant.

13. The Division Bench of the High Court has done substantial justice by nipping in the bud, a suit which is ex facie not maintainable for want of cause of action against the defendants or any of them, thereby saving precious judicial time as also inconvenience and expenditure to the parties to the suit.”

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[Emphasis Supplied]

16. The principles laid down direct that it must be determined whether a meaningful reading of the plaint discloses a cause of action. It

must also be determined whether the plaintiff had come to Court with clean hands.

17. In this case, the plaintiff had suppressed one very vital fact, namely the proceedings before the Master of the High Court, Madras, where his Counsel had appeared. He had built a cause of action. He is God personified in creating a fictitious person, Mrs. Mekala, the 1st defendant. Not only should the Court read the plaint, but Court documents have to be perused to determine whether the plaintiff had disclosed truthful facts before the Court.

18. In the plaint, the plaintiff claims to be a lessee under the 1st defendant. He claims that the original of the 2nd lease agreement had been handed over to the 1st defendant. He had produced the 1st lease agreement. He had not produced the copy of the 2nd lease agreement. He had not produced any document that he was in possession on the date of filing of the suit. He had not disclosed that he handed over possession to the Court Bailiff., who had taken lawful possession. These are facts which stare in the

face of the plaintiff. The Court records speak for themselves.

19. I am deeply disappointed with the order passed by the XVI Assistant City Civil Court Judge. A duty is case on the Presiding Officer of the Trial Court to probe deep to determine the facts. He has a duty to examine the records of parallel judicial proceedings. Rule 75 of the Civil Rules of Practice give that power. I hold that the learned Judge should have applied his mind with the diligence which is expected. As directed by the Hon'ble Supreme Court,

*“The learned Munsif must remember that if on a meaningful—not formal—reading of the **plaint** it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing....” - T. Arivandandam v. T.V. Satyapal [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467]*

*“Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the **plaint**. - ITC v. Debts*

Recovery Appellate Tribunal reported in (1998) 2 SCC 70 : AIR 1998 SC 634.

“The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.” - Madanuri Sri Rama Chandra Murthy v. Syed Jalal [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602].

“The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.” - Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and Others reported in (2020) 7 SCC 366.

“Moreover, the provisions of Order VII Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are

*not allowed to consume the time of the Court.” -
K.Akbar Ali Vs. K.Umar Khan and Others reported in
2021 SCC OnLine SC 238.”*

20. It is palpably evident that the plaint in O.S. No. 4708 of 2018 has falsity as it legs to stand on. Such a plaint cannot be permitted to be on the register. It would only pollute the system. It has to rejected and is directed to be struck off.

21. In the result, the Civil Revision Petition is allowed with costs of Rs. 25,000/- (Rupees Twenty Five Thousands only). The suit in O.S. No. 4708 of 2018, pending on the file of the XVI Assistant City Civil Court, Chennai is rejected and is directed to be struck off the Suit Register. Connected Miscellaneous Petition is closed.

30.07.2021

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Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking

C.V.KARTHIKEYAN, J.

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