Reserved on : 29.01.2021

Pronounced on : 10.02.2021

A.No.2374 of 2018
in
C.S.No.869 of 2017
and
O.A.No.1120 of 2017

R.PONGIAPPAN, J.

The 1st Defendant in C.S.No.869 of 2017, has filed this application, under Order XIV Rule 8 of Original Side Rules r/w Order VII Rule 11 (a and d) of CPC and Section 151 of CPC, praying to reject the plaint in C.S.No.869 of 2017.

2. Heard Mr.M.Kamalanthan, learned counsel for the applicant/1st defendant, Mrs.K.Bhanumathi, learned counsel for the 1st respondent/plaintiff and Mr.G.Veerapathiran, learned counsel for the 2nd respondent/2nd defendant.

3. Originally, the 1st respondent/plaintiff filed this suit against the applicant herein and against the 2nd respondent for the relief of specific performance, particularly to enforce the Agreement of Sale dated 19.06.2012, 29.09.2012 and 29.11.2012, by directing the applicant/1st defendant to execute and register three sale deeds in respect of the plaint schedule properties. While the suit is pending for filing written statement, the applicant/1st defendant, has filed this application, for the relief of rejecting the plaint.

4. In order to substantiate the claim made by the applicant/1st defendant, the learned counsel appearing for the applicant/1st defendant would contend that the suit filed by the 1st respondent/plaintiff, is hit by various provisions of law, further, he challenges the suit in the following three folds.

(i) the 1st respondent/plaintiff being the partner of dissolved partnership firm, she is not entitled to file this present suit.

(ii) The suit is barred by limitation.

(iii)The suit filed by the 1st respondent/plaintiff is hit by Order II Rule 2 of Code of Civil Procedure, 1908.

5. In respect to the first ground raised by the applicant/1st defendant, the learned counsel for the applicant/1st defendant, vehemently submitted that at the time of entering into the contract, the plaintiff's husband, is a partner of RVS Developers, which is a partnership firm. Subsequent to that, after the death of the husband of 1st respondent/plaintiff viz., Mr.K.R.Annamalai on 16.07.2013, the 1st respondent/plaintiff issued a legal notice dated 22.09.2014 to the 2nd respondent/2nd defendant for dissolution of partnership firm viz., RVS Developers with effect from 21.08.2014 and called upon the 2nd defendant to dissolve the firm and to render the true and proper accounts.

6. In response to the legal notice dated 22.09.2014 sent by the 1st respondent/plaintiff, the 2nd respondent/ 2nd defendant accepted the letter of retirement sent by the 1st respondent/plaintiff and thereafter, the 2nd

respondent/2nd defendant has become the Proprietor of the firm, as per the Reconstituted Deed of Partnership. He would further submit that since the deed of Agreement of sale was created on behalf of the partnership firm, after resignation/retirement, the 1st respondent/plaintiff is not entitled to file the present suit. Therefore, on this score alone, the suit filed by the 1st respondent/plaintiff, is not valid in the eye of law.

7. In response to the said submission, the learned counsel appearing for the 1st respondent/plaintiff would contend that though the letter dated 22.09.2014 sent by the 1st respondent/plaintiff is having some materials as alleged by the applicant/1st defendant, that alone is not sufficient to hold that the 1st respondent/plaintiff has retired from the partnership on 22.09.2014 itself.

8. In respect to the said dispute, on 26.08.2015, after the appointment of Mr.T.R.Rajagopalan, as the sole Arbitrator, he was pleased to pass a preliminary decree dissolving the partnership as on and from

26.08.2015. In the said circumstances, according to Section 47 of the Indian Partnership Act, the 1st respondent/plaintiff being the erstwhile partner, is having a right to file a suit and therefore, the ground raised by the applicant/1st defendant as above, is not having much force. Moreover in the arbitration proceedings the applicant/1st defendant is not a party.

9. By considering the rival submissions, it is apparent, as per the preliminary decree passed by the learned Arbitrator, the partnership firm was dissolved from 26.08.2015. Only thereafter, the 1st respondent/plaintiff being the erstwhile partner filed the suit. In the said circumstances, for filing the suit, whether the other partners had given consent or not, is the matter that has to be decided only at the time of trial. At this juncture, it is necessary to see Section 47 of the Indian Partnership Act, which reads as follows:

> "**Continuing authority of partners for purposes of winding up.**- After the dissolution of a firm, the authority of each partner to bind the firm and the other mutual rights and

obligations of the partners continue, not withstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete the transactions begun but unfinished at the time of the dissolution, but not otherwise."

10. Under the said Section, the rights and obligation of the partners continue even after dissolution, insofar as it is necessary to wind up the affairs of the firm. Further, the surviving partners could be sued for recovery of the debts due to the firm. In **I.R.C. Vs. Graham's Trustees,** the House of Lord had referred to Section 47 of the Indian Partnership Act, 1932 and observed as follows:

> "(The partners') right and duty is to wind up its affairs. In my view, this must mean that the surviving partners have the right and duty to complete all unfinished operations necessary to fulfil contracts of the firm which were still in force when the firm was dissolved..... Otherwise, the position would be intolerable. Suppose, the firm was employed to build a bridge and the bridge was half finished when the firm was dissolved. The surviving partners must be

> bound to finish the work, for otherwise they could hold the employer to ransom by refusing to proceed unless he made a new contract more favourable to them, and conversely the employer could refuse to allow the work to proceed unless the surviving partners made a new contract more favourable to him. That could not be right."

11. So, it is made clear that even assuming that the partnership firm is not in existence, the 1st respondent/plaintiff being the partner of the firm is entitled to file the suit and therefore, the first ground raised by the applicant/1st defendant, cannot be accepted.

12. The second ground raised by the learned counsel appearing for the applicant/1st defendant is that the suit filed by the 1st respondent/plaintiff is barred by limitation. Ofcourse, only on 19.06.2012, 29.09.2012 and 29.11.2012, the RVS Developers, a partnership firm entered into a contract with the applicant / 1st defendant and executed a sale agreement. In the sale

agreement, it was agreed by either parties that the period of execution is only six months. In respect to the same, the period of limitation for filing the suit, has ended in 2016 itself. But the present suit have been filed only in the year 2017.

13. The learned counsel appearing for the 1st respondent / plaintiff would contend that in view of the letter dated 11.11.2014, sent by the applicant/1st defendant, the time for execution of the sale deed was extended and therefore, it cannot be said that the suit filed by the 1st respondent/plaintiff is barred by law.

14. Now, on considering the either side submission, it is admitted on either side that on 11.11.2014 itself, the applicant/1st defendant has sent a letter to the respondents herein, compelling them to execute a sale deed immediately. The said letter was sent by the applicant/1st defendant, within the period of limitation. In the said circumstances, since the issue involved is a mixed question of fact and law, the validity of letter sent by the

applicant/1st defendant, has to be decided only at the time of trial. In otherwise, the same cannot be taken into account for rejecting the plaint.

15. The last submission of the counsel appearing for the applicant/1st defendant is that the suit filed by the 1st respondent/plaintiff is hit by Order 2 Rule 2 of CPC. In this regard, he would submit that there is one more case pending on the same issue and therefore, the suit is liable to be rejected. He would further submit that the 1st respondent/plaintiff has already filed arbitration proceedings against one of the partners of the partnership firm, after invoking the arbitration clause in the Partnership Deed. Since one of the issues involved in the arbitration is the suit agreements, now sought to be specifically enforced. The learned Arbitrator has issued a notice to the applicant/1st defendant and the same was contested by him, as far as the suit agreements are concerned. In this situation, the present suit is hit by Order II Rule 2 of CPC.

16. In this regard, the learned counsel appearing for the 1st

respondent/plaintiff would contend that in Arbitration Proceedings the applicant/1st defendant is not a party. Only in order to verify the status of the sale agreements, notice has been sent to the applicant/1st defendant. Further, the arbitration proceedings initiated, is in respect to the dispute having by the 1st respondent/plaintiff with the 2nd respondent and it cannot be termed as also within the meaning of enforcing the contract, entered by the partnership firm. Therefore, the applicant/1st defendant is not entitled for the relief sought for under this ground also.

17. At this juncture, by considering the rival submissions made on either side, it is necessary to see Order II Rule 2 of the CPC, which reads as follows:

> "**Suit to include the whole claim**.- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.
>
> (2) **Relinquishment of part of claim**.- Where a

> plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
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> (3) **Omission to sue for one of several reliefs.** - A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

18. Now, applying the said principle with the case in hand, the relief sought by the 1st respondent/plaintiff in arbitration proceedings and the present suit is entirely different one. In respect to the enforcement of contract, no issue is pending before the arbitrator. Therefore, it cannot be termed that the present suit is not filed for the whole claim as alleged by the applicant / 1st defendant.

19. Therefore, in all, this Court is of the considered opinion that the ground raised by the applicant/1st defendant is not at all having any much force for rejecting the plaint, as prayed for. Accordingly, this

application is dismissed. List C.S.No.869 of 2017 for hearing on 10.03.2021.

10.02.2021

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R.PONGIAPPAN, J.

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Pre-delivery order in

**A.No.2374 of 2018
in C.S.No.869 of 2017
and O.A.No.1120 of 2017**

10.02.2021