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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

A.S. No.603 of 2018

M/s. Veequesy Footcare (India) Pvt. Ltd.,
Rep. By its Managing Director Mr. V.Noushad,
Plot No.10-12, Sidco Industrial Estate,
Mulimichampatty P.O. Coimbatore - 641 050, TN.
.. Appellant/Plaintiff

Vs.

Jawahar .. Respondent/Defendant

Appeal Suit filed under Section 96 and Order 41 Rule 1 of Code of Civil Procedure, to set aside the order dated 20.03.2018, passed in I.A. No.685 of 2017 in O.S. No.500 of 2016, on the file of the III Additional District and Sessions Judge, Coimbatore.

For Appellant : Mr. P.Raja

For Respondent : Mr. Arun Sabari

JUDGMENT

This appeal is preferred as against the rejection of plaint in O.S. No.500 of 2016 on the file of III District and Sessions Judge, Coimbatore.

2. The appellant as plaintiff filed a suit in O.S. No.500 of 2016 on the file of III Additional District and Sessions Judge, Coimbatore, for granting a decree directing the defendant to pay a sum of Rs.10,00,000/- as compensation towards the loss incurred to the plaintiff / appellant and for mandatory injunction directing the defendant to delete / cancel the endorsement made on 10.06.2016 on the back of sale deed dated 22.05.2016 (Document No.2568 of 2015).

3. The plaintiff purchased few items of properties pursuant to the auction held under SARFAESI Act. (The entire property purchased by the petitioner hereinafter is referred to as 'the suit property'). After getting the sale certificate



dated 13.02.2015 and upon payment of entire sale consideration, possession of the property was handed over to the appellant. It is also admitted that the Federal Bank executed a sale deed on 22.05.2015 in the name of plaintiff. The document was presented for registration on 22.05.2015, before the Sub-Registrar. It is stated by the plaintiff that the plaintiff had paid a sum of Rs.1,18,00,000/- towards stamp duty and a further sum of Rs.16,91,270/- towards registration charges on 22.05.2015. However, the sale deed was retained by the defendant for assessment of building value. Thereafter, the defendant by a letter dated 28.12.2015, demanded additional stamp duty to a tune of Rs.43,63,093/- and a further sum of Rs.6,23,300/- towards deficit stamp duty and registration charges respectively.

4. The appellant / plaintiff filed a writ petition in W.P. No.3374 of 2016 for the release of original document withheld by the defendant. This Court, by order dated 29.01.2016, allowed the writ petition by directing the defendant to hand over the original document to the plaintiff. Despite the order being produced before the defendant, it is stated that the defendant refused to release the document. Serious allegations were made against the defendant in his individual capacity. It is seen that the defendant in his official capacity filed an appeal before this Court in W.A. No.304 of 2016 and the appeal was also dismissed at the admission stage itself. Despite the order passed by the Division Bench of this Court, the defendant failed to hand over the sale deed to the appellant with regard to the order passed by this Court. Therefore, the appellant was constrained to file a Contempt Petition in Contempt Petition No.1245 of 2016. The respondent defendant filed an affidavit tendering unconditional apology before this Court and on 10.06.2016, he handed over the original sale deed dated 22.05.2015, by making an endorsement in it as if a Special Leave Petition is pending before the Hon'ble Supreme Court. It is the specific case of the appellant that at the time of making the endorsement no Special Leave Petition was pending before the Supreme Court. It is admitted that the Special Leave Petition was dismissed later, at the admission stage itself.

5. It is stated by the appellant that he is the successful bidder and that the bank issued sale certificate and executed sale deed on 22.05.2015. On account of the long delay in the release of the original document, it is stated that the plaintiff could not proceed further as per his original plan. Even it is stated that his business plan was simply paralysed on account of recalcitrant attitude of the respondent. Since the other limbs of Government expect the original document for further processing of his project, the appellant stated that the first respondent, in his individual capacity, has caused all the problems with ill motive and the conduct of the respondent has caused great loss and prejudice to the appellant.



6. The respondent / defendant filed an Interlocutory Application in I.A. No.685 of 2017 for rejection of plaint mainly on the ground that the pre suit notice as contemplated under Section 80 CPC was not served on him. It is to be noted that the respondent has understood the plaint as one which was filed against the defendant in his official capacity. At the same time it is also stated that the allegations against the respondent for claiming damages are in his personal name and hit by Section 80 C.P.C. The revision petitioner filed a counter stating that no pre suit notice is necessary. It is also stated that it is premature to consider the contentions issues.

7. It is well settled that the plaint can be rejected even without an application. If an individual files an application under Order VII Rule 11 CPC, he cannot be given any exemption. Only on the basis of the averments found in the plaint, a plaint can be rejected under Order 7 Rule 11(d) C.P.C. The lower Court rejected the plaint only on the ground that notice under Section 80 (1) CPC, is a condition precedent for institution of the present suit against the defendant who is a public officer and that in the absence of notice, the suit is not maintainable. Strangely, the lower Court did not consider the first part of the relief. Since there was a direction to delete / cancel the endorsement dated 10.06.2016 on the back of sale deed dated 22.05.2015, it was taken that the suit against the respondent was in his official capacity as a Sub Registrar and that therefore, the suit cannot be filed without complying with the provision under Section 80 CPC. Aggrieved by the same, the above appeal is filed by the plaintiff.

8. Learned counsel for the respondent submitted that the plaint should be rejected on the ground that it is not maintainable before issuing pre suit notice under Section 80 CPC. It is further submitted that by doing so, the plaintiff will not be put to any prejudice as he has to represent it after complying Section 80 CPC. He also relied upon the judgment of the Hon'ble Supreme Court in the case of Gangppa Gurupadappa Gugwad Gulbarga Vs. Rachawwa, Widow of Lochanappa Gugwad and others, reported in 1970(3) Supreme Court Cases 716, wherein it has been held as under:

"... 10. No doubt it would be open to a court not to decide all the issues which may arise on the pleadings before it if it finds that the plaint on the face of it is barred by any law. If for instance the plaintiff's cause of action is against a Government and the plaint does not show that notice under Section 80 of the Code of Civil Procedure claiming relief was served in terms of the said section, it would be the duty of the Court to reject the plaint recording an order to that effect with reasons



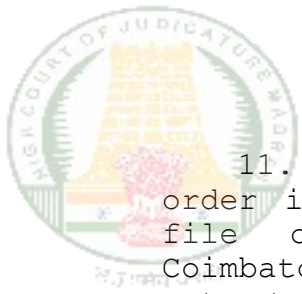
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for the order. In such a case the court should not embark upon a trial of all the issues involved and such rejection would not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. But, where the plaint on the face of it does not show that any relief envisaged by Section 80 of the Code is being claimed, it would be the duty of the court to go into all the issues which may arise on the pleadings including the question as to whether notice under Section 80 was necessary. If the court decides the various issues raised on the pleadings, it is difficult to see why the adjudication of the rights of the parties, apart from the question as to the applicability of Section 80 of the Code and absence of notice thereunder should not operate as res judicata in a subsequent suit where the identical questions arise for determination between the same parties.

11. In our view the High Court was right in deciding the issue as to res judicata against the appellant. The High Court rightly pointed out that the Subordinate Judge had in clear terms decided that the appellant had obtained no interest under the will of Rudrappa and therefore he was not entitled to sue. The Subordinate Judge had further held that the estate obtained by Lochanappa under the will was an absolute estate."

9. The Hon'ble Supreme Court has categorically held that when the plaint, on the face of it, does not show that any relief envisaged by Section 80 CPC is being claimed, it will be the duty of the Court to go into all issues which may arise on the pleadings including the question as to whether notice under Section 80 CPC is necessary. Therefore, the judgment is directly against the proposition now that is sought to be advanced by the learned counsel appearing for the respondent.

10. This Court is of the view that the relief against the respondent regarding damages is distinct from the relief of mandatory injunction. As far as the first relief is concerned, it is against the respondent in his individual capacity. Therefore, there is no question of applying Section 80 CPC in the present suit. As regard the second relief, the plaintiff cannot pursue against the first defendant who has not been impleaded in his official capacity. There cannot be splitting of relief for the purpose of rejecting the plaint under Order VII Rule 11 CPC. Since the substantial portion of the relief is against the individual, the rejection of plaint on the ground of non-compliance of Section 80 CPC, cannot be sustained.



11. As a result this Appeal Suit is allowed. No costs. The order in I.A. No.685 of 2017 in O.S. No.500 of 2016 on the file of III Additional District and Sessions Judge, Coimbatore, is hereby set aside. The order in this appeal will not stand in the way of the respondent to raise any other issues and the trial Court can decide all the issues in accordance with law uninfluenced by any of the observations made in this order.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

Bkn

To

The III Additional District and Sessions Judge,
Coimbatore.

Copy to:

The Section Officer,
V.R.Section,
High Court,
Madras-104.

+1cc to Mr.K.R.Arun Shabari, Advocate SR. No.59700

A.S. No.603 of 2018

KK (CO)
PR (30/12/2021)