

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.08.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Application No.2295 of 2021
in
C.S.No.98 of 2021

M.Balakrishnan, S/o V.S.Moorthy

.. Applicant/defendant

Vs.

A.Abdul Malick, S/o Abdul Khader

.. Respondent/plaintiff

Judge's Summons issued under Order XIV Rule 8 of the Original Side Rules of this Court read with Order VII Rule 11(a) and (d) and Section 151 of the Code of Civil Procedure (CPC) and this application is filed to reject the plaint filed by the respondent/plaintiff in a defective manner, as the plaint is barred by limitation under Order VII Rule 11(d) of CPC, as the same is filed after a period of more than five years and consequently, there is no cause of action under Order VII Rule 11(a) of CPC.

Schedule of property

Schedule-A

All the piece and parcel of vacant land bearing Plot No.52, Door No.1, IXth Main Road, Dhandeeswarar Nagar of Velachery Village, Mambalam-Guindy Taluk, Chennai-600 042, bounded on:

North by : 30 feet layout road now known as X Cross Street

South by : Plot No.51, Dhandeeswara Nagar;

East by : Plot No.51, Dhandeeswara Nagar;

West by : 30 feet Road, now known as Dhandeeswara Nagar IXth Main Road,

situate in previous Survey No.224 (part) New Survey No.224/1B, measuring East to West 45 feet

North to South 80 feet

measuring 3600 Sq.Ft. of land situate in Registration Sub-District of Velachery and the Registration District of Chennai South, Chennai Corporation Division No.153 Zone 10.

Schedule-B (property conveyed):

999 Sq.Ft. of UDS land out of 3600 Sq.Ft. of vacant land in the 'A' schedule property together with 1550 Sq.Ft. super built up area in the Ground Floor, bearing Flat No.1/2, Plot No.52 Door No.1, IXth Main Road, Dhandeeswarar Nagar of Velachery Village, Mambalam-Guindy Taluk, Chennai District, Chennai-600 042, together with covered car parking

measuring about 150 Sq.Ft. and to cancel the sale deed dated 08.10.2015 bearing Doc.No.6609 of 2015 on the file of the Sub-Registrar, Velachery.

For applicant : Mr.P.Ayyamperumal

For respondent : Mr.S.Senthil

ORDER

The applicant is the defendant and the respondent herein is the plaintiff in the suit.

2. The said suit has been filed for the following reliefs:

(a) to cancel the sale deed, dated 08.10.2015 registered as Document No.6609 of 2015 on the file of the Sub-Registrar, Velachery, executed by the plaintiff in favour of the defendant;

(b) for permanent injunction restraining the defendant, his men or agents from in any manner disturbing the peaceful possession of the plaintiff in the suit property, and

(c) for costs of the suit.

3. According to the respondent/plaintiff, he was living and was

working in Malaysia for a long time between 2000 and 2021 and is presently living in the suit property. While he was working in Malaysia, his family members had been in occupation of the suit property. The applicant/defendant had lent some money to the brother of the respondent/plaintiff and the defendant had lent the money in Malaysian Currency on 04.02.2015, approximately equal to the value of Rs.1,75,00,000/- in the Indian Currency.

4. According to the respondent/plaintiff, his brother had been regularly paying interest as per the agreement. In order to provide security to the applicant/defendant, for the amount he had lent to his brother, the plaintiff was requested to execute a mortgage deed in his favour in respect of the suit property, and therefore, the suit property was mortgaged, vide document dated 08.10.2015.

5. According to the plaintiff, his brother, with a view to close the loan transaction, had eventually sold one of his own properties in Malaysia and out of the sale proceeds, he settled amount equivalent to

Rs.1,65,00,000/- in the Indian Currency, in 2017. His brother thus had almost settled the entire principal amount and a very little amount remained to be paid towards interest.

6. While matters stood thus, according to the respondent/plaintiff, he had come to know that the so-called document (mortgage deed) which was taken from him at the instance of the applicant/defendant, was in fact, a sale deed executed in favour of the defendant in respect of the subject property. The respondent/plaintiff claims to have learnt about the fraudulent action of the defendant only when he applied for certified copy of the document registered in the Sub-Registrar Office on 23.02.2021.

7. Further, the case of the respondent/plaintiff is that one person, by name Veeraraghavan claimed to represent the defendant, approached him in February 2021, pressurising him to vacate the suit property. Thereafter, when enquiry was made, the plaintiff had come to know about the transaction of sale, which had been stated to be effected by him behind his back.

8. According to the plaintiff, in the guise of taking a mortgage deed, in effect, a sale deed was executed clandestinely and fraudulently and all along, the plaintiff and his family members have been residing in the suit property. The defendant being very close family friend, had betrayed the faith reposed in him by the respondent/plaintiff and his brother and in the said circumstances, the suit has been filed by the respondent/plaintiff for cancellation of the sale deed, dated 08.10.2015.

9. Per contra, the case of the applicant/defendant is that there is no cause of action at all to file the present suit and even there is any, the same is hit by the law of limitation. According to the applicant/defendant, the plaintiff had full knowledge of the execution of the document, namely the sale deed, dated 08.10.2015 and the signature as contained in the document, bears the testimony to the said fact.

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10. Moreover, the applicant/defendant, with a view to help the plaintiff and their family members to live in the same subject property, had

entered into a lease agreement after the sale was effected. On behalf of the applicant/defendant, repeated letters have been sent to the respondent/plaintiff for payment of rent, which has not been forthcoming. The case of the applicant/defendant is that the rental agreement, dated 09.10.2015 was entered into for payment of monthly rent of Rs.15,000/- for a period of 11 months. According to him, though the monthly rent was not paid, the plaintiff was allowed to continue by another rental agreement, dated 01.09.2017.

11. The further case of the applicant/defendant is that taking advantage of the magnanimous nature of the defendant, the plaintiff and his brother had hatched a conspiracy to grab the suit property by filing the present vexatious suit. The plaintiff and his family members have been in illegal occupation of the suit property for more than 65 months without paying any rent.

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12. The applicant has filed this rejection application on two grounds, one is that the suit is hit by limitation in terms of Article 59 of the

Limitation Act, 1963, as the plaintiff was very much aware of the sale deed, dated 08.10.2015. Further, no cause of action has been disclosed specifically in the plaint and in the said circumstances, the suit is liable to be rejected under Order 7 Rule 11 (a) and (d) of the Civil Procedure Code (CPC).

13. On behalf of the respondent/plaintiff, the averments as contained in the affidavit filed in support of the rejection application, had been refuted. According to the learned counsel for the respondent/plaintiff, what was executed by the plaintiff was only the mortgage deed. According to him, the suit has been filed in time, when he had come to know about the fraudulent execution of the sale deed in 2021. In any event, the application for rejection of the plaint, is not sustainable in law and on facts. In support of his submissions, the learned counsel for the respondent/plaintiff relied on the following decisions:

(i) 2016 (14) SCC 275 (R.K.Roja Vs. U.S.Rayudu):

"4. We are afraid that the stand taken by the High Court in the impugned order cannot be appreciated. An application under Order 7 Rule 11

CPC can be filed at any stage, as held by this Court in *Sopan Sukhdeo Sable Vs. Charity Commr. (2004 (3) SCC 137) (SCC P.146, para 10)*:

"10 The trial court can exercise the power at any stage of the suit -- before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial."

The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order 7 Rules 11(a) to (f) CPC, the same has to be rejected."

(ii) 2019 (10) SCC 226 (Shaukathussain Mohammed Patel Vs. Khatunben Mohmmmedbhai Polara):

"6. It is well settled that for the purposes of the provisions of Order 7 Rule 11 of the Code, the entirety of the averments in the plaint have to be taken into account. Going by the version of the appellant as detailed in the plaint, there was an element of deception and fraud which was practised upon him as a result of which the document concerned got entered into. It is also a matter of record that the consideration in respect of the transfer of the property in question was stated to have been paid in cash.

7. Again going by the averments made in

the plaint, the information in respect of the transaction came to the knowledge only in the year 2013-2014. According to the assertions in the plaint, the appellant-plaintiff was always in possession of the property. In the entirety of the circumstances, as pleaded in the plaint, the issues raised in the matter were certainly required to be considered on merit.

8. In our view, the High Court was not right and justified in accepting the prayer and holding that the plaint was required to be rejected. We, therefore, allow this appeal, set aside the judgment and order (Khatunben Mohammedbhai Polara VS. Shaukathussain Mohammed Patel,R/Civil Revision Application No.354 of 2017, order dated 06.05.2019 (Guj)) passed by the High Court and restore the one that was passed by the trial Court."

14. This Court considered the above facts and the pleadings and the materials placed on record.

15. According to the applicant/defendant, there is no proper cause of action for the respondent/plaintiff to file the present suit, and therefore, the suit is liable to be rejected at the threshold. This Court is unable to countenance such a contention of the defendant for the simple reason that the case of the plaintiff is that the sale deed dated 08.10.2015 had been

fraudulently executed. In fact, the plaintiff has given the factual background explaining the transaction between the plaintiff and the defendant.

16. In any case, the sale deed purported to have been entered into between the applicant/defendant and the respondent/plaintiff, was not an ancient document and it was entered into only in 2015. According to the plaintiff, he had come to know about the fraudulent execution of the sale deed only when he got certified copy of the sale deed from the SRO on 23.02.2021 and the suit has been filed immediately thereafter.

17. In view of the plaintiff's case and also in view of the defendant's own averment that the so-called rental agreement entered into and the rents not being paid by the plaintiff, would give a reasonable doubt as to whether there was any sale at all as claimed by the defendant. When the subject property has been leased out to a tenant, it is unbelievable that the defendant had kept quiet for 65 long months even according to his own averment.

18. Moreover, the defendant's case is that no cause of action had been disclosed, and is not supported by any averment or material. On the other hand, the plaint averments clearly explained the specific cause of action for repayment of loan amount as late on 23.03.2017. The cause of action what is pleaded in the plaint is the alleged fraudulent execution of the sale deed, dated 08.10.2015 and that is the subject matter of "lis" between the parties in the suit.

19. The aspect of limitation is always a mixed question of fact and law, which cannot be decided by this Court on the basis of the self-serving averments of the parties in the rejection application. In this case, there appears to be a plausible explanation by the plaintiff which prompted him to file the suit presently.

20. In the face of the detailed averments as to the date of knowledge of the plaintiff in coming to know about the fraudulent sale, this Court does not think that not an iota of case has been made out by the applicant/defendant for rejection of the plaint. This Court, on the other

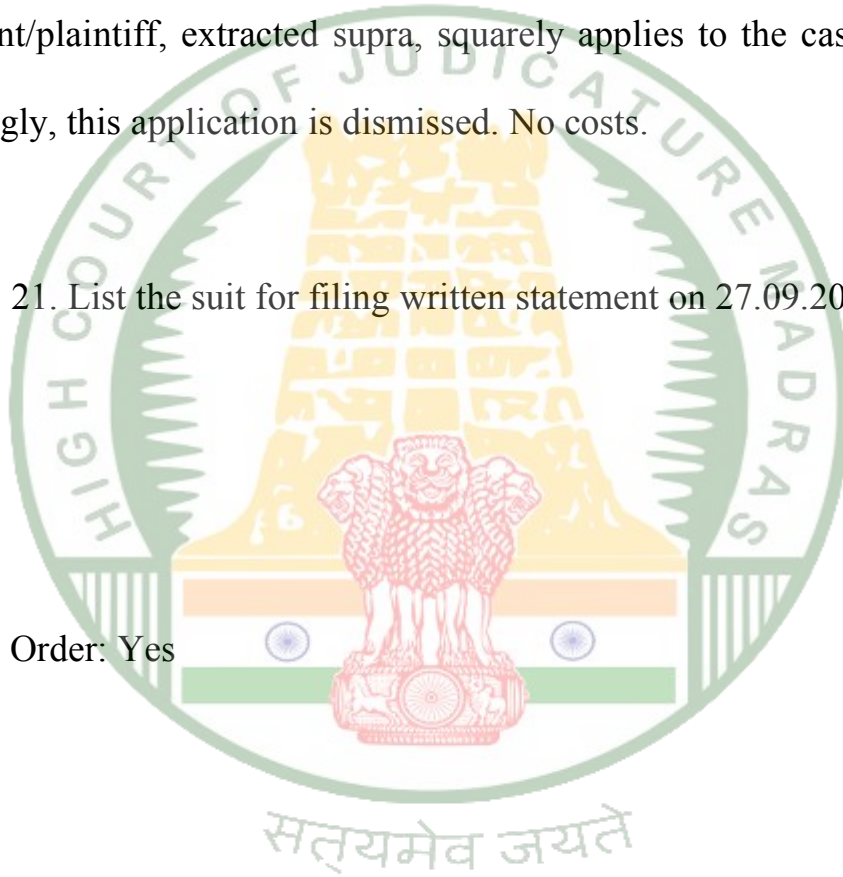
hand, finds that the rejection of plaint application is frivolous and it is intended to non-suit the plaintiff at the very threshold. This Court finds that the present application is devoid of merits and it is liable to be rejected outright. The decisions relied on by the learned counsel for the respondent/plaintiff, extracted supra, squarely applies to the case on hand. Accordingly, this application is dismissed. No costs.

21. List the suit for filing written statement on 27.09.2021.

10.08.2021

Speaking Order: Yes

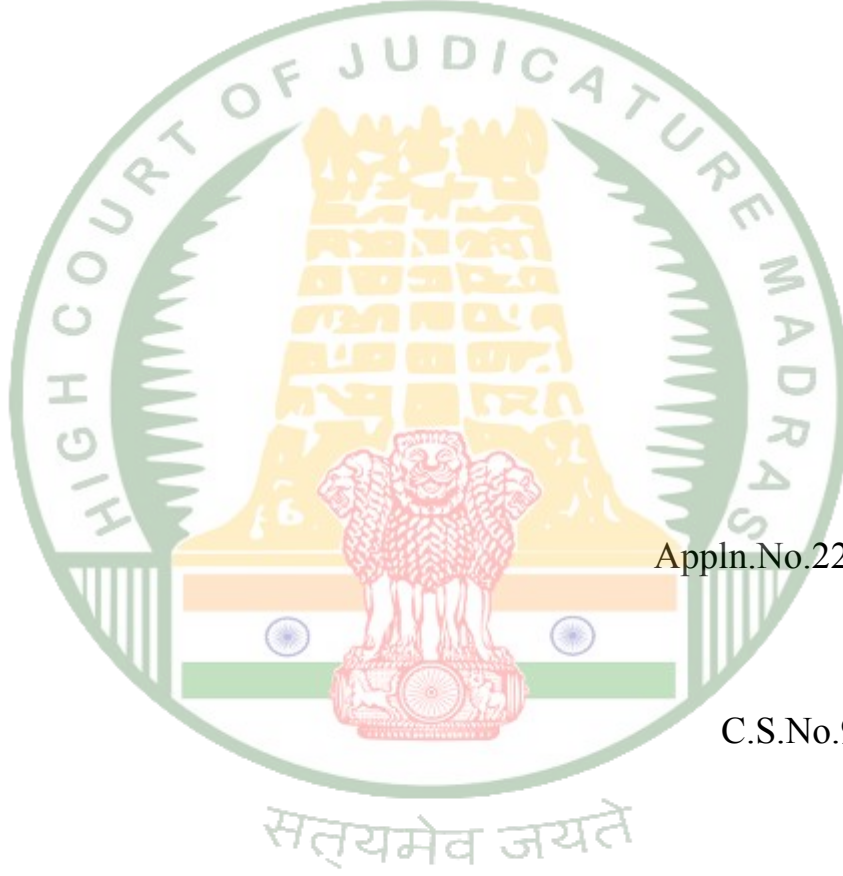
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V.PARTHIBAN, J

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