

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.04.2021

PRONOUNCED ON: 26.04.2021

Coram

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 2336 of 2020

And

C.M.P.No. 14678 of 2020

Ramachandran Nair ... Petitioner/Petitioner/1st Defendant

-Vs-

1. Padam Dugar
... 1st Respondent/1st Respondent/Plaintiff

2. The Sub Registrar
... 2nd Respondent/2nd Respondent/2nd Respondent

PRAYER: Civil Revision Petition filed under Section 115 of CPC, against the order and decretal dated 07.08.2020 passed in I.A.No. 3 of 2019 in O.S.No. 5947 of 2018 on the file of IV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mrs. Nalini Chidambaram,
Senior Counsel

For 1st Respondent: Mr. K. V. Bhashyam Chari

For 2nd Respondent: Mr. T.M. Pappiah
Special Government Pleader

ORDER

This Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure questioning the order dated 07.08.2020 passed in I.A.No. 3 of 2019 in O.S.No. 5947 of 2018 which suit is pending on the file of the IV Assistant Judge, City Civil Court, Chennai.

2.The revision has been filed by the first defendant in the suit.

3.The plaintiff in O.S.No. 5947 of 2018 Padam Dugar had filed the said suit against two defendants, Ramachandran Nair and the Sub Registrar, Sub Registration District of Thousand Lights, Registration District of South Chennai, seeking a Judgment and Decree in the nature of a permanent injunction restraining the first defendant or anybody acting under him from in any manner creating any kind of encumbrances in respect of the schedule

properties in favour of third parties and a permanent injunction against the second defendant from registering any deed of conveyance in the nature of deed of conveyance with respect to the suit schedule properties.

4. Three properties had been described in the schedule to the plaint. The first was ground bearing Plot No. 9D, the second was ground bearing Plot No. 9E and the third was ground bearing Plot No. 9C, all in Plot No. 9 of lay out No. 40 of 1964 in Anderson Road, Nungambakkam, Chennai measuring an extent of 5550 sq ft., 3500 sq.ft., and 5266 sq.ft., respectively.

5. The plaintiff claimed that he was interested in purchasing the schedule properties that he had offered to purchase the schedule properties subject to legal clearance by his lawyers. Thereafter, a Letter of Intent had been entered into between the plaintiff and the first defendant on 14.02.2013. Among other terms given in the Letter of Intent, the sale price was fixed at Rs.22,916.67 per sq. ft., at Rs. 5.5 crores per ground and that the plaintiff herein had given an interest free token advance of Rs. 10 lakhs at the time of handing over of the photocopies of the documents by the first defendant and that the plaintiff will get due diligence and get legal opinion

and if the first defendant is unable to satisfy the clearance of the queries of the legal advisers of the plaintiff, then the Letter of Intent shall stand cancelled and the first defendant would be liable to return Rs. 10 lakhs interest free to the plaintiff.

6.The plaintiff claimed that he had paid Rs.10 lakhs by way of a demand draft purchased from Vijaya Bank on 25.02.2013. The first defendant also handed over a set of documents pertaining to the schedule properties. These documents were examined by the lawyers of the plaintiff and they were satisfied with the ownership with respect to Item Nos. 1 & 2 of the scheduled properties. The lawyers sought patta from the first defendant for Item No.3 of the suit schedule property.

7.The queries were sent to the lawyers of the first defendant on 28.02.2013. The first defendant however could not produce the patta for the third item of the suit property. The plaintiff suggested issuing a paper publication with respect to the third item of suit property but this was objected by the first defendant, who reiterated that he would produce the patta and other related documents. It was claimed that till the date of filing

of an earlier suit, the patta was not produced. Thereafter, the plaintiff came to understand that the first defendant was trying to alienate or create encumbrances over the schedule properties by way of sale to some third parties by excluding the plaintiff.

8.The plaintiff then filed O.S.No. 2156 of 2016 against the first and second defendants and an order of interim injunction had also been obtained in the said suit. The first defendant then provided a photocopy of the patta on 20.08.2018. The plaintiff then withdrew O.S.No. 2156 of 2016 which came to be dismissed by order dated 13.09.2018. Thereafter, the plaintiff sent a further request calling upon further documents from the first defendant including an order copy of a case in O.S.No. 587 of 2006 on the file of Sub Court, Eranakulam and various other documents like encumbrances, legal heirship certificate of Khadher Mohideen and details of sub division of Plot No. 9 in S.No. 85.

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9.The plaintiff claimed that the first defendant was in possession of these documents. However, a legal notice dated 01.10.2018 was issued by the first defendant enclosing a cheque of Rs.10 lakhs stating that the first

defendant was not obliged to produce any other document and that the plaintiff has no right over the suit property. The plaintiff further claimed that the first defendant was again making attempts to convey the suit properties to third parties. It is under these circumstances that the present suit was again filed against the first and second defendants seeking the very same reliefs as sought in O.S.No. 2156 of 2016.

10.The first defendant filed I.A.Nos. 2 and 3 of 2019 seeking to reject the plaint under Order 7 Rule 11 (a), CPC as having no cause of action and under Order 7 Rule 11(d) CPC as being barred by the law of limitation on the principle of constructive resjudicata.

11.It had been contended in the affidavit filed in support of the said applications that under the pretext that documents were not handed over, the plaintiff was delaying the execution of the sale deed and in paying the entire sale consideration. The plaintiff had earlier filed O.S.No. 2156 of 2016 for the very same reliefs as sought in the present suit. The cause of action was also the same. The additional cause of action that had been stated was subsequent to the dismissal of the said suit, the first defendant was again

attempting to sell the suit property to third parties. It was claimed that the first defendant had obtained the patta and had also given a copy of the patta to the counsel for the plaintiff even when the earlier suit was pending. However, the plaintiff did not come forward to purchase the suit schedule property. Thereafter, the counsel for the plaintiff had withdrawn O.S.No. 2156 of 2016 on 03.09.2018 without reserving any right to file a subsequent suit. It was stated that after the withdrawal of the said suit, the counsel for the plaintiff had addressed a letter seeking further documents for which a reply was given claiming that the first defendant was not obliged to give any further documents and enclosing a cheque dated 29.08.2018 for Rs.10 lakhs. It had been stated that the reliefs in both the suits namely in earlier suit in O.S.No. 2156 of 2016 and the instant suit in O.S.No. 5947 of 2018 are identical, the cause of action in both the suits are identical. The plaintiff had withdrawn the earlier suit which was pending on the file of II Assistant City Civil Court at Chennai without seeking permission of the Court to file a second suit. It was therefore stated that the second suit is not maintainable on the same cause of action as the first suit and the principle of constructive resjudicata would apply.

12.It had been further stated that in both the suits, details had not been regarding the alleged prospective purchasers of the suit property. It had been stated that the cause of action was vague and the suit had to be rejected under Order 7 Rule 11(a) of CPC as having no cause of action. It was also stated that the suit should also be rejected under Order VII Rule 11(a) of CPC on the principle of constructive resjudicata New Delhi as being barred by the law of limitation since the Letter of Intent had been signed on 14.02.2011.

13.A common counter affidavit had been filed on behalf of the plaintiff once again reiterating the averments made in the plaint. It had been stated that the plaintiff had filed the first suit in O.S.No. 2156 of 2016 for injunction since the first defendant was attempting to alienate / create encumbrances over the plaint schedule property despite having entered into a Letter of Intent with the plaintiff. It had been stated that the plaintiff had been seeking a copy of the patta and since the copy of the patta had been given, the suit was withdrawn as there was no necessity to continue with the suit in O.S.No. 2156 of 2016. It had been stated that thereafter, a further request was given to give additional documents and the first defendant had

an obligation to comply with the same, but had issued a notice stating that the first defendant was not under any such obligation to give any further documents and returning the advance amount by way of a cheque dated 29.08.2018. It had been stated that since legal due diligence was not completed, the plaintiff cannot file a suit for specific performance. Therefore, the plaintiff had no other option but to again file a suit for injunction. It had been claimed that the allegations that the suit had no cause of action was not correct and that the suit was neither barred by resjudicata nor by the law of Limitation.

14.A reply affidavit was also filed on behalf of the first defendant once again reiterating the statements made in the affidavit filed in support of the petition and denying the averments made in the counter affidavit. It had been once again reiterated that the suit should be rejected.

15.The applications came up for consideration before the learned IV Assistant Judge, City Civil Court, Chennai on 07.08.2020.

16.The present Civil Revision Petition has been filed questioning the order dated 07.08.2020 passed in I.A.No. 3 of 2019.

17.The said application had been filed under Order 7 Rule 11(a) of CPC to reject the plaint for having no cause of action. The learned Judge after setting out the facts, had stated that the earlier suit in O.S.No. 2156 of 2016 had been dismissed as not pressed and that it would not mean that the plaintiff had made a request for permission as contemplated under Order 23 Rule 1(4) of CPC. It had also been stated that dismissal of a suit as not pressed cannot be said to be an abatement of the cause of action. It was therefore stated that the present suit was not hit under Order 23 Rule 1(4) of CPC. It had also been stated that a Letter of Intent had been entered into between the plaintiff and the first defendant and the first defendant had agreed to provide the requisite documents. The plaintiff had filed O.S.No. 2156 of 2016 and the first defendant had produced a photocopy of the patta. Therefore, the plaintiff had not pressed the said suit. However, in response to a notice seeking further documents, the first defendant had sent a legal notice on 01.10.2018 enclosing a Cheque for Rs.10 lakhs. It had been therefore observed that there was cause of action for filing the suit. The

application was dismissed. Questioning the rationale behind that order, the present Civil Revision has been filed.

18. Heard arguments advanced by Mrs. Nalini Chidambaram, learned Senior Counsel on behalf of the revision petitioner / first defendant in the suit and Mr. K.V. Bhashyam Chari, learned counsel for the first respondent/plaintiff in the suit. Mr.T.M.Pappiah, Special Government Pleader, appeared on behalf of the 2nd respondent / 2nd defendant in the suit.

19. It must be mentioned even at the outset that a perusal of the order of the learned Judge which is now the subject matter of the revision petition shows that during the course of hearing, both sides had not examined any witnesses nor produced any documents.

20. As stated, the present Revision Petition has been filed against the dismissal in I.A.No. 3 of 2019. It is the contention of Mr. K. V. Bhashyam Chari, learned counsel for the respondent that documents had been filed in I.A.No. 2 of 2013. The order passed in the said application is not the subject matter of the present Revision Petition.

21.The revision petitioner herein was the first defendant in O.S.No. 5947 of 2018 on the file of the IV Assistant City Civil Court, Chennai and the respondent herein is the plaintiff in O.S.No. 5947 of 2018. For the sake of convenience, the parties will be referred as plaintiff and the first defendant.

22.The plaintiff had filed the suit for permanent injunction against the first defendant restraining the first defendant from dealing with the suit schedule properties. He had also sought the relief of permanent injunction against the second defendant, namely, the jurisdictional Sub Registrar, restraining the said Officer from registering any document pertaining to the suit schedule properties.

23.The reliefs sought in the said suit are as follows:-

“29. The plaintiff therefore prays that this Hon'ble Court may be pleased to grant the Decree and Judgement against the defendants as follows:-

(a) To grant permanent injunction

restraining the 1st defendant, his men, agent, servants, attorneys, successors and/or any other persons acting through or under or on behalf of 1st defendant from in any manner creating any kind of encumbrances in respect of schedule properties in favour of third parties.

(b) To grant permanent injunction restraining the 2nd defendant or any of its men from registering any deed of conveyance or any other documents in the nature of deed of conveyance in respect of Schedule properties in favour of third parties.

(c) To pay the costs.

(d) And to pass such other or further orders as deemed fit in the circumstances of the case and thus render justice.”

24.It must be mentioned that the plaintiff had an occasion to file a

earlier suit as against the very same defendants. That was O.S.No. 2156 of 2016 which was pending on the file of the II Assistant City Civil Court, Chennai. The reliefs sought in the said suit were as under:-

“25. The plaintiff therefore prays that this Hon'ble Court may be pleased to grant the Decree and Judgement against the defendants as follows:-

(a) To grant permanent injunction restraining the 1st defendant, his men, agent, servants, attorneys, successors and/or any other persons acting through or under or on behalf of 1st defendant from in any manner creating any kind of encumbrances in respect of schedule properties in favour of third parties except the plaintiff.

(b) To grant permanent injunction restraining the 2nd defendant or any of its men from registering any deed of conveyance or any other documents in the

nature of deed of conveyance in respect of Schedule properties in favour of third parties except the plaintiff.

(c) To pay the costs.

(d) And to pass such other or further orders as deemed fit in the circumstances of the case and thus render justice.”

25. In the instant suit is just a cut and paste of the relief sought in the earlier suit. The plaintiff had added the words “except the plaintiff” in the earlier suit which for the reasons best known to him had been deleted in the present suit. But that would not make any significant difference.

26. The properties in both the suits are exactly the same. The earlier suit was dismissed as not pressed by Judgment dated 03.09.2018. The entire Judgment is extracted below:-

JUDGMENT

“Suit for a permanent injunction

restraining the 1st defendant, his men, agent, servants, attorneys, successors and/or any other persons acting through or under or on behalf of 1st defendant from in any manner creating any kind of encumbrances in respect of Schedule properties in favour of third parties except the plaintiff and to grant permanent injunction restraining the 2nd defendant or any of its men from registering any deed of conveyance or any other documents in the nature of deed of conveyance in respect of schedule properties in favour of third parties except the plaintiff and for costs.

Plaintiff and defendant counsel are present.

***L**earned **c**ounsel **f**or **p**laintiff **m**ade **a**n **e**ndorsement **o**n **t**he **p**laint **a**nd **t**he **s**ame **i**s **r**ecord**e**d. **S**uit **i**s **p**ermitted **t**o **b**e **w**ithdrawn **a**s **n**ot **p**ressed. **S**uit **i**s **d**ismissed **a**s **n**ot **p**ressed. **N**o **c**osts.”*

Emphasis Supplied

27. Order XXIII of the Code of Civil Procedure, 1908 relates to

Withdrawal and Adjustment of suits. Order XXIII Rule 1 is as follows:-

“Order XXIII:- Withdrawal and Adjustment of Suits:-

R.1. Withdrawal of suit or abandonment of part of claim:-

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rule 1 to 14 or Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied:-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff

permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.

(4)Where the plaintiff:-

(a)abandons any suit or part of claim under sub-rule (1), or

(b)withdraws from a suit or part of a claim without the permission referred to in sub-rule(3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.

(5)Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.”

Emphasis Supplied

28.It is seen that the plaintiff has a liberty to abandon any suit or any part of the claim at any time after the institution of the suit.

29.Under Order XXIII Rule 3(b), the Court may grant the plaintiff

permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim. It is thus seen that unless the Court grants specific permission the plaintiff cannot institute a fresh suit with respect to the subject matter of such suit or even with respect to a part of the claim of the subject matter.

30. In the instant case, the learned counsel for the plaintiff had made an endorsement in O.S.No.2156 of 2016 seeking permission to withdraw the suit. This is abandonment of the suit claim. The suit was dismissed as not pressed. Permission was not sought to institute a fresh suit on the same cause of action or on part of the cause of action. Permission was also not granted to institute a fresh suit either on the same cause of action or on any part of cause of action.

31. The cause of action in O.S.No.2156 of 2016 first arose on 14.02.2013 when the Letter of Intent was entered into between the plaintiff and the first defendant. That was the basis for institution of the suit. This fact cannot be denied or disputed by the plaintiff. If there had been no Letter

of Intent entered into between the plaintiff and the first defendant there could be no cause for the plaintiff to institute any suit against the defendants. They would have been strangers to each other. Thereafter, disputes arose owing to demand for delivery of patta and disputes came to be resolved by delivery of a copy of patta. On receipt of the patta, the learned counsel for the plaintiff made an endorsement seeking permission to withdraw the suit. Permission was granted. Suit was dismissed as withdrawn. Specific permission was neither sought, nor granted, to institute a fresh suit.

32. However, the plaintiff after the withdrawal of the suit commenced further communications with the defendants.

33. The fact remain that the first cause of action for institution of the present suit was also the Letter of Intent dated 14.02.2013. That was the starting period of the cause of action. That was the basis on which the suit was filed. Subsequently, as stated the plaintiff had withdrawn the earlier suit and had not obtained permission to institute a fresh suit. The issues raised were resolved. The suit was abandoned. The second suit is therefore clearly

barred under Order XXIII Rule 4 of the Code of Civil Procedure, 1908.

34. 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 plaint 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 plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In Hardeh Ores (P) Ltd. v. Hede & Co. [Hardeh 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 plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint 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.

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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

35. In *K.Akbar Ali Vs. K.Umar Khan and Others* reported in 2021

SCC OnLine SC 238, the Honourable 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. Depts 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 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.*

.....

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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."

Emphasis Supplied

36. It is also seen that under Section 54 of the Transfer of Property

Act, 1882, Contract for Sale had been defined as follows:-

"S.54.....

.....

Contract for sale.- A contract for the sale of immovable

property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

Emphasis Supplied

37.It had been very specifically provided that a contract of sale does not create any interest or charge on such property. Thus there cannot be a relief sought for permanent injunction restraining the defendant from dealing with the said property covered under Letter of Intent or against the Sub-Registrar from registering a document lawfully produced before him.

38.It is also to be noted that after O.S.No.2156 of 2016 had been withdrawn by the plaintiff, he had addressed yet another letter seeking further documents and the 1st defendant had taken a specific stand that no further documents are required to be forwarded and had also enclosed the cheque of Rs.10,00,000/- received as the advance amount.

39.In O.S.No.5947 of 2018 which is now sought to be rejected by filing I.A.No.3 of 2019, the subsequent correspondences has been shown as

cause of action for instituting the said suit. Those correspondences cannot give rise for cause of action. Actually the cause of action for the plaintiff was the Letter of Intent dated 14.02.2011 and that came to a natural end by withdrawal of the suit in O.S.No.2156 of 2016. The matter ended there. With respect to institution of any further suit on the basis of the Letter of Intent dated 14.02.2011, the subsequent correspondences had been initiated unilaterally by the plaintiff and cannot be related back to the Letter of Intent.

40. In ***Geo Miller and Company Private Limited Vs. Chairman, Rajasthan Vidyut Utpadan Nigam Limited*** reported in (2020) 14 SCC 643, the Honourable Supreme Court, albeit in an issue arising out of Arbitration and Conciliation Act, 1996, had stated “*Mere correspondence of the appellant by way of writing letters/reminders to the respondent subsequent to this date would not extend the time of limitation*”.

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41. Thus, mere correspondences would not be of any assistance to the plaintiff.

42.This aspect has been reiterated by the Hon'ble Supreme Court in ***Secunderabad Cantonment Board Vs. B.Ramachandraiah & Sons*** reported in **2021 SCC OnLine SC 219**, wherein, the very same portion had been extracted in paragraph No.15 namely, that *“Mere correspondence of the appellant by way of writing letters/reminders to the respondent subsequent to this date would not extend the time of limitation”*.

43.The practice of re-agitation and re-litigating the same issue has been very strongly commented by the Honourable Supreme Court reported in **1998-3-SCC-573, K.K.Modi Vs. K.N.Modi**. The Honourable Supreme Court had stated as follows:-

“ 44. One of the examples cited as an abuse of the process of the court is re litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against him. The re agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. A proceeding being

filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

44. In ***N. Ramayee Vs. The Sub-Registrar and Another***, reported in **2020 6 CTC 697**, a Division Bench of this Court presided by me, on a reference, had held as follows:

"8.that there cannot be a refusal for registering a document as presented by the Registering authority, except on the grounds as given under the provisions of the Registration Act, 1908."

It is also seen that any document perpetuating to be an Agreement of Sale, should also be registered for it to be admissible in any Court of law. It should also be stamped to the value of the transaction.

45.The Letter of Intent is of no value. It is just a scrap of paper. It cannot give rise to any right or obligation. No relief can be claimed on the same. There is no effective offer. There is no effective acceptance. More importantly the document is not registered. It is not adequately stamped. Even on these grounds, the plaintiff cannot seek any relief as sought for in the plaint.

46.It is thus seen that the plaintiff has engaged himself in abusing the process of law and court by instituting suit after suit on a document which is of no value against the defendants.

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47.The order under revision, certainly has to be interfered with. In the order under revision, after extracting the various aspects in the petition and the counter, by a mere four paragraphs, the petition had been dismissed.

There is no proper application. The order under revision is set aside.

48. In view of the above reasons, the order under revision is interfered with and the order dated 07.08.2020 of dismissal in I.A.No.3 of 2019 by the IV Assistant City Civil Court, Chennai is set aside. The Civil Revision Petition is allowed, with costs of Rs.1,00,000/- (Rupees One Lakh only). Consequently, the connected Civil Miscellaneous Petition is closed. The suit in O.S.No.5947 of 2018 now pending on the file of the IV Assistant City Civil Court, Chennai is rejected.

26.04.2021

vsg/smv

Index : Yes / No

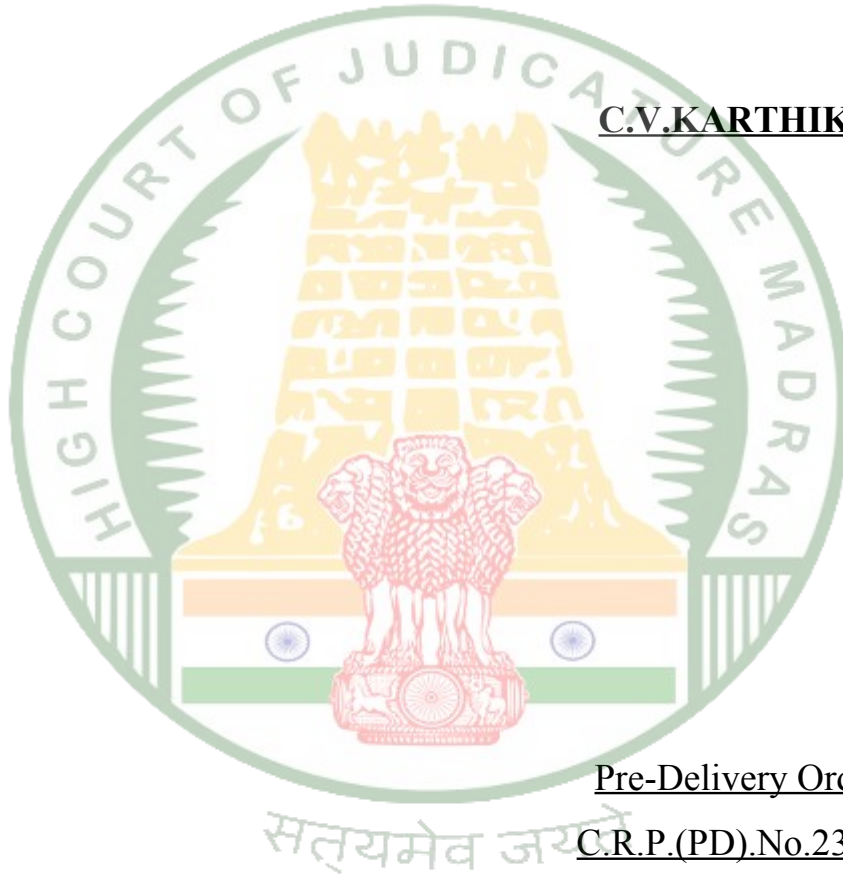
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Speaking order : Yes / No

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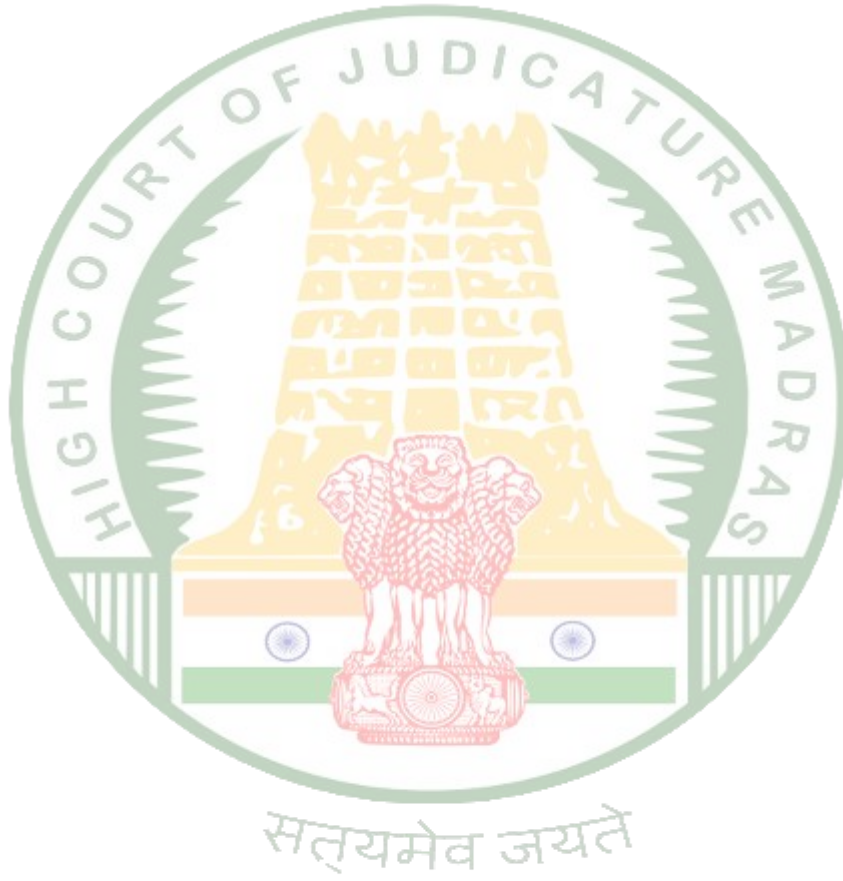
C.V.KARTHIKEYAN, J.,
smv

Pre-Delivery Order made in

C.R.P.(PD).No.2336 of 2020

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