IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.975 of 2017
and C.M.P.No.4828 of 2017

S.Narayanan .. Petitioner

Vs.

1.S.Rakesh Kumar

2.The Executive Officer Peerkankaranai,
Peerkankarnai Town Panchayat,
Peerkankaranai, Chennai 600 063. .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 18.01.2017 made in I.A.No.1111 of 2016 in O.S.No.28 of 2014 on the file of the District Munsif Court, Tambaram.

For Petitioner : Mr.V.Chandraprabu

For Respondents : Mr.G.Govarthanan (For R1)
Mr.P.Senthilkumar (For R2)

O R D E R

(The matter is heard through 'video conferencing/hybrid mode')

The Civil Revision Petition is filed against the order and decree dated 18.01.2017 made in I.A.No.1111 of 2016 in O.S.No.28 of 2014 on the file of the District Munsif Court, Tambaram.

2.The petitioner is 1st defendant, 1st respondent is plaintiff and 2nd respondent is 2nd defendant in O.S.No.28 of 2014 on the file of the District Munsif Court, Tambaram. The 1st respondent filed the said suit for permanent injunction, restraining the petitioner, his men, agents, servants or any one claiming through him from making any further construction on the B-schedule property and for mandatory injunction, directing the petitioner and 2nd respondent to remove the concrete pillar and any other structure that may be made in the B-schedule property and in failure to do so, remove the same by issuing the warrant to the court officer appropriately. The petitioner filed written statement and is contesting the suit. Trial commenced. The 1st respondent filed proof affidavit and examined in chief. The suit was posted for cross-examination of the 1st respondent. At that stage, the petitioner filed I.A.No.1111 of 2016, for rejection of plaint, under Order VII Rule 11(a) and (d) of C.P.C. According to the petitioner, the suit does not disclose cause of action and 1st respondent has not filed material documents along with plaint to substantiate his case. According to the petitioner, it is the 1st respondent who encroached his property, for which the petitioner filed O.S.No.77 of 2013, against him. The said suit was compromised and as per the rough sketch filed in compromise memo, the properties of petitioner and 1st respondent were identified. The petitioner has put up the construction only in his property, as per rough sketch. The 1st respondent suppressed earlier suit filed by the petitioner and compromise decree and has come out with the present suit. If the 1st respondent is aggrieved by compromise decree in O.S.No.77 of 2013 filed by the petitioner, he has to file a suit only to set aside the compromise decree. The filing of the present suit is barred under law. The present suit is filed by M.Sudarsan Raj, on behalf of the 1st respondent, based on the authorization letter. The 1st respondent is owner of the suit property and if he files a suit against the petitioner in order to protect his right over the suit property, he has to file suit either by himself or through valid power of agent. In the absence of any valid registered power of attorney executed in favour of said M.Sudarsan Raj, the filing of the present suit on the strength of mere authorization letter is not permissible in law. Hence, the suit is barred under law and cause of action is imaginary and illusory. The averments in the plaint do not disclose cause of action, which warrants for trial and plaint to be rejected.

3.The 1st respondent filed counter affidavit and denied various averments. According to the 1st respondent, the petitioner has filed the present I.A. when the suit was in the part-heard stage, only with a view to avoid getting into witness box. The petitioner has encroached the property of the 1st respondent and put up present construction. The 1st respondent has mentioned cause of action for the suit and also filed documents to prove his case. The 1st respondent further stated that the averments in the affidavit is beyond the pleadings and defence raised in the written statement filed by the petitioner. The petitioner is not entitled to take defence or new plea without seeking permission of the Court. Additional defence in the form of affidavit being raised in the present application filed under Order VII Rule 11 of C.P.C. is not maintainable. In the plaint, the 1st respondent has stated specifically as to nature of the suit, cause of action and relief sought for and prayed for dismissal of I.A.

4.The learned Judge considering the averments in the plaint, affidavit and counter affidavit, held that there is a cause of action for filing suit and whether relief and documents relied on by the 1st respondent proves his case has to be decided only by appreciating the oral and documentary evidence let in by the parties and dismissed the I.A. filed by the petitioner for rejection of plaint and documents filed by the 1st respondent.

5.Against the said order dated 18.01.2017 made in I.A.No.1111 of 2016 in O.S.No.28 of 2014 , the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioner reiterated the averments in the affidavit filed in support of the application filed for rejection of plaint and submitted that the plaint averments do not disclose any cause of action. The plaint is presented by a person who is not authorised by the plaintiff in the manner known to law. The learned Judge failed to consider that suit filed by the representative without any power of attorney is not maintainable. The 1st respondent has suppressed the suit in O.S.No.77 of 2013 filed by the petitioner and compromise decree passed in the said suit. The learned counsel appearing for the petitioner contended that a suit can be initiated either by the plaintiff himself or through registered power of attorney. A suit filed by the authorised person is not maintainable and barred by law. In support of his contentions, the learned counsel for the petitioner relied on following judgments:

(i) ***(1977) 4 SCC 467 [T.Arivandandam Vs. T.V.Satyapal and another]:***

> ***"5.****We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of*

the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. 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, be should exercise his power under Or. VII r. 1 1 C.P.C. 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 by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits.........."

(ii) ***(2010) 10 SCC 512 [Man Kaur (dead) by LRs Vs. Hartar Singh Sangha]:***

"20.The said attorney-holder (PW1) clearly stated in his evidence that he was not aware of anything that transpired prior to 1.3.1980 when the power of attorney was executed in his favour. Nothing of relevance transpired after 1.3.1980 except the issue of the suit notice dated 5.3.1980. He did not know whether the defendant committed breach nor did he know about the readiness and willingness of the plaintiff. He admitted in his evidence :

> "I do not know the detailed terms and conditions of the transaction.... I do not know the facts of this transaction before my appointment in the year 1980..... I do not know whether plaintiff wrote any letter that he is ready to purchase this plot.... I do not know if anybody else also did any bargain in the transaction or not. I do not know who has been in correspondence on behalf of the plaintiff till June 1979".

The evidence of PW 1 is therefore of no assistance in a suit for specific performance except to prove that he was authorized by the plaintiff to file a suit for specific performance.

21. The plaintiff who ought to have given evidence never appeared and gave evidence. As his attorney-holder PW1 had no knowledge of the transaction, the plaintiff solely relied on the evidence of the property dealer Balraj Singh (PW2) to prove the execution of the agreement, the terms of the agreement, his readiness and willingness to perform the agreement and the alleged breach by the defendant. But Balraj Singh cannot become a substitute for the plaintiff to give evidence about the finances or intentions or the

readiness and willingness of the plaintiff which were within the personal knowledge of the plaintiff. Balraj Singh was a property dealer engaged by the plaintiff and supporting the plaintiff. He was not an attorney-holder acting on behalf of the plaintiff. Therefore, neither the evidence of Jagtar Singh (PW 1) nor the evidence of Balraj Singh (PW2) can be relied upon to prove that plaintiff was always ready and willing to perform his obligations under the contract, in terms of the contract. Therefore, it has to be held that though there were necessary averments in the plaint about the readiness and willingness of the plaintiff, and though PW1 and PW2 gave evidence about his readiness and willingness, the suit has to fail for failure to comply with section 16(c) of the Specific Relief Act, as there was no acceptable or valid evidence of such readiness and willingness of the plaintiff to perform his part of the obligations in terms of the contract. ”

(iii) ***(2012) 8 SCC 706 [Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust]:***

"17.*In the case on hand, the plaintiff-respondent to get a decree for specific performance has to prove that there is a subsisting agreement in his favour and the second defendant has the necessary authority under the power of attorney. Order VII Rule 14 mandates that the plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the power of attorney when the plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is. In the case on hand, only the agreement between the plaintiff and the second defendant has been filed along with the plaint under Order VII Rule 14(1). As rightly pointed out by the learned senior counsel for the appellant, if he is not in possession of the power of attorney, it being a registered document, he should have filed a registration copy of the same. There is no such explanation even for not filing the registration copy of the power of attorney. Under Order VII Rule 14(2) instead of explaining in whose custody the power of attorney is, the plaintiff has simply stated 'Nil'. It clearly shows non-compliance of Order VII Rule 14(2).*

....

30. *In the light of the above discussion, in view of the shortfall in the plaint averments, statutory provisions, namely, Order VII Rule 11, Rule 14(1) and Rule 14(2), Form Nos. 47 and 48 in Appendix A of the Code which are statutory in nature, we hold that the learned single Judge of the High Court has correctly concluded that in the absence of any cause of action shown as against the 1st defendant, the suit cannot be proceeded* *either for specific performance or for the recovery of money advanced which according to the plaintiff was given to the 2nd defendant in the suit and rightly rejected the plaint as against the 1st defendant. Unfortunately, the Division bench failed to consider all those relevant aspects and erroneously reversed the decision of the learned single Judge. We are unable to agree with the reasoning of the Division Bench of the High Court. "*

(iv) ***2019 SCC Online SC 1358 [Colonel Shrawan Kumar Jaipuriyar Vs. Krishna Nandan Singh and another]:***

"10.*This Court in Church of Christ Charitable Trust and Educational Society Represented by its Chairman v. Ponniamman Educational Trust Represented by its Chairman/ Managing Trustee 1 has referred to the earlier judgment of this Court in A.B.C. Laminart Pvt. Ltd. and Anotherv. A.P. Agencies, Salem2 to explain that the cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to seek a decree and relief against the defendant. Cause of action requires infringement of the right or breach of an obligation and comprises of all material facts on which the right and claim for breach is founded, that is, some act done by the defendant to infringe and violate the right or breach an obligation. In T. Arivandanam v. T.V. Satyapal and Another3 this Court has held that if the plaint is manifestly vexatious, meritless and groundless, in the sense that it does not disclose a clear right to sue, it would be right and proper to exercise power* *under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('Code', for short). A mere contemplation or possibility that a right may be infringed without any legitimate basis for that right, would not be sufficient to hold that the plaint discloses a cause of action. "*

(v) ***2019 SCC Online SC 372 [Raghwendra Sharan Singh Vs. Ram Prasanna Singh (dead) by LRs]:***

*"**29.**At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial Court. "*

(vi) ***(2006) 5 SCC 566 [Pushpa Devi Bhagat (dead) through LR.Sadhna Rai Vs. Rajinder Sngh and others]:***

"17.*The position that emerges from the amended provisions of Order 23, can be summed up thus :*

> *(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96(3) CPC.*
>
> *(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) Rule 1 Order 43.*
>
> *(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.*
>
> *(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23.*

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21.8.2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second *defendant within a few days thereafter (that is on 27.8.2001), filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by second defendant was not maintainable, having regard to the express bar contained in section 96 (3) of the Code.*"

7.The learned counsel appearing for the respondents 1 and 2 separately made submissions in support of the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

8.Heard the learned counsel appearing for the petitioner as well as the respondents 1 and 2 and perused the materials available on record.

9.From the materials on record, it is seen that the 1st respondent has filed suit for permanent injunction and mandatory injunction. According to the 1st respondent, the petitioner has encroached 1 ½ feet on the northern side of the 1st respondent's property by 1 feet on the ground and 3 feet under the ground and put up unauthorized construction by erecting pillars. The petitioner filed written statement and is contesting the suit. Trial commenced. The 1st respondent examined himself as P.W.1 and marked 6 documents and the suit was posted for cross-examination of

P.W.1. At that stage, the petitioner filed the present I.A. under Order VII Rule 11 of C.P.C. for rejection of the plaint on the ground that the plaint presented is abuse of process of Court. The plaint does not disclose any cause of action and suit filed by an authorised agent is not maintainable. Only the plaintiff or his authorised power of attorney can file suit on behalf of the plaintiff.

10.A reading of the plaint shows that the 1st respondent has stated that the petitioner had encroached portion of the property owned by the 1st respondent by 3 feet under the ground and 1 ½ feet above the ground, erected pillars and has put up construction unauthorizedly in violation of provisions of Town and Country Planning Act. This is the specific case of the 1st respondent and he has disclosed the same in the cause of action paragraph also. According to the petitioner, it is only the 1st respondent who has encroached his property and he has filed O.S.No.77 of 2013 against the 1st respondent and the said suit was compromised between the petitioner and 1st respondent and compromise decree was passed, enclosing sketch of the property. The petitioner further stated that he has put up construction only in his property as per compromise decree. These contentions of the petitioner are not relevant while considering the application filed under Order VII Rule 11 of C.P.C. Only the averments in the plaint and documents filed along with the plaint can be considered while deciding the issue under Order VII Rule 11 of C.P.C. The averments in the plaint has to be taken as correct and then it has to be considered whether it discloses a cause of action or suit filed is abuse of process of law or whether any one of the ingredients of Order VII Rule 11 of C.P.C has been satisfied by the defendant. It is the case of the petitioner that the 1st respondent has not filed any supporting documents along with the plaint. In the present case, the trial commenced, the 1st respondent let in evidence and marked 6 documents as Exs.A1 to A6 to substantiate his case. The learned Judge considering the documents filed by the 1st respondent, held that whether documents filed by the 1st respondent proved the case of the 1st respondent or not will be decided only after trial.

11.As far as the contention of the learned counsel appearing for the petitioner that the learned Judge failed to consider that suit filed by the authorised representative of 1st respondent is not maintainable is concerned, the petitioner has raised such a plea only after commencement of trial. The petitioner has not taken such a stand in the written statement filed by him. This issue can be decided after conclusion of trial by appreciating oral and documentary evidence let in by the 1st respondent. The petitioner has not made out any case for rejection of plaint. The learned Judge considered all the materials placed before him and provisions of Order VII Rule 11 of C.P.C. and dismissed the I.A., by giving cogent and valid reason. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.10.2021

Index :: Yes/No
gsa

To

The District Munsif,
Tambaram.

V.M.VELUMANI, J.

gsa

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