

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 08TH DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P. VELMURUGAN

A.No. 2558 of 2021

in

C.S.No. 679 of 2019

C.S.No. 679 of 2019 :-

1. Mahendra Jain,
S/o. Babulal Jain,
2. Shakuntala Jain @ Shakuntala Devi,
W/o. Mahendra Jain,
3. Atik Jain,
S/o. Mahendra Jain,
4. Palash Jain,
S/o. Mahendra Jain,

All are residing at :-
Flat No.B-601, Block 'B',
VI Floor, 'Sankeshwara Serenity',
Door No.1089, Poonamalee High Road,
Chennai – 600 084.

... Plaintiffs

-Vs-

1. J. Rajesh,
2. Sushila Jain,
W/o. J. Rajesh,

Both residing at :-
Old No.28, New No.48,
Clemens Road, Purasawalkam,
Chennai – 600 007.

... Defendants

A.No. 2558 of 2021 :-

1. J. Rajesh,
S/o. Jayanthilal Jain,

2. Sushila Jain,
W/o. J. Rajesh,

Both residing at :-
Old No.28, New No.48,
Clemens Road, Purasawalkam,
Chennai – 600 007.

... Applicants/Defendants

-Vs-

1. Mahendra Jain,
S/o. Babulal Jain,

2. Shakuntala Jain @ Shakuntala Devi,
W/o. Mahendra Jain,

3. Atik Jain,
S/o. Mahendra Jain,

4. Palash Jain,
S/o. Mahendra Jain,

All are residing at :-
Flat No.B-601, Block 'B',
VI Floor, 'Sankeshwara Serenity',
Door No.1089, Poonamalee High Road,
Chennai – 600 084.

... Respondents/Plaintiffs

Application praying that this Hon'ble Court be pleased to strike off the entirety of the pleadings in the specific paragraphs in the plaint being 3, 4, 5, 6, 7, 8, 9, 10, 11 and consequently the entire suit may be pleased to be struck off as there is no cause of action for sustaining the suit.

This Application having been heard on 22/03/2022 in the presence of Mr. A. Palaniappan, advocate for the applicant herein, and Mr.T.K.Saravanan, Advocate for the respondents herein and upon reading the Judges Summons and the Affidavit of J.Rajesh Jain and the Counter Affidavit of Mahendra Jain filed herein and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of the said advocates for the parties hereto and this Court having observed that it is well settled proposition of law that at the time of deciding the application under Order VI rule 16 C.P.C., the Court has to see the averments made in the plaint and if the averments in the plaint lead to any ingredients of Order VI Rule 16 C.P.C., certainly, that portion can be struck off from the pleadings, on a reading of the entire plaint, this Court does not find any reason that it would attract Order VI Rule 16 C.P.C., to strike off the portions of the plaint as mentioned in the affidavit of documents, and this Court finds that there is no merit in the application and the same is liable to be dismissed and **It is ordered as follows :-**

That the Application No. A.No. 2558 of 2021 be and is hereby dismissed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 08TH DAY OF APRIL 2022.

Sd/-

ASSISTANT REGISTRAR (O.S-II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

ED
28.04.2022

A.No. 2558 of 2021
in
C.S.No. 679 of 2019

ORDER

DATED : 08.04.2022

THE HON'BLE MR. JUSTICE
P. VELMURUGAN

FOR APPROVAL : 05.05.2022

APPROVED ON : 06.05.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 22.03.2022	Delivered on 08.04.2022
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CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.No.2558 of 2021
in
C.S.No.679 of 2019

C.S.No. 679 of 2019 :-

1. Mahendra Jain,
S/o. Babulal Jain,
2. Shakuntala Jain @ Shakuntala Devi,
W/o. Mahendra Jain,
3. Atik Jain,
S/o. Mahendra Jain,
4. Palash Jain,
S/o. Mahendra Jain,

All are residing at :-
Flat No.B-601, Block 'B',
VI Floor, 'Sankeshwara Serenity',
Door No.1089, Poonamalee High Road,
Chennai – 600 084.

... Plaintiffs

-Vs-

1. J. Rajesh,
2. Sushila Jain,
W/o. J. Rajesh,
Both residing at :-

Old No.28, New No.48,
Greens Road, Purasawalkam,
Chennai – 600 007.

... Defendants

A.No. 2558 of 2021 :-

1. J. Rajesh,

2. Sushila Jain,
W/o. J. Rajesh,
Both residing at :-
Old No.28, New No.48,
Greens Road, Purasawalkam,
Chennai – 600 007.

... Applicants/Defendants

-Vs-

1. Mahendra Jain,
S/o. Babulal Jain,

2. Shakuntala Jain @ Shakuntala Devi,
W/o. Mahendra Jain,

3. Atik Jain,
S/o. Mahendra Jain,

4. Palash Jain,
S/o. Mahendra Jain,

All are residing at :-
Flat No.B-601, Block 'B',
VI Floor, 'Sankeshwara Serenity',
Door No.1089, Poonamalee High Road,
Chennai – 600 084.

... Respondents/Plaintiffs

Application praying that this Hon'ble Court be pleased to strike off the entirety of the pleadings in the specific paragraphs in the plaint being 3, 4, 5, 6, 7, 8, 9, 10, 11 and consequently the entire suit may be pleased to be struck off as there is no cause of action for sustaining the suit.

ORDER

The Plaintiffs have filed the Suit in C.S.No.679 of 2019 under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of CPC for declaration to declare the sale deeds dated 21.11.2017 and 23.11.2017 as sham and nominal and null and void.

2. The case of the respondents/Plaintiffs is that the first respondent/first Plaintiff is the proprietor of “Sree Dharmesh Lighting Company” in Chennai and involved in the business of trading and supply of lighting systems and allied equipments. Since 2011, the first respondent/first Plaintiff was doing business transaction with the first applicant/first defendant, who is the Proprietor of “Spark Lites” in Chennai. During the course of business transaction, first applicant/first defendant had supplied the goods for a total value of Rs.3,00,00,000/- to the first respondent/first plaintiff, which amount was due to be paid to the first applicant/first defendant. Subsequently, the first respondent/first plaintiff had incurred a huge loss in his business due to the fact that the equipments supplied by the first applicant/first defendant were poor and low quality and when the same were supplied by the first respondent/first plaintiff to the

customers, they did not make payments for the goods due to its poor quality and therefore, the first respondent/first plaintiff was unable to pay the said sum of Rs.3,00,00,000/- to the first applicant/first defendant, due to which the first applicant/first defendant exerted undue pressure on the first respondent/first plaintiff and forced him to hand over the original title deeds of entire property documents to the first applicant/first defendant as security for the said amount. Subsequently, the first applicant/first defendant forced the first respondent/first Plaintiff to execute sale deeds in respect of the Suit schedule properties and hence, the first applicant/first defendant with force and coercion have acquired all properties by way of sale deeds. Therefore, the respondents/plaintiffs have filed the Suit for declaration, declaring that the sale deeds dated 21.11.2017 and 23.11.2017 purported to have been executed by the Plaintiffs in favour of the 2nd applicant/2nd defendant is sham and nominal and null and void.

3. During the pendency of the Suit, the applicants/defendants have filed the Application in A.No.2558 of 2021 to strike off the entirety of the pleadings in the specific paragraphs in the plaint being 3 to 11 and consequently, the entire suit be struck off as there is no cause of action for sustaining the suit.

4. The learned counsel appearing of the applicants/defendants submitted that the allegations in the plaint are unnecessary, scandalous, frivolous and vexatious and totally false and it was devised for the purpose of protracting the Suit and the entirety of the Suit is nothing but an abuse and misuse of the process of the Court. It is further submitted that the first applicant/first defendant had supplied the poor quality goods for a total value of Rs.3,00,00,000/-. But however, it is stated that business transaction in between the first applicant/first defendant and first respondent/first plaintiff is only about Rs.1.65 crores and in the absence of any evidence, mention about the period and dates on which the transaction was made, the invoices raised etc., the contra allegation are all absolutely, baseless and vague. Therefore, it is submitted that the allegations levelled against the applicants/defendants are totally bereft of evidence. Further, it is submitted that there is no single protest, not even a single communication has been placed by the first respondent/first plaintiff in respect of the allegations that the first applicant/first defendant had given an evasive reply by stating that the first applicant/first defendant is not at all responsible for the goods supplied, is totally vague without any specification of the date of communication, is not only devoid of truth but the same are totally fabricated and falsely devised for the purpose of creating a false cause of action for filing the Suit. Further, it is submitted that the first

respondent/first plaintiff has indulged in commodity trading in gold and has incurred substantial financial loss. It is further stated that the first respondent/first plaintiff has mismanaged his business and he himself was solely responsible for the loss incurred and therefore, he sought for financial assistance to the first applicant/first defendant. Since the first respondent/first plaintiff could not repay the money, he executed the sale deeds. Further, it is submitted that after execution of the registered sale deed, suit schedule -A property, (Sankareswara Serenity) the first respondent/first plaintiff requested for taking the property on lease, because they were occupying the property at the time of sale and they were entered an agreement of lease and monthly rent has been paid by the 2nd plaintiff by way of bank transaction and advance amount was also paid through bank transaction. All of a sudden, the first respondent/first plaintiff refused to pay the rent and false legal notices have been sent on 12.06.2019 and 21.09.2019 and the same were effectively replied by the applicants/defendants on 23.07.2019 and 30.09.2019 respectively. Thereafter, the first respondent/first Plaintiff has filed the Suit for declaration. It is therefore submitted that the applicants/defendants are impelled to file this application for strike off the various pleadings which are apparently proved to be frivolous, baseless, scandalous and devised for the purpose of protracting the proceedings and hence, the portion of the

plaint as mentioned in the affidavit, has to be struck off. In support of his contentions, the learned counsel appearing for the applicants/defendants placed reliance on the judgments of the Hon'ble Supreme Court and this Court are as follows:-

- (i) ***K.K.Modi vs. K.N.Modi & Ors.***, reported in ***(1998) 3 SCC 573***;
- (ii) ***S.Malla Reddy vs. Future Builders Coop., Housing Society*** reported in ***(2013) 9 SCC 349*** and
- (iii) ***T.Vetriselvan vs. Tamil Nadu Merchantile Bank Ltd.***, reported in ***2002 (1) CTC 513***

4.1 The relevant portion of the judgment of the Hon'ble Supreme Court in the case of ***K.K.Modi (supra)*** is as follows:-

Under Order 6 Rule 16, the Court may, at any state of the proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the court. Mulla in his treatise on the Code of Civil Procedure. (15th Edition, Volume II, page 1179 note 7) has stated that power under clause (c) of Order 6 Rule 16 of the Code is confined to cases where the abuse of the process of the Court is manifest from the pleadings; and that this power is unlike the power under [Section 151](#) whereunder Courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of process of Court on the basis of what is stated in the plaint.

4.2 In the case of **S.Malla Reddy** (supra), the relevant portion of the judgment is extracted hereunder:-

Order VI Rule 16 CPC has been substituted by the CPC (Amendment) Act, 1976. This provision deals with the amendment or striking out of the pleadings, which a party desires to be made in his opponent's pleadings. In other words, the plaintiff or the defendant may ask the court for striking out pleadings of his opponent on the ground that the pleadings are shown to be unnecessary, scandalous, frivolous or vexatious. This Rule is based on the principle of ex debito justitia. The court is empowered under this Rule to strike out any matter in the pleadings that appears to be unnecessary, scandalous, frivolous or vexatious or which tends to prejudice, embarrass or delay the fair trial of the suit.

4.3 In the case of **T.Vetriselvan**(supra), the relevant portion of the judgment is extracted hereunder:-

It is, therefore, evidently clear that the various averments made in the paras referred to above are unnecessary, scandalous frivolous and vexatious and, as such, they are liable to be deleted from the pleadings. There is no cause of action against the second defendant and, as such, the plaint has to be rejected in respect of the second defendant and under the circumstance, the name of the second defendant also has to be struck out from the plaint. The leave granted to the plaintiff also is liable to be revoked. Hence, these points are answered accordingly.

5. The learned counsel appearing for the respondents/plaintiffs submitted that the first applicant/first defendant has deliberately supplied the low quality lighting equipments to the first respondent/plaintiff and the same were supplied by the first respondent/first plaintiff to his customers, who in turn returned the goods supplied and did not pay the money, due to which the first respondent/first plaintiff has incurred huge loss. However, the first applicant/first defendant has forcibly taken all the title deeds and subsequently, executed a sale deed in favour of the 2nd applicant/2nd defendant and therefore, the respondents/plaintiffs are constrained to file the present suit and there is no suppression of fact and protracting the proceedings. Therefore, the learned counsel for the applicants submitted that all the defence taken by the applicants/defendants would have to be decided only after the trial and not at this stage. Further, it is submitted that averments made in the plaint are not frivolous, scandalous and vexatious as stated by the applicants/defendants in their affidavit. Therefore, the application is liable to be dismissed.

6. Heard the learned counsels appearing for the parties and perused the materials placed on record.

7. The points which arose for consideration are as to whether the pleadings set out in paragraphs 3 to 11 of the plaint are liable to be struck off under Order VI, Rule 16 of the Code; and whether striking of the pleadings has serious adverse impact on the rights of the parties concerned, are all to be decided only after trial and not at this stage. It is pertinent to note that Order 6 Rule 16 is not to be considered as mandatory.

8. The provisions of Order VI Rule 16 of the Code of Civil Procedure read as under:

16. Striking out pleadings.- The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.

9. A reading of the plain language of the above reproduced provisions makes it clear that the court's power to strike out any pleading at any stage of the proceedings can be exercised in either of the three eventualities i.e. where the pleadings are considered by the court unnecessary, scandalous,

frivolous or vexatious; or where the Court is satisfied that the pleadings tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise considered as an abuse of the court.

10. Normally, a Court cannot direct or dictate the parties as to what should be their pleading and how they should prepare their pleadings. If the parties do not violate any statutory provision, they have the freedom to make appropriate averments and raise arguable issues. The Court can strike off the pleadings only if it is satisfied that the same are unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay the fair trial of the suit or the Court is satisfied that suit is an abuse of the process of the court. Since striking off the pleadings has serious adverse impact on the rights of the party concerned, the power to do so has to be exercised with great care and circumspection. This Rule is based on the principle of *ex debito justitiae*. The court is empowered under this rule to strike out any matter in the pleadings that appears to be unnecessary, scandalous, frivolous or vexatious or which tends to prejudice, embarrass or delay the fair trial of the suit. The underlying object of the Rule is to ensure that every party to a suit should present his pleadings in an intelligible form without causing embarrassment to his adversary.

11. In the case on hand, admittedly, there is no statement made in the plaint with regard to the scandalous or vexatious nature of litigation. The contention of the applicants/defendants that the suit is not maintainable in view of some provisions of law is not sustainable, as the rival contention of the parties have to be established by producing oral and documentary evidence. Merely because some allegation has been made in the application, that itself cannot be a ground to strike out the pleadings, particularly, when the applicants/defendants have claimed the rights of the properties, that cannot be decided at an early stage, but however, it can be decided only after the full fledged trial and hence, the application is liable to be rejected.

12. The applicants/defendants' case ought to be presented in an intelligible form so that the other side may not be embarrassed in meeting it. In the present case, the question raised by the applicants/defendants was clearly an issue of fact, which had to be decided at the stage of trial of the suit, upon taking evidence.

13. The judgments of the Hon'ble Supreme Court and this Court are relied on by the learned counsel appearing for the applicants/defendants does not support the case on hand. Order VI Rule 16 C.P.C., is very clear as to under what circumstances, the pleadings can be struck off. Since the

respondents/plaintiffs are admittedly the rights of the properties and whether binding on all the sale deeds, would have to be decided only after trial and not at this stage. On a reading of the entire materials, and also the affidavit filed by the applicants/defendants, this Court does not find any merit in the application and the same is liable to be dismissed.

14. It is well settled proposition of law that at the time of deciding the application under Order VI rule 16 C.P.C., the Court has to see the averments made in the plaint and if the averments in the plaint lead to any ingredients of Order VI Rule 16 C.P.C., certainly, that portion can be struck off from the pleadings. On a reading of the entire plaint, this Court does not find any reason that it would attract Order VI Rule 16 C.P.C., to strike off the portions of the plaint as mentioned in the affidavit of documents. This Court finds that there is no merit in the application and the same is liable to be dismissed. Accordingly, this Application is dismissed.

Sd./- P.V.J.,
08.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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