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A.No.481 of 2022 in
C.S.No.256 of 2020

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P.VELMURUGAN, J.

The respondent herein is the plaintiff, who has filed the present suit for recovery of money. The applicant is the defendant in the said suit. After filing written statement, the applicant has filed the present application under Order VII Rule 11 seeking rejection of plaint.

2 The learned counsel appearing for the applicant would submit that the plaintiff has no cause of action to file the present suit. If by reading the plaint, it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the court shall exercise its power under Order VII Rule 11 of CPC and if the plaint is presented by clever drafting and created illusions of cause of action, the Court shall nip it in the bud, so that bogus litigation will end at the earliest stage. The plaintiff cannot be allowed to circumvent the provisions by means of clever drafting so as to avoid to mention of those circumstances, by which the suit is barred by law and therefore if the suit is instituted with illusion of case of action applying Order VII Rule 11(a) & (d) of CPC, the plaint can be rejected. To support the above contentions the learned counsel has placed his reliance on the



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judgments of the Hon'ble Supreme Court in the following cases:

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1. (1997) 4 SCC 467 (T.Arivanandam vs. T.V.Satyapal)
2. (2020) 16 SCC 601 (Raghwendra Sharan Sing vs. Ram Prasanna Sing)
3. (1998) 2 SCC 70 (I.T.C. Ltd., vs. Debts Recovery Appellate Tribunal)
4. (1977) 1 SCC 791 (Gurdit Singh vs. Munsha Singh)

3 The learned counsel for the applicant/defendant would submit that the land measuring to an extent of 205 cents in Survey No.83 and 291 cents in Survey No.84 were acquired by the Government for ORR Project and for the remaining unacquired lands, the applicant/defendant had executed a power of attorney in favour of venkatesan to execute sale of lands at Attanthangal Village, Ponneri Taluk, Tiruvallur District, which was annexed with the typed set of papers filed along with the plaint by the plaintiff and in that there is one Note stating that remaining unacquired land is in possession of the applicant/defendant. Thereafter sale deed was executed in favour of one S.Azaruthin by the applicant's power agent K.Venkatesan in respect of land in survey no.83 situated at Attanthangal Village Ponneri Taluk, excluding the lands already acquired for ORR Project, which was annexed in the typed set of papers filed along with the plaint by the plaintiff.



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4 The learned counsel appearing for the applicant/plaintiff would further submit that even prior to selling of the remaining properties by the power agent of the applicant, the Special Officer had referred the matter to the Land Acquisition Tribunal under Section 30 of the Land Acquisition Act an award was came to be passed and thereafter he also filed L.A.O.P.No.101 of 2011 under Section 18 of the Land Acquisition Act for enhancement and got an order in his favour. The case of the plaintiff is that he is subsequent purchaser and the defendant has erroneously sold the properties, which were already acquired by the Government and therefore the compensation received by the applicant/defendant has to be paid to him and if that is the case of the plaintiff, the plaintiff should have filed an appeal as per Section 54 of the Land Acquisition Act and therefore, he cannot filed the present suit, which is bar under Section 54 of the Land Acquisition Act. To support the above contentions, the learned counsel for the applicant has placed his reliance on the following decisions:

1. (2007) 5 SCC 614 (Hardes Ores Pvt. Ltd., vs. Hede & Co.)
2. (2014) 14 SCC 254 (Suresh Kumar Dagla vs. Sarwan)
3. 2015-3-L.W.875 (Vasumathi Shah vs. Pushpa Raju)
4. (1940) 51 L.W.553 ::1940 SCC OnLine Mad. 48 (Chikkana Chettiar vs.



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5. (1996) 7 SCC 218 (Laxmi Chand vs. Gram Panchayat
6. (2012) 8 SCC 706 (Church of Christ Charitable Trust & Educational Charitable Trust vs. Ponniamman Educational Trust)

5 The learned counsel appearing for the applicant would further submit that even the suit is not filed by the original owner of the property and the power agent has only filed the present suit, for which no prior permission of the Court under Order III Rule 2 of Civil Procedure Code has been obtained. It is also to be noted that the power of attorney given by one Inyul Fathima in favour of the respondent/plaintiff does not confer any right to sue on the disputed properties. Therefore, even if the plaint cannot be rejected under Order VII Rule 11 CPC, it is liable to be rejected under Section 151 of CPC, for abuse of process of law. The learned counsel has placed reliance on the following decisions to support his contentions:

1. (2004) 11 SCC 168 (Shipping Corporation of India Ltd., vs. Machado Bros.)
2. 2008 SCC OnLine Raj 530 (Temple of Thakur Shri Mathuradassji Vs. Shri Kanhaiyalal)



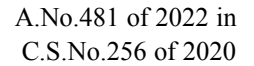
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6 The learned counsel would further submit that while deciding the application under Order VII Rule 11 of CPC, the plaint averments as well as documents annexed thereto can only be considered. In the present case, the documents 4 and 5 annexed by the plaintiff itself show that the plaint averments is vexatious, for which the learned counsel relied on the following decisions:

1. (2004) 9 SCC 512 (Liverpool & London S.P. & I Assn. Ltd., vs. M.V.Sea Success)
2. (2020) 7 SCC 366 (Dahiben vs. Arvindbhai Kalyanji Bhanusali)

7 The learned counsel appearing for the applicant/defendant further submitted that when statute prescribes certain thing to be done in a particular manner, the same shall be done only in that manner and not in any other manner as stated by the Division Bench of this Court in the judgment reported in (2018) 13 SCC 480 (Planters' Association of tamil Nadu vs. Secretary to Government). Further the term “law” occurring Order VII Rule 11 (d) of CPC includes not only legislative enactments but also judicial decisions of Supreme Court of India and High Courts. Therefore, if there is bar or certain thing cannot be done that would



8 Learned counsel appearing for the respondent/plaintiff would submit the plaintiff filed the present suit for recovery of money. The applicant/defendant suppressed the material fact and he has already parted away the property, as filed an affidavit in LAOP No.101 of 2011 and thereafter an application was also filed and a sum of Rs.19,94,936/- has been paid to the applicant/defendant in respect of the land of an extent of 496 cents which includes the plaintiff's property of an extent of 205 cents. Again the applicant/defendant claimed the suppressed compensation and reference had been made under Section 18 of the Land Acquisition Act in L.A.O.P.No.117 of 2014 and a sum of Rs.95,000/- per cent has been fixed and the applicant/defendant received a sum of Rs.93,40,691/- as compensation. The plaintiff, being the power of attorney of the subsequent purchaser of the properties, went to the property to measure the land and thereafter only he came to know all the acts of the applicant/defendant.



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9 The learned counsel further submits that when the applicant/defendant received the compensation in respect of the land which was originally owned by him and later sold by suppressing the fact, the plaintiff is entitled to receive the compensation, since the defendant has already sold it even before the compensation was determined and paid to the owners. The applicant/defendant has initiated various legal proceedings to implement the award after selling the land. The plaintiff has averred all the facts in the plaint and the plaint discloses the cause of action. Since the plaintiff has not challenged the award passed by the Land Acquisition Authorities, appeal under Section 54 of the Land Acquisition Act need not be filed and this Court also taking note of the fact has taken the suit on file. Therefore there is no reason to reject the plaint and the plaint is not barred by law and hence the application has to be dismissed.

10 Heard the learned counsel appearing on either side and perused the materials available on record.

11 The applicant/defendant has already filed written statement and thereafter he filed the present application invoking Order VII Rule 11 seeking



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rejection of plaint on the various grounds, for which, the applicant contended that rejection of plaint can be filed at any stage invoking Order VII Rule 11. However, now this Court has to see as to whether any of the grounds under Order VII Rule 11 has been made out and Section 151 of CPC can be applied or not.

12 It is settled proposition of law that at the time of deciding application under Order VII Rule 11, the Court has to see the averments in the plaint and documents annexed, not the defence taken by the defendants. There is clear distinction between a case where the plaint itself does not disclose any cause of action and a case in which the court after consideration of the entire material including oral and documentary evidence comes to the conclusion that there was no cause of action. For the limited purpose of determining whether the suit is to be rejected under order VII Rule 11(a) or not, the averments in the plaint are only to be looked into. What has to be considered is whether the plaint discloses cause of action and not whether the plaintiff has any cause of action. Further merely because the cause of action disclosed in the plaint is vague and incomplete is also not a ground for rejection of plaint as the provisions of Order VII Rule 11(a) CPC would not be available where triable issues have arisen. Therefore on reading of the plaint, this Court decides that the plaint discloses the cause of action and there



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are issues to be tried and hence the contention of the learned counsel for the applicant/defendant is not acceptable.

13 The other contention of the applicant/defendant that the plaintiff should have filed an appeal under Section 54 of the Land Acquisition Act to resolve his dispute and the suit is barred by law under Section 54 of the above Act. On a careful reading of the plaint shows that the respondent/plaintiff has not challenged the land acquisition proceedings or the award and he filed the suit only for recovery of money i.e. compensation received by the applicant/defendant for the properties, which according to the plaint, already sold to the plaintiff suppressing the fact the land has already been taken over by the Government of India for ORR Project. Therefore the suit is not barred by law as contended by the learned counsel for the applicant/defendant. Further it is stated by the applicant/defendant that he executed power of attorney for the remaining unacquired lands comprised in Survey Nos.78/1, 83, 84/1 and 84/3 situated at No.112, Attanthangal Village, Ponneri Taluk, Thiruvallur District. But per contra, the learned counsel for the respondent/plaintiff has stated that the applicant/defendant received the entire compensation in respect of the entire properties acquired and even after selling the same to predecessor in title to the



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respondent/plaintiff. Therefore, whether entire properties have been acquired by the Government or parts of the properties have been acquired and what are the survey numbers of the properties, in fact acquired by the Government, are all matter for trial and the same cannot be decided at this stage.

14 It is settled proposition of law that Article 141 of Constitution of India states that the law declared by the Supreme Court shall be binding on all courts within the territory of India. There is no quarrel with decisions referred to by the learned counsel for the applicant/defendant. Article 141 of Constitution of India is very clear that the “law” declared by the Hon'ble Supreme Court is law, which will bind all the Subordinate Courts including the High Courts, but not all the decisions of the Hon'ble Supreme Court. Therefore the contentions raised by the learned counsel for the applicant/defendant is not acceptable and the facts and circumstances of the decisions referred to by the learned counsel are different and not made applicable to the facts and circumstances of the present case.

15 Therefore, on a careful reading of the averments in the plaint, this Court finds that the plaint discloses cause of action to proceed with the suit and the suit is not barred under any law. The questions raised by the learned counsel



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appearing for the applicant/defendant are all matter for trial, which cannot be decided in the application under Order VII Rule 11.

16 For the foregoing reasons, this Court is of the view that the grounds raised by the applicant/defendant are not sustainable in law and hence the application is dismissed. Written statement has been filed and hence Registry is directed to list the main suit on 08.04.2022 “for framing issues”.

31.03.2022

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Note: Issue order copy on 07.04.2022



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