



A.No.470 of 2022 in
C.S.No.367 of 2021

Reserved on : 14.02.2022

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P.VELMURUGAN, J.

The first respondent herein is the plaintiff, who has filed the present suit for specific performance and permanent injunction. The applicants have been arrayed as D1 to D5 in the said suit. After receiving summons and entering appearance, the applicants/D1 to D5 have filed the present application under Order VII Rule 11 seeking rejection of plaint.

2 The learned counsel appearing for the applicants/D1 to D5 would submit that the first respondent/plaintiff in collusion with the 4th respondent/8th defendant has filed the present suit to grab the properties of the applicants. The plaint does not disclose the cause of action against the applicants/defendants 1 to 5. and absolutely there is no right accrued in favour of the first respondent/plaintiff over the suit properties. It is alleged that the first respondent/plaintiff entered into the agreement with the fourth respondent/8th



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defendant, who has fraudulently acted as power agent of the applicants/defendants 1 to 5, to sell the suit properties. The said agreement will not bind the applicants and they are not party to the same. The applicants never engaged or authorised the 4th respondent/8th defendant to act on behalf of the applicants for any transaction with the first respondent/plaintiff. There is no privity of contract between the first respondent/plaintiff and the applicants/defendants 1 to 5. Therefore no cause of action would arise to file the suit against the applicants.

3 The learned counsel appearing for the applicants would further submit that there is no averment in the plaint and there is no documentary proof to show that these applicants have authorised the fourth respondent/8th defendant to enter into agreement with the first respondent/plaintiff with regard the suit properties. In the plaint, the plaintiff themselves admitted that they have entered into the oral agreement and that too with fourth respondent/8th defendant only and the plaintiff has not produced any document to show that the fourth respondent/8th defendant is a power agent of the applicants/defendants 1 to 5. Without any single piece of evidence, the first respondent/plaintiff cannot file the suit for specific performance. Further more, transfer of immovable property can be made only by way of a registered instrument as per requirement under Section 54 of the



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Transfer of Property Act, 1882. As such, the unregistered instrument will not confer any right or interest over the immovable properties. Therefore, at any angle the suit cannot be proceeded with and the plaint is liable to be rejected.

4 Learned counsel appearing for the first respondent/plaintiff would submit that the plaintiff filed the present suit for specific performance. The plaintiff is a logistic company mainly handling air cargo catering to the needs of its customers at Chennai Airport. The applicants are the owners of the suit premises. The plaintiff is having its city office at the suit premises and they were on the lookout for a premises to move the existing office, which is in a rented premises to their own business premises to meet their business requirements and needs.

5 Learned counsel would further submit that since plaintiff was in dire need of premises to expand its business activities and to carry on its business with modern technology, they were in the process of identifying a property for their own business and company. At that time, 4th respondent/8th defendant came in contact with the plaintiff and informed that the suit property is available for sale and stated that some of the owners are staying in Chennai, some of them are in



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Vadodara and some of them are in USA and he also suggested that he has requisite authority to deal with the property and he took the plaintiff for a meeting with one R.Ramesh, the husband of the first applicant/first defendant. Thereafter, they have entered into a verbal contract fixing the sale consideration of the suit properties at Rs.3.5 Crores and the plaintiff had expressed its desire to pay a sum of Rs.50.00 lakhs towards advance sale consideration. The applicants/defendants 1 to 5 through the fourth respondent/8th defendant assured that the suit property will be sold only to the plaintiff for a total sale consideration of Rs.3.5 crores, but subsequently in connivance with the defendants 6 and 7, have failed to enforce the verbal agreement. Proving the verbal agreement is a matter of evidence, which has to be substantiated through oral and documentary evidence at the time of trial not at this stage. 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.

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

7 It is an admitted fact that the applicants/defendants 1 to 5 are the owners of the suit premises. The first respondent/plaintiff alleged that there was



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verbal agreement between the plaintiff and the applicants/defendants 1 to 5 through the fourth respondent/8th defendant, but, admittedly there is no document produced by the plaintiff to substantiate his claim. Further, the averments in the plaint itself clearly shows that there are contradictions with regard to the date of verbal agreement alleged to have entered into between the plaintiff and 8th defendant.

8 The averments in the plaint does not say that the applicants/defendants 1 to 5 approached the plaintiff through 4th respondent/eight defendant to sell the suit premises as alleged by the plaintiff. Agreement either can be written or oral and it is not compulsorily registerable under Section 17(i)(b) of the Registration Act, 1908. Neither the Specific Relief Act nor any other law requires that in order to specifically enforceable, an agreement for sale must be in writing. Hence, an oral agreement for sale is also specifically enforceable. But, it has to be proved in the manner known to law. 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 made in the plaint and documents annexed, not the defence taken by the defendants. As far as this case is concerned, admittedly, the plaintiff filed the suit for specific performance based on the verbal agreement. Plaintiff has not filed



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any documents to show any privity of contract between the plaintiff and the defendants 1 to 5. Further, the plaintiff has not paid any advance sale consideration and has not produced any proof for the same. Even the plaintiff has not sent any legal notice to the defendants 1 to 5 to come forward to execute sale deed as per the verbal agreement said to have been entered into between the plaintiff and the defendants 1 to 5. Further the defendants 1 to 5 have not given any document either power of attorney or authorisation to and in favour of the 8th defendant for negotiation and no such document has been produced by the plaintiff.

9 On a careful reading of the averments in the plaint, this Court finds that the plaint does not disclose any cause of action to proceed with the suit. 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. The question is whether the real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of order VII Rule 11 of CPC. 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.



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10 For the foregoing reasons, the application is allowed and the plaint in
C.S.No.367 of 2021 is hereby rejected. All the connected applications are closed.

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Pre-delivery Order in
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