



C.R.P.Nos.1401 & 1403 of 2020
and C.M.P.Nos.8123 & 8134 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

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THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.Nos.1401 & 1403 of 2020

and

C.M.P.Nos.8123 & 8134 of 2020

1.S.Palani Sasthivel Maruthi Harihara Sudhan @ Sudhan
2.Dhurga Vaishnavi Shivamoorthy ... Petitioners in both CRPs
Vs.

R.Krishnamurthy ... Respondent in both CRPs

Prayer in CRP.No.1401 of 2020: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal orders dated 07.03.2020 passed in I.A.No.921 of 2019 in O.S.No.510 of 2019 on the file of the Principal District Court, Tiruppur.

Prayer in CRP.No.1403 of 2020: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal orders dated 07.03.2020 passed in I.A.No.69 of 2020 in I.A.No.921 of 2019 in O.S.No.510 of 2019 on the file of the Principal District Court, Tiruppur.



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For P1 : Mr.V.Ragavachari
For P2 : Ms.Nalini Chidambaram, Sr. Counsel
for Ms.C.Uma
For Respondent : Mr.ARL.Sundaresan, Sr. Counsel
for Mr.Akhil Bhansali

COMMON ORDER

The present petitioners are the defendants in O.S.No.51 of 2019 on the file of the Principal District Court, Tiruppur. The respondent/plaintiff filed the suit for specific performance of contract on the basis of an oral agreement of sale .

2.For the sake of convenience, the parties are referred to as per their ranking in the trial Court and in appropriate places, their rank in the present petition would also be indicated.

3.The brief facts of the case of the plaintiff :

The plaintiff was engaged in real estate business and the first defendant claiming to be the sole and absolute owner of 5.80 acres in



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Nallur Village of Tiruppur was desirous of selling the same and approached the plaintiff. The first defendant handed over xerox copies of the title deeds after receiving a sum of Rs.1,00,000/- as advance in the presence of one Natarajan, a common friend on 04.08.2016. On 10.08.2016 there was an oral agreement between the plaintiff and the first defendant for sale of the property admeasuring 5.80 acres for Rs.4,57,08,000/- without fixing any time frame for the same. A sum of Rs.4 crores was paid on different dates by way of demand draft and cheques. The possession of the property was also handed over to the plaintiff. The plaintiff had commenced the preparation of proposed lay out and expended more than Rs.1 crore for development of the property and for getting statutory approvals. In September 2016, a sum of Rs.1,35,000/- was released by the plaintiff to the first defendant's mother Mrs.Padmini at the latter's request. It was also told by the first defendant that he has to transfer about 48 cents of land in the front portion to his mother since the payment of Rs.35 lakhs was in favour of his mother. The stamp duty and registration charges were borne by the plaintiff and duly accounted for. Another 42 cents of land in the front portion of the



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property was conveyed by the first defendant in favour of the plaintiff out of the entire extent of 5.86 acres for a sale consideration of Rs.31,42,700/- which was adjusted against Rs.4 crores already paid by the plaintiff. The first defendant had also obtained a signed cheque as a security for the balance sale consideration of Rs.57,08,000/-. In fact the plaintiff had in turn sold the 42 cents of the property to one "Precious Housing LLP" on 20.02.2017. The plaintiff had also agreed to name the layout in the name of the first defendant's mother as 'Sri Padmini Nagar' at the request of the first defendant. Another plot no.68 in the above mentioned property was purchased by the plaintiff's nominee Mrs.Samathal for a sale consideration of Rs.20,54,000/- thus reducing the balance sale consideration to be paid by the plaintiff to a mere Rs.1,54,000/-. At the end of all these transactions, the first defendant had in all conveyed 42 cents of the suit property, gifted about 62,802 sq.ft and 22,072 sq.ft. of land for public road and park and also conveyed plot no.68 in favour of Mrs.Samathal, when the first defendant's mother Padmini died leaving behind the defendants 1 & 2 as her legal heirs. But the defendants thereafter failed to honor the commitment as per the oral



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agreement and hence, the suit for specific performance of contract of oral sale agreement on 10.08.2016.

4.Initially the suit in OS.No.274 of 2018 was filed before II Additional District Court, Tiruppur for a bare injunction which was later dismissed as not pressed. Subsequently, this OS.No.510 of 2019 was filed.

5.The defendants in the suit in O.S.No.510 of 2019 had filed two petitions. I.A.No.921 of 2019 under Order VII Rule 11 of CPC praying to reject the plaint on the ground that the oral agreement dated 10.08.2016 was totally false and could not have taken place since the first defendant was in Canada on that particular date and returned to India only on 18th August 2016 and therefore, there is no cause of action for filing the suit. Moreover, in the earlier suit in O.S.No.274 of 2018 was dismissed as not pressed by the plaintiff only due to the fact that the plaintiff was fully aware about the absence of the first defendant in the country from 06.08.2016 to 18.08.2016. The defendants also filed



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WEB COPY I.A.No.69 of 2020 in I.A.No.921 of 2019 seeking permission to adduce

- (a) the certified copies of the dismissal orders in I.A.No.948 of 2018 in O.S.No.274 of 2018 which was filed under Order II Rule 2 CPC
- (b) his passport and flight tickets and
- (c) their counter affidavit in I.A.No.948 of 2018.

Both these IAs were dismissed by the learned Principal District Judge, Tiruppur vide her orders dated 07.03.2020 challenging which the present Civil Revision Petitions are filed.

6.As regards the I.A.No.921 of 2019 the trial Court had concluded citing various Hon'ble Supreme Court decisions that a suit for specific performance based on an oral agreement is maintainable and that the present plaint cannot be rejected on the ground that there is no cause of action especially when it discloses the same. I.A.No.69 of 2020 in I.A.No.921 of 2019 was also dismissed on the ground that the Court has to look into and consider only the averments in the plaint and the documents filed along with the plaint and no other documents filed by the defendants can be taken into consideration at this point of time.



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7.Heard Mr.V.Ragavachari, learned counsel appearing for the first revision petitioner, Ms.Nalini Chidambaram, learned Senior Counsel assisted by Ms.C.Uma, learned counsel for the second revision petitioner and Mr.ARL.Sundaresan learned Senior Counsel assisted by Mr.Akhil Bhansali, learned counsel for the respondent.

8.Ms.C.Uma, learned counsel for the revision petitioners would contend that since no leave of the Court was granted to the respondent in the earlier suit in O.S.No.274 of 2018 for filing a fresh suit for larger relief, the present suit in O.S.No.510 of 2019 was clearly barred under Order II Rule 2(3) CPC. It was also argued that the earlier suit in O.S.No.274 of 2018 was withdrawn by the respondent only because he was not in a position to prove that there was an oral agreement on 10.08.2016. He clearly knew that the first petitioner was not in the country on that particular date. The further contention of the learned counsel for the petitioners was that I.A.No.69 of 2020 in I.A.No.921 of 2019 ought to have been allowed since the documents which were sought



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to be produced would have been a documentary evidence to prove the falsity of the alleged oral agreement for sale on 10.08.2016 and there would have been no cause of action *prima facie*. He also relied on the following decisions :

- 1) *Raptakos Brett and Company Pvt. Ltd. Vs. Modi Business Centre (Pvt) Ltd. reported in (2006) 2 CTC 799.*
- 2) *Bhagawath Devi Vs. Aswin C.Jain reported in (2009) 2 CTC 617*
- 3) *Sornam & Others Vs. A.Venugopal & Others reported in (2010) 5 CTC 563*
- 4) *N.Ravindran Vs. V.Ramachandran reported in (2011) 3 CTC 153*
- 5) *Saradammal alias Saradambal Vs. G.Srinath reported in 2012 (6) MLJ 1*
- 6) *Virgo Industries (Eng.) Private Limited Vs. Venturetech Solutions Private Limited reported in (2013) 1 SCC 625*
- 7) *Coffee Board Vs. Ramesh Exports Private Limited reported in (2014) 6 SCC 424*
- 8) *Sikkim in Bishnu Maya Rai Vs Dr.Rameshwar Prasad and others*



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9) *Punjab and Haryana in Rakesh Kumar Vs. Ajit Singh reported in (1999) SCC Online P & H 244*

10) *Veena Goyal Vs. Raj Kumar Mittal reported in (2008) SCC Online P&H 382.*

11) *S.Gananatha Perumal Vs S.Valliappan reported in (2010) 6 CTC 95*

12) *S.Thirugnanasambandam Vs. P.Kaliyaperumal & Others reported in (2014) 3 L.W. 898*

13) *M.Subramani Vs Anbazhagan reported in MANU/TN/3605/2009*

14) *R.Arumugam Vs. P.R.Palanisamy & Ors. reported in MANU/TN/0011/2013*

15) *R.Vasanthakumar Vs. J.Radhakrishnan reported in CRP (PD) No.3784 of 2012 & CMP.No.7076 of 2016 & M.P.No.1 of 2012*

16) *Dahiben Vs Arvindbhai Kalyanji Bhanusali reported in (2020) 7 SCC 366 and contended that*

a) a reading of causes of action in both the suits in O.S.No. 274 of



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- b) since the plaintiff failed to get permission to claim larger relief at the time of filing the earlier suit in O.S.No.274 of 2018 under Order II Rule 2 CPC, the subsequent suit for specific performance of contract cannot be maintained and therefore the plaint has to be rejected.
- c) The object of Order II Rule 1 & 2 of CPC is to prevent multiplicity of suits and is founded on the principle that a person shall not be vexed twice for one and the same cause of action. If the previous and second suit must arise out of the same cause of action, the subsequent suit is definitely hit by Order II Rule 2 of CPC.



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d) The provisions of Order II Rule 2 of CPC should be read with Order II Rule 3 of CPC and if it emerges that different reliefs and claims arise out of the same cause of action the plaintiff must place all his claims before the Court in one suit and cannot omit one of the reliefs or claims except with the leave of the Court.

9.Per contra Mr.ARL.Sundaresan, learned Senior Counsel assisted by Mr.Akhil Bhansali, for the respondent contended that the earlier suit was dismissed as not pressed and therefore the plaintiff is not precluded from filing the suit for specific performance of contract. He also contended that the permission granted to withdraw the suit decides no matters in controversy and therefore, the plaintiff cannot be precluded from bringing a fresh suit on the same cause of action. It is further contended that while deciding application filed under Order VII Rule 11 CPC the averments in the plaint and documents filed along with the plaint has to be taken into consideration and the documents relied on by the defendants cannot be taken into account. Thus, according to him dismissal of IA.No.69 of 2020 in I.A.No.921 of 2019 cannot be said to be



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against the settled principles of law. He also drew the attention of this Court to the entire averments made in the plaint and contended that the reading of the plaint as a whole would reveal that there is a cause of action for filing the suit. He also relied on the decision in *Pugazhendhi Vs. Subramanian* (CRP.Nos.1359 & 1360 of 2018 and CMP.No.7161 of 2018) orders dated 12.05.2020) wherein a single bench of this Court had held that while deciding under Order VII Rule 11 of CPC the averments made in the plaint alone is germane and the contention of the defendant cannot be looked into either in written statement or any other materials produced by the defendants. The learned Senior Counsel also pointed out that in the earlier suit the plaintiff actually filed application under Order II Rule 2 of CPC seeking leave to file the suit for specific performance separately and when the said petition was not dismissed on merits, the present suit filed by the plaintiff is not hit by Order II Rule 2 of CPC.

10.At the outset, it may be observed that the respondent/plaintiff though filed the suit in O.S.No.274 of 2018 before the II Additional District Court, Tiruppur, for bare injunction against the



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same defendants the said suit was dismissed as not pressed. Along with the said suit the respondent/plaintiff also filed an application under Order II Rule 2 of CPC to grant him liberty to file a suit for specific performance at a later stage. The suit was dismissed as not pressed and the trial Court even without looking into the averments made in the petition filed under Order II Rule 2 of CPC had dismissed it along with the suit on the ground that the suit is dismissed as not pressed.

11.The main contention of the revision petitioners is that the first petitioner was not in India between 06.08.2016 & 19.08.2016 and that the respondent/plaintiff has no right to invoke part performance of contract on the basis of the oral agreement as per Section 53 A of the Transfer of Property Act. It was further contended that since no sale agreement was made on 10.08.2016, there is no cause of action for filing the present suit.

12.The trial Court has observed after citing several decisions of this Court and Hon'ble Supreme Court that even after the amendment of



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the Registration Act, non-registration of contract between the parties would not operate as a total bar from instituting a suit for specific performance as proviso to Section 49 clearly states that the unregistered sale agreement can be used as an evidence in a suit for specific performance. The trial Court had observed that in the present case the respondent/plaintiff stands on a better footing because he has filed the suit on the basis of an oral agreement of sale. It is further observed that the plaintiff had pleaded cause of action in the plaint and Court should consider the submissions made in the written statement only at the time of trial and not in the petition filed under Order VII Rule 11 (a) and (d) of CPC especially when the plaint discloses cause of action.

13.A reading of causes of action in both the suits would clearly refer to the agreement in question. However, the causes of action pleaded in the earlier suit is different from the causes of action in the present suit. It is admitted fact that the property belonged to the revision petitioners / defendants and without an agreement entered into between the parties as averred in the plaint the defendants would not have allowed the plaintiff



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WEB COPY to get into the property and also receive huge payments to the tune of Rs.4 crores. All the decisions cited by the learned counsel for the revision petitioners, may not apply to the facts of the present case because the earlier suit in O.S.No.274 of 2018 was dismissed as not pressed and the learned trial Court Judge who passed the decree and judgment in O.S.No.274 of 2018 had failed to see the petition filed under Order II Rule 2 of CPC and dismissed it only on the ground that the suit was withdrawn. Of course, the present plaintiff /respondent did not file any appeal against the dismissal of the said order. However, he cannot be precluded from filing the suit for specific performance of contract and the plaint cannot be rejected on this ground under Order VII Rule 11 of CPC especially when the cause of action is disclosed in the suit. As regards the absence of one of the defendants in the country during the alleged oral agreement on 10.08.2016 it can be gone into only after the full fledged trial and the trial Court had rightly exercised its jurisdiction while dismissing both the petitions I.A.Nos.69 of 2020 & 921 of 2019. I do not find any infirmity in the orders passed by the trial Court.



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14.The Civil Revision Petitions fail and are therefore dismissed.

No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

- 1.The Principal District Court, Tiruppur.
- 2.The Section Officer, VR Section, High Court, Madras.

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