



A.No.1843 of 2020 in
C.S.No.362 of 2019

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Orders Reserved on : 22.03.2022

Orders Pronounced on : 17.08.2022

P.VELMURUGAN, J.

The applicants/defendants herein filed the present application under Order VII Rule 11(a) and (d) of Code of Civil Procedure seeking to reject the plaint as barred in law and lack of proper cause of action.

2.The respondents herein/plaintiffs have filed the suit in C.S.No.362 of 2019 for declaration to declare two Settlement Deeds dated 11.08.2017 registered as Document Nos.4794 and 4795 of 2017 on the file of the Sub Registrar, Purasaiwakkam as invalid, sham, nominal and null and void. During the pendency of the said suit, the applicants herein/defendants have filed the present application to reject the plaint on the ground that the suit is hit by Order VII Rule 11 (a) and (d) of Code of Civil Procedure as the plaint does not disclose any cause of action and that the suit is barred by Order II Rule 2 of Code of Civil Procedure.



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3.1 The learned counsel for the applicants/defendants submitted that the first respondent herein/first plaintiff executed two Settlement Deeds dated 11.08.2017 in favour of the second applicant herein. Subsequently, the respondents 1 and 2 herein filed a suit in O.S.No.5843 of 2017 before the VIII Assistant Judge, City Civil Court, Chennai seeking for permanent injunction restraining the applicants herein from disturbing the peaceful possession of the respondents herein from the suit schedule mentioned property and for other consequential reliefs. Now, the respondents/plaintiffs have come up with the present suit seeking declaration.

3.2 He further submitted that the respondents have filed the above suit seeking permanent injunction in the year 2017 itself and in the plaint therein, they have clearly stated that they are entitled to file another suit for cancellation of the aforesaid two Settlement Deeds after they mobilize necessary funds for payment of Court fees. However, the relief seeking cancellation of Settlement Deeds sought for in the present suit is already available at the time of filing the earlier suit and hence, the present suit is barred by law, and hit by Order II Rule 2 of C.P.C and the plaint also does not disclose the cause of action. Therefore, at any angle, the suit cannot be proceeded with and the plaint is liable to be rejected.



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3.3 In support of his contention, the learned counsel for the applicants relied upon the judgments of the Hon'ble Supreme Court in the case of ***Deokuer & ANR Vs. Sheoprasad Singh And Ors.*** reported in AIR 1966 359; ***Rathnavathi & Another Vs. Kavita Ganashamdas*** (in Civil Appeals Nos.9949-9950 of 2014) ; ***Sucha Singh Sodhi (D) Thr.Lrs Vs. Baldev Raj Walia & Anr*** (Civil Appeals No.3777 of 2018) ; and the judgment of the Karnataka High Court in the case of ***Chinnappa Vs. Corporation of City of Bangalore*** reported in AIR 2005 Kant 70, 2005(1) Kar LJ 56.

4.1 Per contra, the learned counsel for the respondents/plaintiffs contended that the applicants/defendants 1 and 2, by taking advantage of the first respondent's old age, fraudulently obtained two Settlement Deeds dated 11.08.2017. The fraudulent committed by the defendants are clearly narrated in paragraphs Nos.10 and 11 of the plaint. He further contended that, taking advantage of the Settlement Deeds, the applicants attempted to dispossess the respondents from the schedule mentioned property and hence, the respondents filed a suit in O.S.No.5843 of 2017 seeking permanent injunction restraining the applicants 1 and 2 herein from disturbing the peaceful possession of the respondents 1 and 2 herein from the suit schedule mentioned property and for



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other consequential reliefs. Since the first respondent/first plaintiff is suffering from old-age ailments, the plaintiffs could not mobilize the funds immediately and in order to restrain the defendants from creating any encumbrance or alienation, the respondents/plaintiffs filed the earlier suit seeking bare injunction. However, they have stated that they can file the suit for cancellation of Settlement Deeds, after mobilizing necessary funds. He further contended that the applicants, without disclosing the contents of the documents, obtained signature and thumb impression of the first respondent and got the said documents registered. The applicants played fraud upon the first respondent and registered two settlement deeds dated 11.8.2017 in their favour and hence, they have filed the present suit. Therefore, the suit is not hit by Order II Rule 2 of C.P.C. He further contended that the matter can be decided only after trial, but not at this stage.

4.2 He further contended that the plaint itself discloses the cause of action. The citations referred by the learned counsel for the applicants are not applicable to the present case on hand. Therefore, the present application is to be rejected and the suit is to be proceeded in accordance with law. Hence, there is no reason to reject the plaint. The plaint is not barred by law and this application may be dismissed.

5. Heard the learned counsel for the applicants and the learned counsel for



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the respondents and also perused the materials available on record.

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6. Admittedly, the applicants 1 and 2 and the second respondent are the sons of the first respondent. The respondents 1 and 2 herein have filed the suit for declaration declaring that the Settlement Deeds dated 11.08.2017 are invalid, sham, nominal and null and void. During the pendency of the suit, the applicants/defendants have filed the present application to reject the plaint on two grounds, i.e. as the plaint does not disclose the cause of action, it has to be rejected under Order VII Rule 11 (a) of C.P.C; and that the suit is barred by law under Order II Rule 2 of C.P.C.

7.The main contention of the learned counsel for the applicants is that the respondents have already filed the suit for permanent injunction in O.S.No.5843 of 2017 and even though, the relief sought for in the present suit was already available with the respondents/plaintiffs at the time of filing the earlier suit in O.S.No.5843 of 2017, the present suit is clearly hit by Order II Rule 2 of C.P.C.

8. A careful reading of the plaint averments reveals that the plaint discloses the cause of action. Whether the plaint is hit by Order II Rule 2 of C.P.C. or not can be decided only after trial and not at this stage. In the suit in



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O.S.No.5843 of 2017, the respondents/plaintiffs have clearly stated that since the first respondent is an old lady, the respondents/plaintiffs could not mobilize the funds immediately and they sought liberty to file a suit for cancellation of Settlement Deeds, after mobilizing necessary funds. Further in paragraphs Nos.10 and 11 in the present plaint, the respondents have clearly narrated the fraudulent act committed by the applicants. Therefore, whether the suit is hit by Order II Rule 2 of C.P.C or not can be decided only from the facts and circumstances and after framing issues and recording the evidence.

9. It is settled proposition of law that, at the time of deciding the application under Order VII Rule 11, the Court has to see the averments made in the plaint and the documents annexed therein and not the defence taken by the defendants. As far as this case is concerned, the respondents/plaintiffs have stated that the applicants by playing fraud, coercion and misrepresentation obtained the Settlement Deeds and the same will be established only after trial. The applicants have raised a question why the respondents have not filed the suit for cancellation of Settlement Deeds earlier. However, the respondents have clearly explained the reasons for non filing of the said suit earlier. Therefore, this Court is of the opinion that the plaint discloses a cause of action. Further, there is no quarrel with



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the decisions laid down by the Hon'ble Supreme Court and other High Courts, which were referred by the learned counsel for the applicants, but the facts and circumstances of the case in those decisions are not applicable to the present case on hand. In the present case, the respondents have already stated as to under what circumstances they filed the earlier suit and hence, they reserved their right to file a fresh suit. Though the respondents have stated that in the earlier suit that they would sought for permanent injunction restraining the applicants from disturbing the peaceful possession of the respondents from the suit schedule mentioned property and for other consequential reliefs, whereas in the present suit, they seek for declaration declaring the Settlement Deeds as invalid, sham and null and void. It makes no difference. Therefore, whether the suit for cancellation of Settlement Deeds or declaration of Settlement Deeds as invalid, sham and null and void, and the said relief sought for is hit by Order II Rule 2 CPC or not, can be decided only after trial, but not at this stage.

10. In the light of the above facts and circumstances, this application is hereby dismissed.

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