

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 25TH DAY OF FEBRUARY 2022

THE HON'BLE MR. JUSTICE P. VELMURUGAN

C.S.No. 367 of 2021

and

A.No. 470 of 2022

C.S.No. 367 of 2021 :-

M/s. Tripadam Logistics Private Limited
Represented by its Authorized Signatory
S. Parthasarathy
Deputy General Manager (Administration)
Having its registered office
Plot No.30, 2nd Street,
VGP Murphy Square,
St.Thomas Mount,
Chennai – 600 016.
City Office at
No.21/11, Seethammal Extension 3rd Cross Street,
Teynampet,
Chennai – 600 018.

... Plaintiff

-Vs-

1. Mrs. Praveena R.Bhatt,
W/o. R. Ramesh,
No.69, Medavakkam Tank Road,
Kilpauk,
Chennai – 600 010.
2. Ms. Neeta Ajay Bhatt,
W/o. Ajay Bhatt,
No.110, Rajendra Apartments,
158, Barracks Road, Kellys,
Chennai – 600 010.

3. Ms. Beena Pankaj Vyas,
W/o. Pankaj Vyas,
No.5, Pritvan Society,
Gajanand Complex,
Old Padra Road,
Vadodara – 390 020.
4. Paresh Jagadish Bhatt,
S/o. Jagadish Bhatt,
No.12, Myrtle Lane Streamwood,
Illinois – 601107,
United States of America.
Represented by its Power of Attorney Agent
Ms.Beena Pankaj Vyas
Vide P.O.A. Dated 13.08.21
No.5, Pritvan Society,
Gajanand Complex,
Old Padra Road,
Vadodara – 390 020.
5. Piyush Jagadish Bhatt,
S/o. Jagadish Bhatt,
Old No.69, New No.157,
BA Third Floor, Sivam Apartment,
Medavakkam Tank Road,
Kilpauk,
Chennai – 600 010.
6. M. Anurag,
S/o. M. Mahavirchand,
No.38/2, Old No.56/2,
Ammaiyappan Street,
Royapettah,
Chennai – 600 014.
7. Mrs. Manjula Devi,
W/o. M. Mahavirchand,
No.38/2, Old No.56/2,
Ammaiyappan Street,
Royapettah,
Chennai – 600 014.

8. Anandkumar,
 No.5, Sterling Manor 3rd Street,
 Sterling Road, Chennai – 600 034. ... Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass a judgment and decree as against the Defendants as under :-

(a) Directing the defendants 1 to 5 and the 8th defendant to specifically perform the duties, obligations, enjoined upon them arising out of the verbal contract dated 18.01.2021 by executing a Deed of Sale in favour of the plaintiff on receipt of the entire sale consideration of Rs.3,50,00,000/- on a day to be fixed by executing and registering the sale deed in favour of the plaintiff at its cost and do all such acts, deeds, things etc. for effectual implementation of the verbal contract dated 18.01.2021 including delivery of vacant possession to the plaintiff

AND/OR IN DEFAULT

In the event the defendants 1 to 5 and the 8th defendant fails to execute and register a sale deed, direct the Assistant Registrar, High Court, (Original Side) to execute a deed of sale in respect of the suit Schedule property viz. all that piece and parcel of the Land admeasuring 2961 sq.ft. (1 Ground and 561 sq.ft) (2939 sq.ft as per TSLR) together with the building consisting of first floor and second floor having a total built up area of about 2500 sq.ft constructed thereon in the Plot bearing No.108, (Housing Board Low Income Group Allotment vide Allotment No.E1/38959/1962)

design No.19, comprised in R.S.No.3839/15 (Old R.S.No.3839/6 (Part), R.S.No.3839/70, Teynampet Village situated at Block No.75, Door No.12, Seethammal Extension, Seethammal Colony 3rd Cross Street, Mylapore Taluk, Chennai – 600 018, in favour of the plaintiff on a date to be fixed by this Hon'ble Court, through Court and perform such incidental act, deeds for effectual completion of the sale transaction as agreed verbally on 18.01.2021;

(b) Grant a decree for permanent injunction restraining the Defendants 1 to 5 and the 8th defendant, their men, agents, servants or any other person or persons claiming through them from in any manner alienating or dealing with the suit schedule mentioned property either by way of sale, mortgage, lease or joint development agreement or otherwise except in accordance with the verbal contract dated 18.01.2021.

(c) Grant Costs of the suit.

A.No. 470 of 2021 :-

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S/o. Jagadish Bhatt,
Old No.69, New No.157,
BA Third Floor, Sivam Apartment,
Medavakkam Tank Road,
Kilpauk, Chennai – 600 010. ... Applicants 1-5/Defendants 1-5

-Vs-

1. M/s. Tripadam Logistics Private Limited
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S. Parthasarathy
Deputy General Manager (Administration)
Having its registered office
Plot No.30, 2nd Street,
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2. M. Anurag,
S/o. M. Mahavirchand,
No.38/2, Old No.56/2,
Ammaiyappan Street,
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3. Mrs. Manjula Devi,
W/o. M. Mahavirchand,
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4. Anandkumar,
No.5, Sterling Manor 3rd Street,
Sterling Road, Chennai – 600 034.

... Respondents 2 to 4 / Defendants 6 to 8

Application praying that this Hon'ble Court be pleased to reject the
Plaint in C.S.No. 367 of 2021.

This Civil Suit along with the application having been heard on
14.02.2022 in the presence of Mr.R.Thiagarajan, Advocate for the plaintiff
in C.S.No.367 of 2021 and for the 1st respondent in A.No.470 of 2022 and
Mr.K.M.Aasim Shehzad for BFS Legal, advocates for the defendants 1 to 5
in C.S.No. 367 of 2021 and for the applicants in A.No. 470 of 2022 and
Mr.R.Palaniandavan, advocate for the defendants 6 & 7 in C.S.No. 367 of
2021 and for the respondent 2 & 3 in A.No. 470 of 2022 and
Mr.T.Thiyagarajan, Advocate for the 8th defendant in C.S.No. 367 of 2021
and for the 4th respondent in A.No. 470 of 2022 and upon reading the plaint
filed in C.S.No. 367 of 2021 and the Judges Summons and the affidavit of

Piyush Jagadish Bhatt filed in A.No. 470 of 2022 and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of said advocate for the parties hereto and this Court having observed that the plaint does not disclose any cause of action to proceed with the suit and 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 and allowing this application, **it is ordered as follows :-**

That the suit in C.S.No. 367 of 2021, be and is hereby rejected.

2. That the Connected Applications 2 do stand closed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 25TH DAY OF FEBRUARY 2022.

Sd/-

ASSISTANT REGISTRAR (O.S-I)

//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
04.03.2022

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

ORDER

DATED : 25.02.2022

THE HON'BLE MR. JUSTICE
P. VELMURUGAN

FOR APPROVAL: 09.03.2022

APPROVED ON : 11.03.2022

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... Respondents 2 to 4 / Defendants 6 to 8

Application praying that this Hon'ble Court be pleased to reject the
Plaint in C.S.No. 367 of 2021.

This Civil Suit along with the Application coming on this day before
this court for hearing, **The Court made the following order:-**

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 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 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 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 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 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.

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.

Sd./- (P.V.J.,)
25.02.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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