

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

|              |            |
|--------------|------------|
| RESERVED ON  | 23.02.2022 |
| DELIVERED ON | 15.03.2022 |

WEB COPY

**CORAM :****THE HONOURABLE MRS.JUSTICE S.ANANTHI****C.R.P. (MD) No.1116 of 2011**

Indian Evangelical Lutheran Church Trust  
Association represented its  
Secretary and Treasurer. ...Petitioner/Defendant

Vs.

Sri Bala & Co.,  
Represented by its Proprietrix,  
R.Sivabaladevi. ...Respondent/Plaintiff

**PRAYER:** Civil Revision Petition under Section 227 of Constitution of India, to call for the records in Fair and Decreetal order, dated 16.09.2010 in I.A.No.223 of 2007 in O.S.No.49 of 2007 on the file of the learned District Judge, Dindigul, and set aside the same thereby allowing the I.A.No.223 of 2007 by allowing this Revision Petition.

For Petitioner :Mr.P.V.Balasubramaniam, for  
Mr.R.Sathiamoorthy  
For Respondent :Mr.AR.L.Sundaresan,  
Senior Advocate, for  
Mr.AL.Ganthi Mathi

**ORDER**

This Civil Revision Petition has been filed to set aside the order, dated 23.03.2016 in I.A.No.3 of 2013 in O.S.No.49 of 2007 passed by the learned Additional District Judge, Dindigul.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The respondent herein/plaintiff has filed a suit in O.S.No.49 of 2007 for specific performance, on the file of the learned Additional District Judge, Dindigul. During the pendency of the said suit in O.S.No.49 of 2007, the defendant has filed a petition in I.A.No.223 of 207 for rejection of plaint under Order 7 Rule 11 and Section 151 of Civil Procedure Code. The said petition was dismissed on 16.09.2010 by the Court below. Aggrieved over the same, the petitioner is before this Court.



4. Heard on either side and perused the material documents available on record.

5. The Civil Revision Petition is filed on the ground that the Court below has failed to note that after the rejection of plaint by the learned Subordinate Judge, Palani, the plaintiff in the said suit has not taken any steps to challenge the same and he accepted the rejection of the suit thereby they are bound by the findings of the learned Subordinate Judge, Palani. The Court below has failed to note that after 9 years, the plaintiff who is same in both the suits submitting the very same submissions has filed the present suit on 26.04.2007 before the learned District Judge, Dindigul, for specific performance of agreement of sale dated 26.04.1991. The fair and executable order of the learned District Judge, Dindigul, is liable to be set aside by this Court as it is against law and not sustainable.

6. The petition in I.A.No.223 of 2007 has been filed by the defendant for rejection of plaint in O.S.No.49 of 2007 filed by the plaintiff.

7. The suit in O.S.No.49 of 2007 was filed by the plaintiff for specific performance on the basis of a sale agreement, dated 26.04.1991.

8. The revision petitioner herein/defendant has filed a petition in I.A.No.223 of 2007 in O.S.No.49 of 2007 on the following grounds:

(a). The sale agreement will not bind the petitioner. The executor of the sale agreement has no right to sell the property.

(b) Already the plaintiff had filed a suit for specific performance before the learned Subordinate Court, Dindigul, with deficit Court fee. After giving sufficient opportunities, the plaintiff did not come forward to pay the deficit Court fee. So, the learned Subordinate Judge, Dindigul, has rejected the plaint under Order 7 Rule 11 of Civil Procedure Code. So, again the plaintiff cannot file a new suit for the same relief. This suit is barred by *Res judicata*.

(c) The suit in O.S.No.49 of 2007 is hit by Order 2 Rule of Civil Procedure Code, since the plaintiff did not reserve his rights to file suit for specific performance in O.S.No.66 of 1991.

(d) The suit is barred by limitation since the time limit of the sale agreement itself ended on 25.04.1994.

9. The first objection raised by the defendant can be decided only after full-fledged trial only, whether the executant has right to sell the properties and the sale agreement will bind the petitioner can be decided only after the evidence. It can be decided only after evidence. The petitioner cannot raise the contention under Order 7 Rule 11 of Civil Procedure Code petition.



10. The second objection is that already the suit was filed with deficit Court fee and was rejected. So, the plaintiff cannot file a new suit for the same relief.

11. The learned counsel appearing for the petitioner has relied upon the Judgment reported in **(1977)4 Supreme Court Cases 467, Arivandandam Vs. T.V. Satyapal and another**, in which the Hon'ble Supreme Court held as follows:

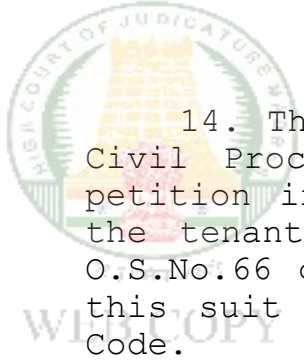
**"Held:** The trial Court must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clearly right to sue, it should exercise its power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shut down at the earliest stage. The Penal Code is also resourceful enough to meet such men. (Ch.XI) and must be triggered against them. "

12. The ingredients of **Order 7 Rule 11(c) of Civil Procedure Code**, is extracted hereunder:

*"c. where the relief claimed is properly valued, but the plaint is written upon paper sufficiently stamped and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so:"*

the Court can reject the plaint if the plaintiff has not paid deficit Court fee within time fixed by the Court. But, as per Order 7 Rule 13 of Civil Procedure Code, **"the rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action"**.

13. The suit is not even numbered. So, no suit was registered. Further, the issues are not finally decided. So, it is not hit by *res judicata*.



14. The suit in O.S.No.49 of 2007 is hit by Order 2 Rule 2 of Civil Procedure Code as per the contention of petitioner. The petition in I.A.No.66 of 1991 was filed by the petitioner against the tenant, not against the Church. The relief sought for in O.S.No.66 of 1991 also not connected with this sale agreement. So, this suit is not barred under Order 2 Rule 2 of Civil Procedure Code.

15. The Judgment reported in **CDJ 2020 MHC 2277, Pugazhendhi Vs. Subramanian**, in which this Court held as follows:

.....

"21. When the cause of action is not identical between the previous suit and the later suit, there is no scope for the application of Order II Rule 2 of C.P.C. The Constitutional Bench of the Hon'ble Supreme Court in Gurbux Singh Vs. Bhooralal reported in AIR 1964 SC 1810 has held as follows:

6. In order that a plea of bar under O.2 r. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief, the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential



reasoning..... "

16. The Judgment reported in (2018) 6 SCC 733, in the case of **Sucha Singh Sodhi (dead) through LRs Vs. Baldev Raj Walia**, in which the Hon'ble Supreme Court has held that the cause of action for filing a suit for specific performance of a sale agreement and the relief for permanent injunction are totally independent and one cannot include the other and vice versa. In paragraph 29, the Hon'ble Supreme Court has held as follows:

"29. Our answer to the aforementioned question is in favour of the plaintiffs (appellants) and against the defendants (respondents). In other words, our answer to the aforementioned question is that the plaintiff could not claim the relief of specific performance of agreement against the defendants along with the relief of permanent injunction in the previous suit for the following reasons.

29.1. First, the cause of action to claim a relief of permanent injunction and the cause of action to claim a relief of specific performance of agreement are independent and one cannot include the other and vice versa. In other words, a plaintiff cannot claim a relief of specific performance of agreement against the defendant on a cause of action on which he has claimed a relief of permanent injunction.

29.2. Second, the cause of action to claim temporary/permanent injunction against the defendants from interfering in plaintiff's possession over the suit premises accrues when defendant No.1 threatens the plaintiff to dispossess him from the suit premises or otherwise cause injury to the plaintiff in relation to the suit premises. It is governed by Order 39 Rule 1 (c) of the Code which deals with the grant of injunction. The limitation to file such suit is three years from the date of obstruction caused by the defendant to the plaintiff (See - Part VII Articles 85, 86 and 87 of the Limitation Act. On the other hand, the cause of action to file a suit for claiming specific performance of agreement arises from the date fixed for the performance or when no such date is fixed, when the plaintiff has noticed that performance is refused by the defendant. The



limitation to file such suit is three years from such date (See - Part II Article 54 of the Limitation Act).

29.3. Third, when both the reliefs/claims namely, (1) Permanent Injunction and (2) Specific Performance of Agreement are not identical, when the causes of action to sue are separate, when the factual ingredients necessary to constitute the respective causes of action for both the reliefs/claims are different and lastly, when both the reliefs/claims are governed by separate articles of the Limitation Act, then, in our opinion, it is not possible to claim both the reliefs together on one cause of action."

17.The last ground is barred by Limitation. At the stage of deciding the suit under Order 7 Rule 11 only the pleadings in the plaint can be looked into.

18.The paragraph No.16 of the Judgment in **S.L.P. (C)No.3899 of 2021** in the case of **Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors.**, is extracted hereunder:

"16.Order 7 Rule 11(d) of CPC provides that the plaint shall be rejected "where the suit appears from the statement in the plaint to be barred by any law". Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case. Before proceeding to refer to precedents on the interpretation of Order 7 Rule 11(d) CPC, we find it imperative to refer to Section 11 of CPC which defines res judicata:

"11.Res judicata- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them



WEB COPY

*claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."*

19. Admittedly, lot of litigations are pending regarding the suit properties.

20. In the plaint, the plaintiff has stated that the cause of action for the suite arose on 26.04.1991 when the plaintiff and the defendant entered into an agreement of sale with regard to the schedule mentioned property herein under, on 15.07.1991 the time for performance of contract is extended till the disposal of litigations launched at the instance of the president of the company through the tenant, on 25.04.2003 when the Hon'ble District Judge upheld the validity of the sale agreement dated 26.4.1991 and on 5.4.2007 when I.A.No.1515 of 2003 was dismissed to delete the name of the plaintiff and at Kodaikkanal Township where the suit property situate within the jurisdiction of this Court.

21. So in the case on hand, whether time extended by the executant can be decided only after evidence. Since, it is a mixed question of facts and law, the plaint cannot be rejected under Order 7 Rule 11 of Civil Procedure Code.

22. Further, the learned counsel appearing for the petitioner has contended that the plaintiff is not ready and willing to perform the contract. It also can be proved only after evidence.

23. All the questions can be decided only after trial. Therefore, the trial Court has rightly dismissed the I.A.No.3 of 2013 in O.S.No.49 of 2007. This Court has no valid reason to interfere with the order passed by the Court below.

24. Accordingly, this Civil Revision Petition is dismissed by confirming the order, dated 23.03.2016 in I.A.No.3 of 2013 in O.S.No.49 of 2007 passed by the learned Additional District Judge, Dindigul. No Costs.

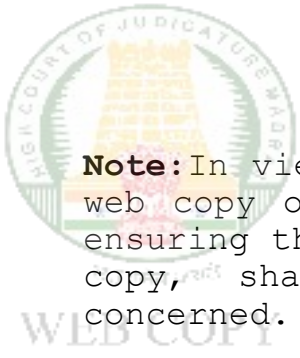
Sd/-

Assistant Registrar (Cs-III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)



**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Additional District Judge,  
Dindigul.

+2 CC to M/s.R.SATHIAMOORTHY, Advocate ( SR-12106[F] dated  
15/03/2022 )

+1 CC to M/s.AL.GANTHIMATHI, Advocate ( SR-12656[F] dated  
17/03/2022 )

C.R.P. (MD) No.1116 of 2011  
15.03.2022

NSN (CO)  
KB (24.03.2022) 8P 5C