



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S. (MD)No.74 of 2020

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C.Anantha Baskaran

... Appellant

Vs.

1.S.Venkatesan

2.C.Bharathi

... Respondents

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, against the judgment and decree of the learned Principal District Judge, Tiruchirappalli, dated 14.11.2019 in O.S.S.R.No.13375/23.10.2019 and to number the suit by allowing this appeal with costs.

For Appellant : Mr.R.Sundar Srinivasan

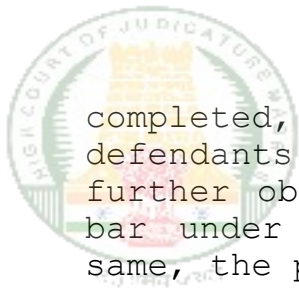
For Respondents : M/s.G.Vidhya Maheswaran

J U D G M E N T

This appeal has been preferred challenging the judgment and decree of the learned Principal District Judge, Tiruchirappalli, dated 14.11.2019 made in O.S.S.R.No.13375/23.10.2019.

2.The appellant herein is the plaintiff in the suit; he filed a suit for recovering a sum of Rs.41,50,000/- (Rupees Forty One Lakh and Fifty Thousand Only) from the defendants; the learned trial Judge without admitting the plaint rejected the same on the ground that there is no cause of action against the defendants; the plaintiff has raised allegation against the defendants on the ground that the sale agreement was made in favour of the first defendant for a sale consideration of Rs.74,00,000/- (Rupees Seventy Four Lakhs Only) and later, the plaintiff, at the instructions of the first defendant and in order to facilitate the process of layout, executed a sale deed dated 25.03.2019 in favour of the second defendant, who is the wife of the first defendant; it is claimed that there is still balance sale consideration of Rs.41,50,000/- (Rupees Forty One Lakh and Fifty Thousand Only) to be paid to the plaintiff and hence, he has filed the suit for recovery of money.

3.The learned trial Judge had chosen to reject the plaint on the threshold itself by observing that the first defendant was not a party to the sale deed and the second defendant was not a party to the sale agreement and when the sale deed was executed and



completed, there cannot be any cause of action against the defendants to recover the suit amount, as pleaded; it has been further observed that no oral evidence can be let, in view of the bar under Section 92 of Indian Evidence Act; aggrieved over the same, the plaintiff has preferred this appeal.

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4.The learned counsel for the appellant/plaintiff submitted that a judgment on merits of the case has been passed even at the very initial stage of filing; there are lot of factual contents that have to be proved and disproved by the respective parties; the cause of action as alleged by the plaintiff has to be taken for the purpose of taking the case on file, irrespective of the fact whether it is true or not; at the time of filing the suit, the Court is not expected to deal with the merits of the case, if the plaint does not seem to be proper and fit for admission with requisite Court fee and it should be taken as a preliminary issue; he drew the attention of this Court to the judgment of a learned Judge of this Court, dated 16.07.2021 made in C.R.P.(MD)Nos.915, 943, 967, 991 and 330 of 2020. In the said judgment, it has been held as under:-

"26. Sec.9 of the CPC makes it obligatory for a civil court to take cognizance of a suit of a civil nature unless its jurisdiction is barred either expressly or by necessary implication. There are two parts to it: First there must be a suit of civil nature - a suit where the existence of an enforceable legal right and its violation are alleged; and Second, the inherent jurisdiction of the Court to take cognizance of the same. The former deals with the cause for the action which is presented before the court in a plaint, and the latter concerns with the availability of the inherent jurisdiction in the Court to take cognizance of the cause of action so presented before it.

(a) Cause of action:

It belongs to the plaintiff. The Court/Registry cannot investigate the merit of the cause of action at the stage of numbering the plaint or adequacy of pleadings. It has to merely presume and accept the pleadings as they are at that stage. This is however, subject to one exception: where the allegation in the plaint does not constitute a legally recognised right, then the Court may reject the plaint even at the preliminary stage: To illustrate, if the plaintiff pleads that she was married prior to the date of coming into force of Sec.29-A of the Hindu Succession Act (inserted Vide a Tamil Nadu Amendment which elevated all unmarried daughters as on the date on which the provision became operational as coparceners), and still seeks a right as a coparcener



under the said provision, then the Court may reject the plaint. If however, she does not state anything about the date of her marriage, at the stage of numbering plaint, it is not the job of the Registry to insist on it, since it will then part take the character of an adjudication; nor can it insist on any document evidencing marriage, for the Court or the Registry is not empowered to hold a trial at the preliminary stage, but are only required to verify if the check-list to be provided in the tabulation in paragraph 31 below.

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Summing up

29. To sum up, the Court may reject the plaint before numbering and entering it in the Register of Suits, if from a reading of the plaint, it is seen that the suit is barred by any law, or if it suffers from any procedural infirmity, adumbrated supra. The Court, at that stage, cannot and is not expected to conduct a roving enquiry into the merits of the matter by testing the correctness of the plaint-averments even prior to its institution.

30. In *S. Parameswari v. Denis Lourdusamy*, [(2011) 5 CTC 742], this Court had held that after one return, the Court should post the matter in open Court, and invited arguments of the counsel on the question of maintainability and pass a judicial order. If the objection is upheld, the aggrieved party could work out his/her rights. In *Muthuganesah v. Thillaimani*, [2016- 2- LW 340], this Court had pointed out:

"3. The court, while admitting the plaint, can scrutinise the other aspects, namely the cause of action, valuation, payment of court fee, jurisdiction and limitation. The court can also verify whether the plaint has been filed in the proper form and whether the necessary requirements of plaint have been complied with. The question as to whether any other person should have been made a party is outside the purview of the scrutiny of the trial court at the time of admitting the plaint. The above said aspects are with reference to the merits of the return made by the trial court.

4. Once certain defects are pointed out by the court and the plaint is returned and the plaintiff or plaintiffs, re-present the same stating that the plaint has been properly prepared and filed and asking the court to hear regarding the necessity to comply with the returns made by the court, the court can return the



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plaint provided its view that the compliance with the returns are mandatory and it is conceded by the plaintiff. If the plaintiff makes it clear that he is not prepared to comply with the returns and the plaint as filed by him should be taken on file, the trial court should reject the plaint rather than returning the plaint stating the very same reason." This Court only adds a rider to it: In all cases where the Court chooses to reject the plaint for not curing the defects mentioned (which may include the issue on exclusion of jurisdiction) it is necessary for the Court to follow the dictum in *S. Parameswari v. Denis Lourdusamy*, [(2011) 5 CTC 742] and post the matter before Court, with or without the request of the plaintiff or the counsel concerned, and hear them. The duty to hear before a decision is made constitutes the soul of procedural fairness inbuilt in the Civil Procedure Code, and cannot be compromised.

32.Now, to facilitate the process of scrutiny of plaint at the preliminary, preregistration stage in the manner herein above stated, this Court tabulate the same below:

Heads	Permissible during scrutiny of plaint	Not permissible
Cause title and form of pleading (Order VI Rule 3)	Yes. Can be verified if there is a substantial compliance of Appendix A.	
Parties to suit Order VII Rule 1 (a) to (b) and Rule 4	Yes. Required to the extent required, and if the suit is laid in a representative capacity.	



Maintainability (cause of action) Sec.9 & Order VII Rule 1(e)	Yes. Only to the extent of ascertaining if the plaintiff has a legally recognised or enforceable right on a plain reading of the plaint, and no more.	➤Sufficiency or adequacy of pleading cannot be gone into. Hence grounds of fraud as in Order VI Rule 4 CPC cannot be insisted. ➤Proof of any of the allegations in the plaint should not be sought. ➤Merits of the matter or correctness of the pleadings cannot be gone into.
Maintainability (Jurisdiction) Sec.9 CPC	If the inherent jurisdiction of the Court is barred in granting the relief sought by any statute.	
	Caution must be exercised before returning a plaint. The entire plaint, the cause of action and the relief sought must be understood as are stated or disclosed in the plaint alone need to be considered. The statutory provision barring the institution of the civil suit or excluding the civil court's inherent jurisdiction to take cognizance of the civil dispute must be strictly understood.	



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Maintainability (Limitation)	Yes. Where a suit is ex facie barred by limitation. Only the allegation in the plaint should be the basis. However, where the plaintiff pleads exemption from the law of limitation under Order VII Rule 6, this should be left to be tested post registration of the suit at the appropriate stage.	Newer or clarificatory material or proof of any fact pertaining to limitation should not be insisted.
Maintainability Territorial and Pecuniary jurisdiction Order Sec.15 to 21 r/w Order VII Rule 1(f)	Yes.	
Money suits Order VII Rule 2	If precise amount is stated	
Description of Property Order VII Rule 3	Yes	However, sufficiency of the description cannot be gone into. Again, if there is any variance of extent or boundary description with any title deed, even that may be formally notified for a possible typographical or clerical mistake, but if any explanation is offered justifying the extent stated, the plaint has to be registered. This is because, looking for proof and correctness of pleadings is not contemplated at the stage when the suit is registered.



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Relief Order VII Rule 7 and 8	Yes, but limited to ascertaining if a relief at all is sought	Appropriateness or suitability of the relief sought cannot be gone into. This is not Court's job. Seeking the relief is the prerogative of the plaintiff. The fact that the Court may not grant it ultimately is a matter for adjudication, and is part of its judicial act and not part of its ministerial act of numbering the plaint. [See AIR 1942 Mad 446]
Valuation and court fee	Yes. But the basis for the the valuation must be as stated by the plaintiff. If any objection as to valuation must be done, then the defendant can always raise it during the first hearing under Sec.12(2) of the Tamil Nadu Court Fee & Suit Valuation Act, 1955	Proof of value of subject matter of the suit such as expert's valuation report cannot be insisted.
Documents	If enclosed can be verified with the list provided in the plaint	Production of the documents cannot be insisted. It needs to be realised that, given the level of



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<i>Documents</i>		poverty and illiteracy in this country it cannot be expected that every one will possess all the documents all the time, anticipating the possibility of laying a suit 24 x 7.No law compels any person to possess all the documents all the time either. A cause of action for the suit invariably arises at a time convenient to the defendant, but it is the plaintiff who has to approach the Court to protect his/her right. All that the plaintiff therefore needs is only a cause of action and not proof of it when he enters the court-system. This apart After all under Order VII Rule 14(3) CPC documents can be produced subsequently. Production of documents may be relevant for considering the granting of interim relief, but is not mandatory for numbering the suit.
<i>Signing the plaint Order VI Rule 14</i>	Yes	



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Accompanying papers	1. Copy of plaint and affidavit. 2. Vakalath. 3. Any application for leave to sue 4. Process along with copies of plaint. (Plaint cannot be returned for not providing it since under Order VII Rule 9, they have to be provided only after the suit is numbered and the Court orders summons to the defendant) 5. Any other applications with affidavit	
Others	Any formal typographical or clerical error apparent on the face. Any doubt as to pecuniary or territorial jurisdiction. This is consistent with Order VII Rule 1(a) CPC	

5. The learned counsel for the respondent submitted that there is no due to be paid by the defendants to the plaintiff; in view of the completion of the transaction by executing the sale deed dated 25.03.2019 in favour of the second defendant; the learned trial Judge has rightly scrutinized the plaint and found that no cause of action has arisen against the defendants and rejected the plaint in limine. Hence, the appeal is liable to be dismissed.

6. The points for consideration in this appeal are as follows:-

"i) Whether the judgment of the learned Principal District Judge is fair and proper? and

ii) Whether the plaintiff has filed a civil suit



for recovery of money on certain allegations on the sale agreement entered between himself and the first defendant and later execution of the sale deed by himself in favour of the second defendant, the wife of the first defendant?

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7. The learned counsel for the appellant submitted that due to certain factual matters, the first defendant has requested the plaintiff to execute the sale deed in favour of the second defendant for the purpose of completing the layout process seamlessly. However, the learned trial Judge has made an observation stating that Section 92 of Indian Evidence Act would be a bar for oral evidence, when the registered sale deed itself would show the completion of transaction and there are no arrears to be paid by the defendants to the plaintiff.

8. On a perusal of the plaint, it is seen that the plaintiff pleaded cause of action right from the sale agreement entered into between himself and the second defendant. Despite the fact that Section 92 of Indian Evidence Act excludes oral evidence to prove the written contract, the provision of the said Section would contemplate certain situations, where the parties can let in oral evidence. As per Section 9 C.P.C., the civil Court has jurisdiction to try all the suits that are civil in nature excepting cognizance, which has been expressly or impliedly barred. For convenient understanding Section 9 C.P.C. is extracted as below:-

"9. Courts to try all civil suits unless barred? The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

9. The plaint can be rejected on certain circumstances as found in Order 7 Rule 11 C.P.C. Order 7 Rule 11 C.P.C. reads as under:-

"11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently 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;

(d) where the suit appears from the statement in the



plaint to be barred by any law;

[(e) where it is not filed in duplicate;]

[(f) where the plaintiff fails to comply with the provisions of rule 9:]

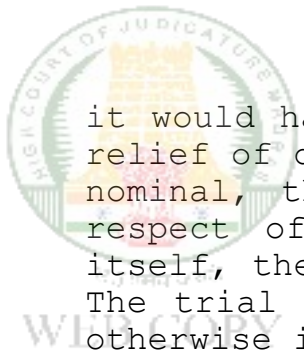
[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

" (emphasis supplied)

10. It is seen from the judgment of the trial Court that the learned trial Judge had acted within the power drawn under Order 7 Rule 11 (a) C.P.C. According to the learned trial Judge, there is no cause of action arose for filing of the suit. But the plaintiff had traced his cause of action right from the date when the sale agreement was entered into between himself and the first defendant. The second defendant, who is none other than the wife of the first defendant in whose favour, at the instance of the first defendant, the sale deed is said to have been executed for a nominal sum of Rs.2,00,000/- (Rupees Two Lakhs Only). It would have been better, if the plaintiff had filed a suit for declaring the sale deed as sham and nominal along with a prayer for recovery of money. But that will not entitle the plaintiff to pursue the relief sought for by him.

11. The entitlement or disentitlement for the relief prayed by him would only be the consequence of the trial based on the evidence available therein. Though there are written contracts like sale deed and sale agreement, when the plaintiff pleads otherwise, he would get the benefit of letting in oral evidence as per the proviso to Section 92 of the Indian Evidence Act. At the stage of taking the suit on file itself, the Trial Court need not venture into a roving enquiry without getting the benefit of evidence available during the trial. That would certainly prejudice the plaintiff, especially, in the circumstances, where summons has not been sent to the defendants and the defendants have not come forward with a petition to reject the plaint under Order 7 Rule 11 CPC.

12. At the initial stage of plaint before numbering, the cause of action would be as how it was pleaded by the plaintiff. The risk goes with the plaintiff, if he pleads a weak cause of action or difficult cause of action. The fact remains that the plaint reveals some cause of action, for which, the plaint has been filed. Though



it would have been better, if the plaintiff had chosen to pray the relief of declaration of the sale deed dated, 25.03.2019 as sham and nominal, that cannot deprive the plaintiff to maintain a suit in respect of other reliefs sought by him. At the initial stage itself, the suit ought not to have been rejected without numbering. The trial Court ought to have numbered the plaint, if it is found otherwise in order.

13. In view of the above discussion, I feel that the decision of the learned trial Judge requires interference.

14. In the result, this Appeal Suit is allowed and the judgment and decree dated 14.11.2019 made in O.S.S.R.No.13375/23.10.2019 is set aside and the learned trial Judge is directed to take the plaint on file, if it is otherwise in order by summoning the defendants and dispose the suit in accordance with law. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

To:

1. The Principal District Court,
Trichirappalli.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-13420[F] dated
22/03/2022)

A.S. (MD) No.74 of 2020

21.03.2022

CK (CO)

KB (29.04.2022) 12P 5C