IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.Nos.2228 of 2020 & C.M.P.No.14036 of 2020
& C.R.P.No.1024 of 2021

Radhika ... Petitioners in both the petitions

Vs.

1. A.Perumal
2. Saroja [died] ... Respondents in both the petitions

CRP NO.2228 of 2020

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 24.03.2020 passed by the learned Principal District Munsif, Poonamallee in I.A.No.595 of 2019 in O.S.No.401 of 2016

CRP NO.1024 of 2021

Civil Revision Petition filed under Article 227 of the Constitution of India to strike of the plaint in O.S.No.401 of 2016 from the file of the learned Principal District Munsif, Poonamallee

For Petitioners : M/s G.Gnanabanu &

Mr.Rajaramani

For Respondents : No appearance

COMMON ORDER

Since the issues involved in both the petitions are one and same, they are taken up together and a common order is being passed.

2. The C.R.P. No.2228 of 2020 has been filed to set aside the order and decreetal order dated 24.03.2020 passed by the learned Principal District Munsif, Poonamallee in I.A.No.595 of 2019 in O.S.No.401 of 2016 and C.R.P. No.1024 of 2021 has been filed to strike of the plaint in O.S.No.401 of 2016 from the file of the learned Principal District Munsif, Poonamallee.

3. The brief facts involved in the present cases in the nutshell is as follows:-

The petitioner is the 2nd defendant and daughterinlaw [owner of ½ share] of the 2nd respondent/ 1st defendant [owner of ½ share]. The 1st respondent is the plaintiff [agreement holder]. The suit in O.S.No.401 of 2016 has been filed to declare the release deed dated 28.11.2013 bearing doc.no.4310/2013 executed by the 2nd respondent / 1st defendant in favour of the petitioner / 2nd defendant as null and void and to pay the costs of the suit. Pending suit, I.A.No.595 of 2019 was filed by the 1st respondent / plaintiff seeking an amendment to direct the 2nd respondent / 1st defendant to execute sale deed in favour of the 1st respondent / plaintiff in respect of suit properties, Items Nos.1 and 2 of schedule property and clause II and III of prayer in main suit shall be amended as Clause III and IV'. The said application was allowed. As against the same, the C.R.P.No.2228 of 2020 has been filed and to strike of the plaint, C.R.P.No.1024 of 2021 is filed.

4. The learned counsel for the petitioner would submit that the suit seeking specific performance on the agreement dated 24.01.2010 ought to have been filed within 3 years from 24.07.2010 on which date the 6 months time of execution of sale deed stipulated in the agreement came to an end. Further, the amendment sought for, is hit by Order 1 Rule 21 CPC as the right to seek specific performance was not reserved by the 1st respondent / plaintiff.

5. The learned counsel for the petitioner also submits that the amendment of the plaint came to be sought on the basis that the 2nd respondent / 1st defendant received further of Rs.1,50,000/- on 10.08.2019 pursuant to the sale agreement dated 25.05.2012. After filing the proof affidavit on 08.08.2019, the 1st respondent / plaintiff created a receipt dated 10.08.2019, as if balance sale consideration was paid pursuant to the

agreement dated 25.05.2012. In such circumstances, the learned Judge ought to have dismissed the petition holding that the amendment is on the basis of the new cause of action arose subsequent to the filing of the suit and not relating to the cause pleaded in the time of filing the suit.

6. The learned counsel for the petitioner also contends that the learned Judge ought to have held that the suit for specific performance is not maintainable before the court of District Munsif and the value of the suit will be beyond the pecuniary limit of the said court, as the sale consideration stated in the alleged agreement for sale deed dated 25.05.2012 is two crores. Further, the learned Judge failed to consider the receipt dated 10.08.2019, wherein it is clearly stated that the sale deed shall be executed after the disposal of the suit in O.S.No.401 of 2016.

7. Lastly, the learned counsel for the petitioner submits that as against the order of amendment, the petitioner has filed the present petition, viz., CRP No.2228 of 2020 and this Court had granted an Interim Stay, since the entire suit is an abuse of process of law, the petitioner has filed the CRP No.1024 of 2021 to strike of the plaint. In support of his contention, the learned counsel has relied on the decision of this Court reported in 2020 (6) CTC 29 (Mad) [Virgo Industries (Engineers) Pvt., Ltd., Ambattur Industrial Estate, Chennai – 58 Vs. Venturetech Solutions Pvt.,

Ltd., rep. By its Director, Nungambakkam, Chennai – 600 034]

8. That apart, it is brought to the notice of this Court by the learned counsel for the petitioner that the 2nd respondent, viz., Saroja died and there are no legal heirs of the deceased.

9. Though notice was ordered to the respondents and the name of the learned counsel was printed in the cause list, there is no appearance for the respondents.

10. Heard the learned counsel for the petitioner and perused the documents placed on record.

11. On going through the plaint, it is seen that one Veeran, who is the son and husband of the 2nd respondent and petitioner respectively, owned 17.30 cents agricultural lands at Thirumanam Village, Poonamalle Taluk, Thiruvallur District. He died intestate leaving behind the petitioner (wife) and 2nd respondent (mother) as his legal heirs. Thus each of them are legally entitled for equal share in the above mentioned property ad-measuring to 8.65 cents each. After acquiring the property mentioned in the suit, the 2nd respondent, mother of the deceased entered into a sale Agreement dated 25.05.2012 with the 1st Respondent /plaintiff for total consideration of Rs. 2,00,00,000/- (Two Crores Only). As per the said agreement the 2nd

Respondent agreed to complete the sale and execute registered sale deed in favour of the 1st respondent/plaintiff within a period of six months from the date of execution of said agreement.

12. It is relevant to point out that the 1st respondent/plaintiff in his plaint has stated that, the 2nd Respondent has received Rs. 1,95,00,000/- in total, towards sale consideration till date. Hence, the 2nd Respondent is now entitled for the balance sale consideration of Rs.5,00,000/- (Rupees Five Lakhs Only) only from the 1st respondent/plaintiff and she is bound to execute registered sale deed in favour of the 1st respondent/plaintiff in respect of suit schedule property. While that being the case, the 2nd Respondent has executed the registered Release deed dated 28-11-2013, bearing document no. 4310/2013 on the file of the S.R.O Poonamallee in favour of the petitioner and alienated the entire suit schedule, [including her half share] property in favour of the petitioner. Hence the 1st respondent/plaintiff has filed the suit in O.S No 401 of 2016 before the District Munsif court Poonamalle for declaring the said release deed as null and void.

13. It is also relevant to point out that the 2nd Respondent filed a written statement and admitted that she had received a sum of

Rs.1,95,00,000/- from the 1st respondent/plaintiff for sale consideration in respect of the suit property and further proceeded to state that the petitioner had approached the 2nd defendant and fraudulently obtained the said release deed. Further, the petitioner in her written statement has stated that 2nd respondent executed a Release Deed dated 28.11.2013 releasing her entire right over the half share in the undivided properties after receiving value consideration. After executing the Release Deed, some friction was developed between the petitioner and the 2nd respondent and hence the respondents have fraudulently created the sale agreement. The 1st respondent is none other than the brother's son of the 2nd respondent. In any event, the sale agreement dated 25.05.2012 is a void document.

14. While the matter stood thus, the 1st respondent has filed a application under Order 6 Rule 17 before the trial court in the year 2019 (i.e 3 years after filing the suit) seeking for an amendment to include the following in the prayer in the suit. “to direct the 1st defendant to execute the Sale Deed in favor of Plaintiff in respect of Suit Properties,...” The trial Court by its order dated 24.03.2020 had allowed the said amendment application. Aggrieved by the same the petitioner has filed the Present C.R.P No: 2228 of 2020 to set aside the trail court order. The petitioner has also filed another C.R.P.No.1024 of 2021 to reject the plaint.

15. Now, the points that would arise for consideration before this Court is (i) Whether the Amendment of plaint can be allowed, if it is likely to affect limitation? (ii) Whether the plaint is liable to be struck off?

16. As far as the point no.1, viz., Whether the Amendment of plaint can be allowed if it is likely to affect limitation is concerned, it is worthwhile to recall and recollect the **Judgment of the Hon'ble Apex Court in Revajeetu Builders and Developers Vs.Narayanaswamy and Sons and Ors. (09.10.2009 - SC) [MANU/SC/1724/2009],** wherein some Important factors are laid down, which are to be taken into consideration while dealing with applications for amendments:

> *"67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.*
>
> *(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?*
>
> *(2) Whether the application for amendment is bona fide or mala fide?*
>
> *(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
>
> *(4) Refusing amendment would in fact lead to injustice or lead to*

multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

17. It is also worthwhile to recollect the Judgment of the Hon'ble Supreme Court [Vishwambhar and Ors. vs. Laxminarayana (Dead) through L.Rs. and Ors.] (20.07.2001 – SC) reported in MANU/SC/0374/2001, wherein it is held that 'the amendment though properly made cannot relate back to the date of filing of the suit, but to the date of filing of the application.'

"Regarding the suit filed by Vishwambhar it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December, 1985) by introducing such a prayer by amendment of the plaint the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances the amendment of the plaint could not come to the rescue of the plaintiff."

18. That apart, the Hon'ble Supreme Court [T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Ors.] (12.02.2004 - SC) reported in

MANU/SC/0145/2004 has observed as follows:-

"The law as regard permitting amendment to the plaint, is well settled. In L.J. Leach and Co. Ltd. and Anr. v. Jardine Skinner and Co., MANU/SC/0009/1957 : [1957]1SCR438, it was held that the Court as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered and does not affect the power of the Court to order it.

3. It is not disputed that the appellate court has a co-extensive power of the trial court. We find that the discretion exercise by the High Court in rejecting the plaint was in conformity with law."

19. Further, the Hon'ble Supreme Court in Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Ors. (01.09.2022 - SC) reported in MANU/SC/1093/2022, among other things has held thus:

"70. Our final conclusions may be summed up thus:

………

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision……."

20. Applying the above said principles in the case on hand, it is crystal clear that the sale deed was executed by the 2nd respondent in favour of the 1st respondent in the year 2012, viz., on 25.05.2012, wherein the 2nd

respondent agreed to complete the sale and execute registered sale deed in favour of the 1st respondent within six months from the date of execution of agreement. However, the same has not been done and nearly after four years, the suit was filed in the year 2016 only with a prayer 'to declare the release deed dated 28.11.2013 as null and void'. Also, amendment petition was sought for in the year 2019, which is nearly 7 years from the date of execution of sale agreement, to 'direct the 2nd respondent to execute the sale deed in favour of the 1st respondent' on the basis that the 2nd respondent / 1st defendant received further of Rs.1,50,000/- sum on 10.08.2019 pursuant to the agreement dated 25.05.2012, which is also a new cause of action and hence the order passed by the court below in I.A.No.595 of 2019 dated 24.03.2020 warrants interference and liable to be set aside.

21. With regard to the 2nd point, viz., whether the plaint is liable to struck off? is concerned, the petitioner in the present case has pleaded for rejection of plaint on the grounds of abuse process of law and pecuniary jurisdiction. It is necessary to extract Order VII Rule 11 of CPC, wherein it is averred that the court shall reject a plaint only on certain specific grounds:-

“(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 written 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 comply with the provision of Rule 9."

22. It is important to note that the Hon'ble Supreme Court in Gurdev Singh vs Harvinder Singh 2022 Live Law (SC) 963 observed that a plaint cannot be rejected under Order VII Rule 11 CPC merely on the ground that the plaintiff is not entitled to any relief in the suit.

"The application preferred by the petitioner to reject the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) has been dismissed by the Trial Court which has been confirmed by the High Court. It is the case on behalf of the petitioner that the plaintiff is not entitled to any relief in the suit. The aforesaid cannot be a ground to reject the plaint at the threshold in exercise of powers under Order 7, Rule 11 of the CPC. The learned Trial court has rightly rejected the application under Order 7, Rule 11 of the CPC, which is rightly not interfered with by the High Court. We are in complete agreement with the view taken by the High Court"

23. Also, the Judgment of Hon'ble Supreme Court [HS Deekshit vs

Metropoli Overseas Limited] reported in 2022 LiveLaw (SC) 703

"It is well-settled that while considering an application under Order 7 Rule 11 of the Code, the averments in the plaint alone are to be examined and no other extraneous factor can be taken into consideration. On the basis of averments made by the plaintiffs in the suit as mentioned above, we find that it is disputed question of fact as to whether the Agreement to Sell, the Power of Attorney and the Sale Deeds are forged and fabricated documents. Such questions are required to be decided on the basis of evidence to be led by the parties. We do find that the forgery pleaded cannot be a ground for rejection of the plaint."

24. Besides the above, the Judgment of Hon'ble Apex Court [R.Arumugam vs. P.R. Palanisamy and Ors. (08.01.2013 - MADHC) reported in MANU/TN/0011/2013, wherein it is held as follows:-

"10.Citation of a false cause of action, fraud, misrepresentation or the filing of the suit being an abuse of process of court, can, at the best, be projected as a preliminary issue. All questions, which can be decided as preliminary issues, cannot be made as grounds for rejection of the plaint unless the ground is brought within the purview of Order VII Rule 11 CPC. The distinction between the rejection of a plaint under Order VII Rule 11 CPC and the dismissal of the suit on a preliminary issue should be kept in mind. In case of rejection of plaint, the same will not bar a fresh suit….";

25. On going through the above said principles and applying the same to the present case on hand it is seen that the present suit has been

filed before District Munsif Court, Poonamalle. The District Munsif court presided over by Civil Judges are exercising pecuniary jurisdiction up to Rs.1,00,000 (One Lakh), whereas the value of the suit property is Rupees 2 Crores as evident from the sale agreement dated 25.05.2012. Further, on going through the plaint and written statement and the document placed on record, this Court is of the view that it is mixed question of law and fact as to whether the sale agreement, release deed are forged and fabricated or genuine documents, such questions are required to be decided on the basis of evidence to be led by the parties. Therefore, the pecuniary jurisdiction alone cannot be a ground to reject the plaint and a direction is hereby issued to the trial court to raise the pecuniary jurisdiction as a preliminary issue and decide the same.

26. In view of the above, the C.R.P.No.2228 of 2020 is allowed and the order passed in I.A.No.595 of 2016 dated 24.03.2020 is set aside and C.R.P.No.1024 of 2021, seeking to reject the plaint is hereby dismissed by directing the court below to decide the pecuniary jurisdiction as a preliminary issue. Consequently, connected misellaneous petition is closed. No costs.

27.03.2023

Index:Yes/No

Internet:Yes/No
Speaking / Nonspeaking order
ssd

To
The Principal District Munsif,

Poonamallee

V.BHAVANI SUBBAROYAN J.

ssd

C.R.P.No.2228 of 2020 &
C.R.P.No.1024 of 2021
C.M.P.No.14036 of 2020

.03.2023