



A.S.No.230 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.06.2023

PRONOUNCED ON : 23.06.2023

CORAM

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

Appeal Suit No.230 of 2022

and

Civil Miscellaneous Petition No.22281 of 2022

A.John Basha

... Appellant /1st respondent

Versus

1.S.Jayaraman
2.Gowhar John
3.Abdul Kalam Azath
4.Kulab John
5.Alen John
6.Rashia Begum
7.C.Kandasamy

Nallappan (deceased)

8.Sub Registrar,
Omalur, Salem District.

9.Rajathi
10.Manickam

... Respondents/Respondents



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Prayer: The Appeal Suit filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure to set aside the Judgment and Decree of rejection of plaint, dated 11.04.2017 passed in I.A.No.1115 of 2015 in O.S.No.146 of 2010 on the file of the I Additional District Court, Salem.

For Appellant : Mr.V.Venkatasamy
For R1 : Mr.T.S.Vijaya Raghavan
For R2 to R6 : Mr.T.Sundaravadanam
For R7 & R8 : No appearance
For R9 : Not ready in notice

JUDGMENT

[The Judgment of the Court was delivered by K.RAJASEKAR,J.,]

This Appeal has been filed by the first respondent, against the fair and decreetal order passed in I.A.No.1115 of 2015 in O.S.No.146 of 2010, dated 11.04.2017, on the file of the I Additional District Judge, Salem, wherein, the trial Court has rejected the suit filed by the plaintiff by invoking under Order VII Rule 11 (a) of the Code of Civil Procedure.

2. Aggrieved over the same, the plaintiff has filed this present appeal.



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3. The case of the plaintiff is as follows:

(a) The first defendant is the wife, the plaintiff and the

defendants 2 to 5 are the children of one Ameer, son of John Basha. The suit properties were consisting 12.20 acres of land situated in Survey No.35/4 at Vallapatti Village, Salem was originally allotted to Ameer, by way of a Partition Deed, dated 29.05.1995 and he was in possession and enjoyment of the same. The plaintiff's father Ameer along with defendants 2 to 5 have entered in to the agreement of sale with the sixth defendant and based on the same, the sixth defendant has filed the suit against them.

(b) On 06.11.1974, while Ameer was alive, the plaintiff has executed a Relinquishment Deed, relinquishing his share in the suit properties in favour of his father. After the death of Ameer, on 03.07.2008, the plaintiff inherited 1/4 share in the suit properties but the defendants have not come forward to partition the suit properties. Hence, he issued legal notice, dated 28.04.2010 to the defendants 1 and 2, but no reply was sent. The defendants 1 to 5 also executed a registered Power of Attorney in favour of the seventh defendant, since the defendants have refused to partition the suit properties has come forward with this suit.



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(c) The defendants after entered into the appearance in the suit, the sixth defendant had filed I.A.No.1115 of 2015, seeking rejection of plaint wherein, it is contended that by suppressing several facts including various litigations, which reached its finality, the plaintiff has filed the suit with bogus claim by making clever drafting of the plaint. The petitioner has also narrated previous litigations held between the plaintiff, the plaintiffs father and the defendants.

(d) After taking notice of the previous litigations held between the parties including the decree for specific performance passed against the plaintiff's father, the trial Court has held that there is no cause of action in the suit and rejected the plaint.

4. We have heard the learned counsel on both sides in this appeal and perused the materials placed before this Court.

5. The learned counsel for the appellant contended that for exercising the power under Order VII Rule 11 (a) CPC, the trial Court has look into the averments made in the plaint alone and the averments made in the written statement is irrelevant. Similarly, the entire pleadings and



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averments made in the plaint in entirety, must be held to be correct and the test is to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed in this case. The learned counsel for the appellant further submitted that the reliance on the various previous decrees and Judgments passed by the various other Courts in the litigations held between the plaintiff, the plaintiff's father, sixth defendant, etc., shall not to taken up for consideration, while exercising jurisdiction under Order VII Rule 11 (a) CPC. Hence, he prays to allow the appeal.

6. Countenancing the arguments of the appellant, the learned counsel for the respondent No.1 would submit that on 06.11.1974, the plaintiff has relinquished his share in the suit property by way of registered document. In the year 1996, the plaintiff's father entered into the Agreement of Sale with the sixth defendant to sell the property for a total sale consideration of Rs.10,52,000/- and received an advance amount of Rs.2,00,000/-. Before concluding the agreement of sale, the plaintiff has filed the suit against his father in O.S.No.963 of 1996 on the file of the District Munsif Court, Omalur, seeking injunction from alienating of the suit properties. In the meantime, the possession of the suit properties were handover to the sixth defendant.



7. In the year 2002, the suit filed by the plaintiff was dismissed.

Against which, the plaintiff has also filed an appeal before the Sub Court at Mettur in A.S.No.30 of 2002, since there is a continuous delay in execution of the agreement of sale, the sixth defendant has filed a suit in O.S.No.212 of 2004, on the file of the Fast Track Court No.II, Salem, against the plaintiff's father and defendants 1 to 5 for specific performance. In the year, 2005, the plaintiff's father filed a suit in O.S.No. 170 of 2005, for recovery of possession from the defendants. Both the suits were tried together and decree was also passed, decreeing the suit for specific performance and dismissing the suit for possession on 28.08.2007. Thereafter, the plaintiff's father filed Appeal Suit in A.S.Nos.409 and 410 of 2008 before this Court. After the death of Ameer, the plaintiff has come forward with the bogus suit, suppressing all the above facts.

8. It is found from the order passed by the trial Court, that two rounds of litigation is already completed with regard to the suit properties. One is at the instance of plaintiff and another at the instance of the plaintiff's father and sixth defendant.



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9. Before this Court, the learned counsel for the respondents submitted that already Sale deed has been executed, after dismissal of the Appeal Suit filed by the plaintiff's father and against which, S.L.P.(C)Nos.35191 and 35192 of 2017 was also filed before the Hon'ble Supreme Court of India and the same was also dismissed by an order dated 03.11.2017.

10. The Hon'ble Apex Court in ***Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through legal representatives and Others*** reported in (2020) 7 SCC 366, wherein, the Hon'ble Apex Court has considered the powers of the Court while exercising petition under Order VII Rule 11(a) CPC and the relevant paragraphs are under:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it



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would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In **Azhar Hussain v. Rajiv Gandhi** [**Azhar Hussain v. Rajiv Gandhi**, 1986 Supp SCC 315. Followed in **Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba**, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

24.2. In **T. Arivandandam v. T.V. Satyapal** [**T. Arivandandam v. T.V. Satyapal**, (1977) 4 SCC 467] this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)

“5. ... The learned Munsif 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 clear right to sue, he should



exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing....”
(emphasis supplied)

24.3. Subsequently, in **ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70]** this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in **Madanuri Sri Rama Chandra Murthy v. Syed Jalal [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602]** held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

11. In the plaint, the plaintiff has pleaded that during the lifetime of his father, Relinquishment Deed, dated 06.11.1974 was registered stating that the plaintiff had relinquished his share in the suit property in favour of his father. The plaintiff's father died on 03.07.2008. After his death, the plaintiff inherits 1/4 share in the suit property since the



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other legal heirs of his father has not come forward for partition, he has filed a suit for partition. Similarly, he has also stated that the sixth defendant has entered into agreement with his father and the suit for specific performance was filed by him. He has not stated about the stage of the suit for specific performance filed by the sixth defendant in the plaint.

12. It is brought to the notice of the trial Court by the sixth defendant that already the plaintiff has filed the suit against his father claiming right over the suit property and the same was dismissed. Against which, appeal was filed and the same was also dismissed and reached its finality. Similarly, the sixth defendant has filed the suit for specific performance and the same is also decreed in his favour. The plaintiff's father has also filed a suit for recovery of possession from the sixth defendant and the same was also dismissed. These judicial proceedings were reached its finality before the trial Court. During the appeal proceedings before this Court in A.S.Nos.409 and 410 of 2008, the plaintiff's father was died and his legal heirs have impleaded. The plaintiff has purposely suppressed the vital material such as earlier litigations between the plaintiff and his father regarding the ownership of the properties.



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13. In *Sopan Sukhole Sable and Others vs. Assistant Charity*

Commissioner and Others reported in **2004 (3) SCC 137**, the Apex Court has considered in paragraph No.20 has held that, pleading of material facts is necessary to formulate a complete cause of action. Omission of a single material fact leads to an in-complete cause of action and it is held as follows:

“20. There is distinction between “material facts” and “particulars”. The words “material facts” show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between “material facts” and “particulars” was brought by Scott, L.J., in Bruce v. Odhams Press Ltd. in the following passage:

“The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material statement is omitted, the statement of claim is bad; it is 'demurrable' in the old phraseology, and in the new is liable to be 'struck out' under R.S.C. Order 25 Rule 4; or a further and better statement of claim' may be ordered under Rule 7.

The function of 'particulars' under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim – gaps which ought to have been filled by appropriate statements of the various material facts



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which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial."

The dictum of Scott, L.J. in Bruce case has been quoted with approval by this Court in Samant N.Balkrishna v. George Fernandez and the distinction between "material facts" and "particulars" was brought out in the following terms:(SCC p.250, para 29)

"The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet."

Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11,



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even without intervention of the defendant. In any event, rejection of the plaint under Rule 22 does not preclude the plaintiff's from presenting a fresh plaint in terms of Rule 13."

14. At the time of filing of the present suit by the plaintiff, the possession of the suit property is with the sixth defendant and the Competent Court has passed the decree directing the father of the plaintiff to execute the Sale deed in favour of the sixth defendant. This fact relating to the title of the suit property is the material fact and the same has been suppressed by the plaintiff.

15. By suppressing the material facts by cleverly omitting to state regarding previous judicial proceedings including the decree for directing the plaintiff's father to transfer the ownership of the property, the petitioner has filed the suit by creating illusion of cause of action which is to be nipped in the bud. Accordingly, the plaint is liable to be rejected as per Order VII Rule 11 (a) CPC.

16. In view of the above, this Court finds no infirmity in the order passed by the trial Court in rejecting the plaint filed by the plaintiff in in I.A.No.1115 of 2015 in O.S.No.146 of 2010, dated 11.04.2017.



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17. Accordingly, the Appeal Suit is dismissed with costs. The Judgment and Decree of rejection of plaint passed in I.A.No.1115 of 2015 in O.S.No.146 of 2010, dated 11.04.2017, on the file of the I Additional District Court, Salem is confirmed. Consequently, the connected miscellaneous petition is closed.

(S.V.N.,J.) (K.R.S.,J.)
23.06.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
ssi

To:

1. The I Additional District Court,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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