



C.R.P.No.3925 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.06.2023

Pronounced on : 19.06.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.3925 of 2018
and CMP.No.21772 of 2018

1.S.M.S.Bucary Wakf-Al-aulad
Rep by its Muthavalli
Mr.S.M.S.Abdul Khader
Door No.61, Surappa Mudali Street
Triplicane, Chennai - 600 005.

2.M/s.Doshi Housing Ltd.,
Rep by its Managing Director
No.3H, Century Plaza, 560, Anna Salai
Teynampet, Chennai - 600 018.

3.M/s.Doshi Constructions
Rep by its Partner
Smt.Yashumathi H.Doshi
[Substituted vide Court order dated 08.11.2022 made
in CMP.No.12148/2021 in CRP.No.3925 of 2018]

4.S.M.S.Kalvath Syed A.Abdul Khader
S/o.S.M.S.Bucary
Door No.61, Surappa Mudali Street
Triplicane, Chennai - 600 005.

... Revision Petitioners /
Defendants 1,3,4 &5 /
Petitioners

Vs.



C.R.P.No.3925 of 2018

WEB COPY

1.M/s.Sundaram Constructions
Rep by its Managing Partner
Mr.S.Pandiyan
G1, Sri Ganesh Apartments
No.5/6, Jayabharatham Street
Kodambakkam, Chennai - 600 024.

2.M/s.MEC International Pvt. Ltd.,
Rep by its Authorised Signatory
Mr.H.G.Singhal
Old No.37, New No.6, Arcot Road
Vadapalani, Chennai - 600 026.

.. Respondents /
Plaintiff, 2nd Defendants /
Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 24.08.2018 in I.A.No.17221 of 2015 in O.S.No.4635 of 2015 on the file of learned XV Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.ARL Sundaresan, Senior Counsel
Assisted by Mr.R.Muthukumar

For Respondents : Mr.B.Kumar, Senior Counsel
Assisted by Kalavanan for R1

Mr.K.V.Bhashyam Chari for R2



C.R.P.No.3925 of 2018

WEB COPY

ORDER

The defendants 1, 3 to 5 in O.S.No.4635/2015 on the file of the XV Assistant, City Civil Court, Chennai, are the revision petitioners herein. These defendants have taken out I.A.No.17221 of 2015 for rejection of plaint under Order VII Rule 11(d) CPC., alleging that the suit is barred by law. In order to understand and appreciate the contextual setting of the present revision, it is necessary to go back in time and to record all that have happened vis-a-vis a certain block of property belonging to the first defendant. The details are as below :

- The suit property originally belonged to the first defendant. It is stated to be a private wakf. The fifth defendant is its Muttavalli. This property is in the occupation of certain M/s.MEC International Pvt. Ltd., the second defendant as a ground-lessee, on the strength of which, the lessee had put some constructions in the property.
- In this setting, on 15.10.2003, plaintiff had entered into a Memorandum of Understanding with the first defendant-wakf, wherein it was agreed as between the parties thereto that the



WEB COPY



C.R.P.No.3925 of 2018

plaintiff would take steps to obtain clear possession of the property, that is to say that they would vacate the tenant from the property, and that they would develop the property and share the construction proposed to be made at 60 : 40 ratio. However, nothing is stated to have been done pursuant to this agreement.

- In this backdrop, the plaintiff has laid five independent suits and each of them had been dismissed for default. Their details are provided in the table below :

<i>Suit No.</i>	<i>Against Defendants (in the suit in column No.1) in terms of their rank in the present suit</i>	<i>Prayer</i>	<i>Date of dismissal</i>
O.S.No.5573/2006	D5 & D3	Injunction - Not to alienate the property	04.01.2013
O.S.No.9258/2006	Certain Jain Housing and D5	Injunction - Not to do anything as would defeat the right of the plaintiff under the MoU. (****)	16.04.2008
O.S.No.9259/2006	D1, D3, D4, D5 and Jain Housing	Permanent Injunction restraining the defendants thereof from denying free access to 'A' and 'B' schedule properties on the foundation that the plaintiff is an agent coupled with interest under Section 202 of the Contract Act.	25.10.2013
O.S.No.3507/2007	D1, D2, D3 & D5	(a) For a declaration declaring that a public notice dated 13.06.2007	23.12.2008



C.R.P.No.3925 of 2018

WEB COPY

<i>Suit No.</i>	<i>Against Defendants (in the suit in column No.1) in terms of their rank in the present suit</i>	<i>Prayer</i>	<i>Date of dismissal</i>
		published in 'The Hindu' by the second defendant in that suit (D4 in the present suit) intimating a certain MoU dated 16.03.2004 and certain deeds that floated out of it dated 15.12.2004, executed by the first defendant in favour of the third defendant herein are not legally enforceable; b)Permanent Injunction restraining the defendants thereof from denying free access to 'A' and 'B' schedule properties on the foundation that the plaintiff is an agent coupled with interest under Section 202 of the Contract Act.	
O.S.No.1900/2014	D1, D2 & D3	For permanent injunction that the defendants in that suit be restrained from interfering with the plaintiff's legal right, based on the correspondence between the second defendant M/s.MEC International Pvt. Ltd., to its banker, dated 30.01.2014.	Dismissed for default on 18.11.2019 and an application is stated to have filed for its restoration and the same is stated to be pending
****The prayers in each of the suits have been provided so clumsily that it defies easy understanding as to what the plaintiff wants from the Court (The statement is			



C.R.P.No.3925 of 2018

<i>Suit No.</i>	<i>Against Defendants (in the suit in column No.1) in terms of their rank in the present suit</i>	<i>Prayer</i>	<i>Date of dismissal</i>
intended to be harsh, as some responsibility could have been taken to draft it for comfortable understanding)			

- The present suit is the next one in the line of suits the plaintiff had laid (and did not prosecute) The cause of action for the suit fundamentally rests on three correspondences between the second defendant, the lessee of the suit property and its banker dated 30.01.2014, 20.09.2014 and 17.07.2014 Of them, the first mentioned correspondence appeared to have provided a cause of action for O.S.No.1900 of 2014.

2. Considerable if not insurmountable difficulty is felt in comprehending relief (a) and (b) sought in the plaint and hence this Court thought it fit to reproduce them (to provide an opportunity to anyone who is willing to decipher them) and they are :

(a)for declaration that the commitment between the plaintiff with the second defendant with reference to contract dated 30.01.2014 and 20.09.2014, pursuant to contract dated 17.07.2014 in the form of communication of the correspondence is legally binding the first defendant as



C.R.P.No.3925 of 2018

per Memorandum of Understanding dated 15.10.2003 between the first defendant with the plaintiff without reference to any misdeed in the form of encumbrance before SRO, Virugambakkam between the first defendant with defendant on suppression of lawful remedies to be exhausted to create encumbrance with third parties and in the absence of termination or recession or cancellation of adjudication of the claim of the plaintiff with reference to his entitlement of 60% share by way of interest and 40% flats to be constructed by plaintiff on behalf of first defendant duly entered between the plaintiff with the first defendant for the suit property according to law.

(b) for permanent injunction restraining their men, agents, servants etc., from further proceeding the act of causing prejudice by way of creating encumbrance with third parties or causing hindrance in respect of holding lawful possession of the plaintiff of the suit property with the legal rights of the plaintiff as acknowledged by the first defendant in the Memorandum of Terms of Understanding dated 15.10.2003 duly entered between the plaintiff and the first defendant at Chennai in its strict adherence unless and until the legal rights of the rival claimants more particularly third and fourth defendant at the instance and of the first defendant is duly substantiated and determined in the manner known to law against the



C.R.P.No.3925 of 2018

legal rights of the plaintiff;

WEB COPY

3. To reject this plaint, the revision petitioners have taken out an application in I.A.No.17721/2015 on the following grounds:

(a) that the decrees passed in earlier five suits constitute *res judicata*; and bars the institution of the suit.

(b) that inasmuch as the original MoU between the plaintiff and the first defendant, dated 15.10.2003, has not been enforced till now despite its breach by the first defendant even in 2006, the suit is barred by limitation.

To provide a backdrop to the second of the aforesaid two grounds, it may have to be stated that on 26.12.2006, the third defendant had purchased the suit property from the first defendant through its Muttavalli, the 5th defendant herein. Indeed, this sale deed appears to have been made in the backdrop of the MoU dated 16.03.2004 published in 'The Hindu', which later became the subject matter of O.S.No.3507/2007, referred to above.

5. Mr.AR.L.Sundaresan, the learned Senior Counsel, appearing for the revision petitioners submitted that when there is a breach of contract, the



C.R.P.No.3925 of 2018

only right that flows under the MoU dated 15.10.2003 in favour of the plaintiff is to enforce it. Now, on 26.12.2006, the third defendant had purchased the property from the first defendant, and the plaintiff cannot plea ignorance about it since this transaction was known to the plaintiff vide the written statement in O.S.No.3507/2007. So far as the present cause of action is concerned, the three correspondences dated 30.01.2014, 17.07.2014 and 20.09.2014, referred to in the prayer are between the lessee of the site with its banker, and this lessee is not a party to the MoU dated 15.10.2003 between the first defendant and the plaintiff.

6. In response Mr.B.Kumar, the learned senior counsel for the plaintiff/first respondent submitted:

- In the affidavit filed in support of the application, the revision petitioner has raised only three grounds for seeking rejection of the plaint and they are:
 - a) that the suit is barred by limitation,
 - b) that it is barred by *res judicata*, and
 - c) there are two prayers sought out of which, one is for permanent injunction which is sought as an independent relief to protect



C.R.P.No.3925 of 2018

plaintiff's possession of the suit property.

WEB COPY

- So far as the first ground is concerned, it is an admitted fact that the plaintiff was put in possession pursuant to a MoU dated 15.10.2003 entered into between the plaintiff on the one part and the first defendant on the other part. This implies the plaintiff's possession of the property cannot be termed illegal or unlawful. This MoU provides for development of the property in question and for sharing the constructed area in the ratio of 60 : 40, the former to the plaintiff and there is also a condition available in the MoU that the plaintiff should evict the second defendant before taking possession. The second defendant however, has not been dispossessed, as there are other legal imbroglio affecting the second defendant and certain banker's lien on his property. Therefore it is not that the MoU has become incapable of being performed, but on the contrary the time for performance itself is yet to be ascertained.
- Turning to the aspect of *res judicata*, it is true the plaintiff had filed a few suits earlier, and that all of them were dismissed for default, but



C.R.P.No.3925 of 2018

WEB COPY

what is significant in the context of the doctrine of *res judicata* is that no issue has yet been tried and decided to attain finality.

- Thirdly, when the plaintiff's possession is lawful and settled, is he not entitled to maintain a suit for bare injunction, and hence the plaint can be sustained to that extent, but a plaint cannot be rejected in part. Reliance was placed on the authority of the Hon'ble Supreme Court in ***Prem Kishore & Ors. vs. Brahm Prakash & Others*** [2023 SCC Online SC 356].

If these three aspects are eliminated from the line of consideration, then there is no other aspect that would justify rejection of the plaint under Order VII Rule 11(d) CPC. Reliance was also placed on the ratio in ***Vaish Aggarwal Panchayat Vs. Inder Kumar and Others*** [(2020) 12 SCC 809]; ***State of Andhra Pradesh Vs. B. Ranga Reddy (Dead) by Legal Representatives and Others*** [(2020) 15 SCC 681]; ***Nakkheeran Publications Vs. Dhyanapeeta Charitable Trust*** [2010 (5) CTC 318]; ***Venutal Motiram Ghongde Vs. Sadashiv Parashramji Madghe and others*** [AIR 1975 Bom 68]; ***Popat and Kotecha Property Vs. State Bank of India***



C.R.P.No.3925 of 2018

Staff Association [(2005) 7 SCC 510]; **T.Mohanraj Vs. Akila**

Thiruvidadancore Siddha Vaidhya Sangam [2011 (3) MWN (Civil) 787].

7. Replying the same, Mr.AR.L.Sundaresan, learned Senior Counsel would submit :

(a) So far as the sustainability of the suit vis-a-vis the decree for permanent prohibitory injunction seeking to restrain the revision petitioners herein from disturbing the possession of the plaintiff is concerned, admittedly even in terms of the MoU, the plaintiff is not in possession, but a certain M/s.MEC International, the second defendant alone is in possession. Therefore, even the suit for injunction cannot be sustained.

(b) So far as the plea of limitation is concerned, even though ordinarily it is considered as a mixed question of law and fact, yet when it becomes an ingredient for abusing the judicial process, then it deserves to be considered and treated differently.

8. The course of events that followed the MoU indicate that the plaintiff is either clueless as what it wants to do, or pretends to be clueless. In 2003, it



C.R.P.No.3925 of 2018

entered into a MoU and this MoU is in its twentieth year, and it has been informed that the first defendant had since sold the property to the revision petitioners herein in 2006 as contended in the written statement in O.S.No.3507/2007, and which this Court had an opportunity to verify and ascertain. Effectively the plaintiff has an information that the first defendant Wakf has already committed breach of contract. But the plaintiff / first respondent would institute a series of litigations for remedies of its choice, but not one for enforcing the contract or for damages for breach of the contract. And it is yet to prosecute a suit that it had so far instituted. In all probability, if only the defendants 1,3,4 & 5/ revision petitioners had not taken out the present application for rejection of plaint, in all probability, the plaintiff might have well let the present suit go for default for non-prosecution. It in effect informs the Court that it has a strong tendency to treat the Court and its process as casinos, and is keen to gamble on the time of the Court with no seriousness to obtain justice for its alleged causes. Such exercises by the litigants on the judicial process cannot be tolerated merely because the litigant has chosen to pay the Court fee.

9. Turning to the present action which the plaintiff has laid, the first prayer



C.R.P.No.3925 of 2018

which even its counsel did not press, much in essence appears to be for declaring that certain correspondences between the tenant of the property and its banker is binding on the other defendants. In the MoU, the plaintiff is required to vacate the tenant and this Court wonders that, where on earth the correspondences between the tenant and its banker could be made to bind the defendants. These documents at the best, can be the relevant documents vis-a-vis in dispute arising against the tenant, but the tenant is not a party to the MoU dated 15.10.2003. Turning to the second prayer, even in terms of the MoU, physical possession continues to be with the tenant and if so, the plaintiff does not have a right *in prasenti* to seek any injunction for protecting its alleged possession. Thirdly and as very rightly contended by the counsel for the revision petitioners, there are only two remedies open to the plaintiff when the MoU which it had entered with the first defendant was breached by the latter :

- a) Either to institute a suit for enforcing the MoU or for damages for breach. Neither was done when the breach of MoU had already taken place in 2006 to the knowledge of the plaintiff.
- b) And under Limitation Act, a suit has to be laid in any one of them



WEB COPY



C.R.P.No.3925 of 2018

within three years from the date of arising of cause of action.

Instead of filing a comprehensive suit for any of the reliefs to which the plaintiff perhaps is entitled to in law, he keeps instituting litigations of no interest to it - for all unnecessary reliefs. This attitude of the plaintiff epitomises its tendency to abuse the judicial process.

10. From whichever angle this Court views the ongoing, it is evident that the suit deserves to be rejected. Accordingly, the revision petition is allowed. The order of the trial Court in I.A.No.17221 of 2015 in O.S.No.4635 of 2015 is set aside and the suit is hereby rejected. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2023

Index : Yes / No
Speaking order / Non-speaking order
ds

To:

1.The XV Assistant Judge



C.R.P.No.3925 of 2018

City Civil Court, Chennai.

WEB COPY

2.The Section Officer
VR Section, High Court, Madras.



WEB COPY



C.R.P.No.3925 of 2018

N.SESHASAYEE.J.,

ds

Pre-delivery order in
C.R.P.No.3925 of 2018

19.06.2023