



S.A.No.689 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.689 of 2021

J.Amburose

... Appellant

Vs.

1. G.K.Palanisamy
2. Kadhira @ Parimala
3. Suganya
4. Madhanmohan

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 25.03.2019 in A.S.No.22 of 2015 on the file of the Sub Court, Gobichettipalayam, confirming the judgment and decree dated 21.09.2015 in O.S.No.259 of 2014 on the file of the District Munsif Court, Gobichettipalayam.

For appellant

: Ms.E.Harini

for Mr.MA.P.Thangavel

For respondents

: Mr.M.Guruprasad



S.A.No.689 of 2021.

JUDGMENT

The plaintiff in the suit in O.S.No.529 of 2014 is the appellant before this Court.

2. The facts of the case are narrated hereinbelow, with the parties referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff had filed a suit in O.S.No.529 of 2014 on the file of the District Munsif Court, Gobichettipalayam, for permanent injunction restraining the defendants 1 to 4, their men and agents from trespassing into the suit property and to direct the defendants 1 to 4 to get the lease deed dated 18.06.2014 registered before the registering authority and in case, they fail to do so, the Court may get the same registered.

2.2. The defendants had taken out an application to reject the



S.A.No.689 of 2021.

plaint by invoking the provisions of Order VII Rule 11 of C.P.C. The application was filed by the defendants stating that under the said lease agreement which is filed as Document No.1 in the suit, the agreement contained an Arbitration clause. The company, with which the plaintiff had entered into an agreement of sale *viz.*, Sri Pavalambigai Paper Boards Private Limited, had filed an application under Section 9 of the Arbitration and Conciliation Act seeking interim measures of protection. That apart, the defendants had pleaded that though the lease agreement was entered into with the company, the plaintiff had filed the suit against the private individuals and therefore, on this ground, the suit has to be rejected, since the cause of action was only against the company and not against the defendants.

2.3. The defendants had also contended that the plaint was grossly undervalued. The plaintiff, who has filed the suit for specific performance of the lease deed, ought to have paid the proper Court Fee under Section 25(a) of the Tamil Nadu Court Fees and Suits



Valuation Act. The defendants would submit that the Court fee payable would be a sum of Rs.16,20,000/- on the basis of value of the lease being a sum of Rs.20,000/- per day. The defendants would also contend that the Courts at Gobichettipalayam do not have the jurisdiction to try the suit, since under the lease agreement jurisdiction has been conferred exclusively on the Courts at Erode. Therefore, on the above said grounds, the defendants had filed an application for rejecting the plaint in I.A.No.1304 of 2014.

TRIAL COURT:

3. The learned District Munsif, Gobichettipalayam, by an order dated 21.09.2015, allowed the said application in I.A.No.1304 of 2014. The learned Judge held that the lease deed, in respect of which, the suit for specific performance has been filed, contained an Arbitration clause and that apart, the lessor company had filed an A.O.P.No.104 of 2014 on the file of the District and Sessions Court, Erode, which has been suppressed by the plaintiff in his plaint.



WEB COPY



S.A.No.689 of 2021

4. The proceedings have been marked as Ex.P1. The recitals in Clause 5 Sub-clause 1 of the lease agreement clearly states that any dispute can be solved only by working the Arbitration clause. On this ground, the application has been allowed. Consequently, the suit was also dismissed.

LOWER APPELLATE COURT:

5. Challenging the said judgment and decree, the plaintiff had filed an appeal in A.S.No.22 of 2015 on the file of the Sub Court, Gobichettipalayam.

6. The Lower Appellate Court had by its judgment and decree dated 25.03.2019, confirmed the judgment and decree of the Trial Court and dismissed the appeal. The Lower Appellate Court had also relied upon the Arbitration clause in the lease deed and the fact that the lessor company had filed A.O.P.No.104 of 2014 on the file of



S.A.No.689 of 2021.

the District and Sessions Court, Erode, and held that the suit was therefore, barred under Section 8 of the Arbitration and Conciliation Act.

7. The Lower Appellate Court had also held that the plaintiff cannot seek a decree for mandatory injunction, but, ought to file a suit for specific performance.

8. Challenging the said judgment and decree, the plaintiff is before this Court.

9. When the matter had come up on 08.09.2021, this Court had ordered notice to the respondents. The respondents have been served.

10. Heard the learned counsel on either side and perused the materials available on record.



11. This Court, on hearing both the parties, had framed the following substantial questions of law.

“(i) Whether the Courts below are correct in law in rejecting the plaint on the ground that the lease agreement dated 18.06.2014 entered into between the plaintiff and one Sri Pavalambigai Paper Boards Private Limited contains an arbitration clause, when the suit has been filed against private individuals?”

“(ii) Whether the Courts at Gobichettipalayam has jurisdiction to entertain the suit?”

DISCUSSION:

12. The learned counsel appearing for the appellant would submit that the only ground on which the application to reject the plaint was allowed was the pendency of the application under Section 9 and 11 of the Arbitration and Conciliation Act between the plaintiff and the lessor company. She would submit that after the rejection of the plaint, A.O.P.No.104 of 2014 has been dismissed as not pressed



by an order dated 07.02.2017. The application for appointment of an Arbitrator has also been withdrawn by the company and the petition in O.P.No.662 of 2016 had been dismissed as withdrawn. While seeking the withdrawal, the company has sought leave to take out an appropriate proceedings in accordance with law.

13. She would submit that the suit is one for injunction against the defendants, since it was they who have been interfering with his possession of the suit schedule property. The learned counsel would further submit that in the instant case, the plaintiff has rushed to the Court on account of the fact that the defendants had threatened dispossession and therefore, the plaintiff has to necessarily file a suit for permanent injunction. That apart, both the parties are claiming possession to the property and this can be decided only by the Civil Court. As to whether the second prayer of the plaintiff is maintainable is a point to be decided during the trial of the suit as it is a mixed question of both facts and law.



14. The learned counsel appearing for the respondents would concede that the petition filed by the company invoking the provisions of the Arbitration and Conciliation Act has been withdrawn by them.

15. Considering the fact that the suit is one for bare injunction seeking to restrain the defendants from dispossessing the plaintiff, a suit can be instituted. The plaintiff had set out that the defendants 1 to 4 had come to his premises along with a group of armed men and threatened him. The threat was being made by these individuals. Therefore, the suit filed against the individuals is very much maintainable. The exclusive jurisdiction on the Courts at Erode has been conferred only for the purposes of Arbitration.

16. As to the plea of non-joinder of necessary parties and whether the second prayer of the plaintiff is not maintainable are the issues to be considered after the defendants had filed their written



S.A.No.689 of 2021

statement and the trial has commenced and they cannot be a ground for rejection of the plaint under the provisions of Order VII Rule 11 of the C.P.C. Therefore, the plaint has been rejected without any basis and hence, the judgments of the Courts below are liable to be set aside. Therefore, the substantial questions of law are answered in favour of the appellant.

Accordingly, this second appeal stands allowed and the suit O.S.No.259 of 2014 is restored to the file of the District Munsif, Gobichettipalayam. No costs.

11.03.2024

Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The Subordinate Judge, Gobichettipalayam.

10/12



S.A.No.689 of 2021

2.The District Munsif, Gobichettipalayam.

3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

ssa

S.A.No.689 of 2021



WEB COPY



S.A.No.689 of 2024.

11.03.2024