A.No.4132 of 2022 in C.S.No.216 of 2010 and
A.No.4183 of 2022 in C.S.No.656 of 2008

RESERVED ON : 03.08.2023

PRONOUNCED ON : 11.01.2024

A.A.NAKKIRAN, J.

ORDER

These applications have been filed by the respective Defendants in the above suits, for framing a preliminary issue with respect to the maintainability of the suits, namely, "Whether the suits as framed are maintainable?".

2.The case of the Applicant/ Defendant in A.No.4132 of 2022 is as under:-

a)The Applicant was the owner of the suit property. The husband of the Applicant had originally purchased the suit property in S.Nos.13, 14, 15, 16, 18, 19 and 20 in Chettiaragharam Village, Chengalpattu District in 1968 in the names of her minor daughter, minor son and the Applicant respectively. The Plaintiff, knowing very well that the said properties were subjected to lis with one Saradamani Kandappan since 1981, came forward to purchase the suit properties. The suits filed by the said litigant in

CS.Nos.95/1984, 302/1989 and 170/1984 for specific performance were dismissed and the OSA.Nos.12/1992, 32/1995 and 148/1999 filed against the same were also Dismissed. The Judgement in CS.No.95 of 1984 was confirmed and thereafter, MOUs were entered into by the Plaintiff on 05.07.2002 with the Defendants. Since the Plaintiff had breached the terms of the MOU's, the Defendants jointly issued a termination notice of the MOU's dated 25.06.2007 and also made out a joint pay order No.790432 dated 23.06.2007 for Rs.2,25,00,000/- towards full refund of the earnest money deposits. While so, the Plaintiff has filed the present suit for declaration of the notice dated 25.06.2007 and the rejoinder dated 29.08.2007, cancelling the MOUs dated 05.07.2002, are illegal and for permanent injunction and mandatory injunction, directing the Defendant to enforce Clauses 9 and 10 of the MOU dated 05.07.2002 and enable the Plaintiff to purchase the suit property. The Plaintiff also intends to file another comprehensive suit for specific performance of the contract.

b).The Applicant has filed a written statement on 27.07.2011, contending that the suit is barred as an agreement to enter into another agreement is not specifically enforceable in law. The Civil Appeals in C.A.Nos.7254-7256 of 2002 were dismissed by the Honourable Supreme

Court on 04.07.2011 in favour of the Defendants. The plaint not disclose any cause of action. After lapse of 10 years from filing of this Suit and when the trial was about to commence, the Plaintiff filed A.No.3570 of 2019 for amendment of the plaint, for declaration of MoU, dated 05.07.2002 as an agreement for sale and direction to the Defendant to execute the sale deed in favour of the Plaintiff and for declaration of the settlement deeds dated 01.08.2011 as null and void. The said application was dismissed on 11.09.2018. OSA.No.37 of 2020 filed against the same was also dismissed on 18.08.2022. The suit currently filed for mandatory injunction is not maintainable in law.

c)As per Order XIV Rule 2(2) of the Code of Civil Procedure, where issues of both law and facts arise in the same suit and it appears that the case can be disposed of based on questions on law alone, then the Court may proceed to try the preliminary issue to weed out the frivolous cases and nip a futile litigation in the bud. There can never be a mandatory injunction to agree on terms, which fall into the personal volition of the parties. The prayer for mandatory injunction to compel the Defendant to enforce Clause 9 of the MOU by mutually agreeing with the Plaintiff is not sustainable in law. The Plaintiff cannot compel the court to work out the terms and conditions for the benefit of the Plaintiff and the Defendant and such a prayer for mandatory injunction is not maintainable and ought to be rejected in limine. Hence, a preliminary issue on a question of law can be framed at any stage of the suit. Hence, this application has been filed seeking the relief as stated above.

3.In the counter filed by the Respondent/ Plaintiff in A.No.4132 of 2022, it is stated as under:-

a)The application seeking to frame a preliminary issue as to the maintainability of the suit, is a complete abuse of process of law. The averments of the application are incorrect and misleading. In fact, it was the husband of the Applicant/Defendant V.K.P.Sunkavalli and the applicant, who jointly offered to sell the suit property stating that the property is free from all encumbrances excepting the specific performance claim made by one Saradha Mani Kandhappan, which had been rejected by the trial court as well as the first appellate court. In fact it was only during the negotiations, the Defendant and her husband made representations that they were anticipating further appeal to Supreme Court by Saradha Mani Kandhappan. Believing the representations of the Defendant, the Plaintiff agreed to purchase the suit property for a valuable consideration of Rs.3.34,72,000/- and he paid an advance of Rs.74,24,000/-.

b)The MOU dated 5.7.2022 was entered into by incorporating all clauses essentially required for a regular agreement for sale. A total of Rs.2,25,00,000/- was paid as advance. After receiving the advance amount, the Defendant and her family had discharged their liabilities to the Bank of India, Ellur Branch, Andhara Pradesh relating to the suit property and they agreed to handover the original documents before receiving further payments from. The bank authorities were refusing to handover the original documents and therefore, they have filed OA.No.1283 of 1997 before the Debt Recovery Tribunal, Visakapattinam and the said application was also dismissed on 11.2.2005. In these circumstances. the Defendant wanted him to withhold the payments covered in all cheques dated 15.02.2005. There are elaborate pleadings made in the plaint in the above suit regarding the payment of advance and the nature of the agreement/MOU and his readiness and willingness. The MOU is a regular agreement and it is not a simple agreement for entering into a comprehensive agreement. The present suit was filed much prior to SLP filed by Saradha Mani Kandhappan. According to the clauses of the agreement/MOU, he will get right to purchase the suit property with a further period of 180 days from the date of disposal of the pending and future litigations and the Defendants furnishing copies of such orders. The right to file a comprehensive suit depends upon the final disposal of all pending and future litigations. Admittedly, it is not the case of the applicant that she furnished copies of the final orders in the litigations. He has filed an application to amend the prayer as that of specific performance by forgoing his right of 180 days of further period, which alone is contemplated under Clause 9 of the MOU. Even on the date of filing of application for amendment of the prayer, the properties were subjected to further pending litigations, which facts came to his knowledge during the pendency of the suit. A mere reading of the entire agreement/MOU would clearly disclose that all essential ingredients required for a regular sale agreement have been incorporated and agreed by both the parties. When the provision of 180 days of further time is sought to be given up and the application to amend the prayer is made, this Court ought to have allowed the application. The amendment sought for is not at all changing the nature of the suit and therefore, he is constrained to challenge the orders of this Court in the appropriate forum. This application is filed with the view of gaining undue advantage by misleading this Court. The MOU is not an agreement for entering into an agreement. On the direction of this court, parties have filed draft issues and now this Court has to proceed with the trial by settling the issues. The preliminary issue raised by the Applicant is completely untenable both on law and on facts. Hence, this application is to be dismissed.

4.The case of the Applicant / Defendant in A.No.4183 of 2010 is as under:-

a)The Applicant was the owner of the suit property. The father of the Applicant had originally purchased S.Nos.13, 14, 15, 16, 18, 19 and 20 in Chettiaragharam Village, Chengalpattu District in 1968 in the names of his wife, daughter and the Applicant respectively. The Plaintiff knowing very well that the said properties were subjected to lis with one Saradamani Kandappan since 1981, came forward to purchase the suit properties. The suits filed by the said litigant in CS.Nos.95/1984, 302/1989 and 170/1984 for specific performance were dismissed and OSA.Nos.12/1992, 32/1995 and 148/1999 filed against the same were also dismissed. The judgement in CS.No.95 of 1984 was confirmed and thereafter, MOUs were entered into by the Plaintiff on 05.07.2002 with the Defendants. Since the Plaintiff had breached the terms of the MOU's, the Defendants jointly issued a termination notice of the MOU's dated 25.06.2007 and also made out a joint pay order No.790432 dated 23.06.2007 for Rs.2,25,00,000/- towards full refund of the earnest money deposits. While so, the Plaintiff has filed the present suit for declaration of the notice dated 25.06.2007 and the rejoinder dated 29.08.2007, cancelling the MOUs dated 05.07.2002 are illegal and for permanent injunction and mandatory injunction, directing the Defendant to enforce Clauses 9 and 10 of the MOU dated 05.07.2002 and enable the Plaintiff to purchase the suit property. The Plaintiff also intends to file another comprehensive suit for specific performance of the contract.

b)The Applicant has filed a written statement on 21.04.2009, contending that the suit is barred as an agreement to enter into another agreement is not specifically enforceable in law. The plaint not disclose any cause of action. After lapse of 10 years from filing of this Suit and when the trial was about to commence, the Plaintiff filed A.No.3568 of 2019 for amendment of Plaint, for declaration of Memorandum of Understanding dated 05.07.202 as an agreement for sale and direction to the Defendant to execute the sale deed in favour of the Plaintiff and for declaration of the settlement deeds dated 01.08.2011 as null and void. The said application was dismissed on 11.09.2018. OSA.No.37 of 2020 filed against the same was also dismissed on 18.08.2022. The suit currently filed for mandatory injunction is not maintainable in law.

c)As per Order XIV Rule 2(2) of the Code of Civil Procedure, where issues of both law and facts arise in the same suit and it appears that the case can be disposed of based on questions on law alone, then the Court may proceed to try the preliminary issue to weed out the frivolous cases and nip a futile litigation in the bud. The prayer for mandatory injunction to compel the Defendant to enforce Clause 9 of the MOU by mutually agreeing with the Plaintiff is not sustainable on law. The Plaintiff cannot compel the court to work out the terms and conditions for the benefit of the Plaintiff and the Defendant. A preliminary issue on a question of law can be framed at any stage of the suit. Hence, this application has been filed seeking the relief as stated above.

5.In the counter filed by the Applicant/ Plaintiff in A.No.4183 of 2010, it is stated as under:-

a)The application seeking to frame a preliminary issue as to the maintainability of the suit, is a complete abuse of process of law. The averments of the application are incorrect and misleading. In fact, it was the husband of the applicant/Defendant V.K.P.Sunkavalli and the applicant who jointly offered to sell the suit property stating that the property is free from all encumbrances excepting the specific performance claim made by one Saradha Mani Kandhappan, which had been rejected by the trial court as well as the first appellate court. In fact it was only during the negotiations, the Defendant and her husband made representations that they were anticipating further appeal to Supreme Court by Saradha Mani Kandhappan. Believing the representations of the Defendant, the Plaintiff agreed to purchase the suit property for a valuable consideration of Rs.1,89,76,000/- and he paid a substantial advance of Rs.23,92,000/-.

b)The MOU dated 5.7.2022 was entered into by incorporating all clauses essentially required for a regular agreement for sale. A total of Rs.2,25,00,000/- was paid as advance. After receiving the advance amount, the Defendant and her family had discharged their liabilities in the

Bank of India, Ellur Branch, Andhara Pradesh relating to the suit property and they agreed to handover the original documents before receiving further payments from. The bank authorities were refusing to handover the original documents and therefore, they have filed OA.No.1283 of 1997 before the Debt Recovery Tribunal, Visakapattinam and the said application was also dismissed on 11.2.2005. In these circumstances. the Defendant wanted him to withhold the payments covered in all cheques dated 15.02.2005. There are elaborate pleadings made in the plaint in the above suit regarding the payment of advance and the nature of the agreement/MOU and his readiness and willingness. The MOU is a regular agreement and it is not a simple agreement for entering into a comprehensive agreement. The present suit was filed much prior to SLP filed by Saradha Mani Kandhappan. According to the clauses of the agreement/MOU, he will get right to purchase the suit property with a further period of 180 days from the date of disposal of the pending and future litigations and the Defendants furnishing copies of such orders. The right to file a comprehensive suit depends upon the final disposal of all pending and future litigations. Admittedly, it is not the case of the applicant that she furnished copies of the final orders in the litigations. He has filed an application to amend the prayer as that of specific performance by forgoing his right of 180 days of further period which alone is contemplated under Clause 9 of the MOU. Even on the date of filing of application for amendment of the prayer, the properties were subjected to further pending litigations, which facts came to his knowledge during the pendency of the suit. A mere reading of the entire agreement/MOU would clearly disclose that all essential ingredients required for a regular sale agreement have been incorporated and agreed by both the parties. When the provision of 180 days of further time is sought to be given up and the application to amend the prayer is made, this Court ought to have allowed the application. The amendment sought for is not at all changing the nature of the suit and therefore, he is constrained to challenge the orders of this Court in the appropriate forum.This application is filed with the view of gaining undue advantage by misleading this Court. The MOU is not an agreement for entering into an agreement. On the direction of this court, parties have filed draft issues and now this Court has to proceed with the trial by settling the issues. The preliminary issue raised by the Applicant is completely untenable both on law and on facts. Hence, this application is to be dismissed.

6. Heard both sides and perused the materials available on records.

7. The learned counsel for the applicants in two applications would submit that these applications have been filed under Order XIV Rule 2(2) of the Code of Civil Procedure, seeking to decide the issue of maintainability of the suits as a preliminary issue while the applicants/defendants jointly issued a Termination Notice dated 25.06.2007 having made out a pay order No.790432 dated 23.06.2007 on breaching of the terms of the MoU dated 05.07.2002 entered into between them.

8. It has been further submitted by the learned counsel for the applicants that there can never be a mandatory injunction to agree on terms, which fall into the personal volition of the parties. The prayer for mandatory injunction to compel the Defendant/applicants herein to enforce Clause 9 of the MoU by mutually agreeing with the Plaintiff/respondent herein is not sustainable in law. The Plaintiff/respondent herein cannot compel the court to work out the terms and conditions for the benefit of the Plaintiff and the Defendant and such a prayer for mandatory injunction is

not maintainable and ought to be rejected in limine. Since a preliminary issue on a question of law can be framed at any stage of the suit, this application has been filed.

9.The learned counsel for the respondent would submit that the suits have been filed by the plaintiff/respondent herein seeking to protect and enforce his right under three MoUs/agreements for sale all dated 05.07.2002 executed by the applicants herein in favour of the plaintiff/respondent herein agreeing to sell their respective lands totally measuring 24.95 Acres. After receiving almost 1/3rd of the sale consideration as agreed amounting to a total of Rs.2.25 Crores and enjoying the said huge amounts profitably, the defendants/applicants herein have cancelled the MoU after sending a single notice dated 25.06.2007 alleging that the plaintiff has committed default. Though the documents have been named as MoUs, they are regular agreements for sale. Hence, the prayer in the suits filed by the plaintiff has to be considered on the ground of facts and on law by way of Trial proceedings.

10.It has been further submitted by the learned counsel for the respondent that while there are serious issues to be tried in the above suit, as to whether the impugned notice dated 25.6.2007 issued by the defendants, terminating the MoUs/Agreements is valid or not? And Whether the plaintiff has committed any default as alleged in the impugned, the applicants/defendants have taken up the above two applications seeking to decide the issue on maintainability under Order XIV Rule 2 is not sustainable and liable to be dismissed.

11. The learned counsel for the respondent would further submit that while disposing of the SLP filed against the dismissal order passed by the court below to amend the suit prayer, the Hon'ble Supreme Court in its order dated 24.4.2023 has observed that "all contentions are left open to be urged in the suit and any of the observations contained in the impugned order shall not prejudice the right of the parties in the Trial Court". As such the findings and observations of the Learned Single Judge and the Division Bench cannot prejudice the right of the plaintiff in the trial in any manner.

12. It has been further submitted by the learned counsel for the respondent that while the MoU was entered into with the applicants and an

amount of Rs.2, 25,00,000/- has been received by the applicants and Various suits and applications were disposed of in regard to this suit property, the suits have to be adjudicated on all issues raised in the said case. In support of his argument, the learned counsel for the respondent has relied upon the following Judgments passed by the Supreme Court in the case of "Agricultural Produce Marketing Committee, Bangalore vs. State of Karnataka and others reported in 2022 (7) SCC 796, (ii) "Sathyananth and another vs. Sarojamani", reported in 2022 (7) SCC 644 and (iii) "Ramesh B Desai and Others vs. Bipin Vadil AL.Mehta and others", reported in 2006 (5) SCC 638. Hence, the applications are liable to be dismissed.

13. Having considered the facts and circumstances of the case and submissions made by the learned counsel on either side, it is seen that the said MoU dated 05.07.2002 has been entered into between both parties enumerating various terms and conditions therein having paid a sum of Rs.2,25,00,000/- to the applicants for purchase of the suit property. However, the applicants/defendants have terminated the said MoU dated 25.06.2007 by issuing notice dated 25.06.2007 as the plaintiff committed default under MoU dated 25.06.2007. Further, in the SLP filed by the

respondent/plaintiff against the dismissal order for amending the plaint's prayer, it has been observed by the Hon'ble Supreme court that the right of the plaintiff can not be prejudiced in the trial court.

14. Considering the aforesaid aspects, since complicated question of facts and law are involved in the matter, it has to be decided in depth. Therefore, this Court feels that framing of issues in this aspect is just and necessary for proper and effective adjudication. Hence, at this stage, these applications are not necessary. Accordingly, these applications are dismissed.

11.01.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm/lbm

A.A.NAKKIRAN, J.

Srcm/lbm

Pre-Delivery Order in
A.No.4132 and 4183 of 2022
and 216 of 2010
in CS.No.656 of 2008

11.01.2024