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CRP No.4516 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM:

THE HONOURABLE Mr. JUSTICE V. LAKSHMI NARAYANAN

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M.Sulaiman alias Sulaiman Salt

... Petitioner

Vs

1.S.Saravanan
2.K.Moithutty
3.Ibrahim Kutty
4.Mohammed Rafi
5.Mohammed Taufique

.... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Order and Decree passed in I.A.No.4 of 2023 in O.S.No.467 of 2023 on the file of Principal District Judge, Chengalpattu dated 28.06.2024.

For Petitioner : Colonel Ganesan

For Respondents : MrK.Mahalingam
For M.Rajasekaran



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ORDER

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This Civil Revision Petition arises against the order passed by the learned Principal District Judge, Chengalpattu in I.A.No.4 of 2023 in O.S.No.467 of 2023 dated 28.06.2024.

2. O.S.No.467 of 2023 is a suit for declaration and consequential reliefs.

The reliefs are set forth below”-

*“ a. For declaration to declare that the make belief Partnership Firm known as “**FOODSCAPE**” created by a deed of Partnership Agreement dated 20.03.2020, registered as Document No.288 of 2020, dated 18.06.2020 on the files of Registrar o Firms, Chennai South is null and void.*

b. For the sum of Rs.1,20,60,000/- together with interest at the rate of 16% per annum from the date of filing the plaint till the date of payment and/or realisation.

c. For permanent injunction restraining the defendants their men and agents, representatives or any one



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claiming under them from way interfering with the peaceful possession and enjoyment of the Food Street shops at Semmanchery and Padur.”

3. The case of the plaintiffs is that the second defendant one Muhammed Rafi was an employee of the plaintiff's while in Dubai. The said Muhammed Rafi approached the plaintiffs and others seeking for an investment to start a “**Food Street**” business at Semmencherry and Padur. For the said purpose, 11 parties, including the plaintiffs, joined together and invested with a sum of RS.2,08,00,000/-. The plaint proceeds that Muhammed Rafi had identified properties in Semmencherry and Padur and had convinced the plaintiffs that the money they had invested had been paid to the land owners and properties had been taken on lease.

4. The said Muhammed Rafi had informed the investors including the plaintiffs that on account of pandemic caused due to Covid-19 virus the business did not take off. Subsequently, he sent a message as the business did not take off, he is abandoning the same and going to back to Qatar, in search of employment.



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5. To shock and surprise of the plaintiffs and the investors, they came to know that the entire business fell through on account of the fact the first defendant took over the lease that had been entered into by the said Muhammed Rafi, on behalf of the investors together with the land and superstructures put up thereon. They pleaded defendants 1 and 2 started an entirely a new business under the guise of a make-believe partnership Firm called as **“FOOD SCAPE”**. On further probing the matter, they came to know that **“FOOD SCAPE”** is a make belief partnership entity that had been created in collusion by the defendants 1 and 2 and after the first defendant had taken over the property, the second defendant had subsequently exited from the partnership firm.

6. The plaint states that the entire idea of having projected a partnership firm is only to knock off the hard earned money and investments made by the plaintiffs to start the **FOOD STREET business**. The plaintiffs also pleaded that on the lands taken on lease on their behalf by the second defendant, the first defendant had let out the same to 36 tenants and had collected an advance of Rs.1,60,00,000/-. On coming to know the manner in which they had been cheated, they lodged a complaint with the jurisdictional police and a case has



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also been registered. Being left with no other option, they came forward with a suit for the aforesaid reliefs.

7. On being served with summons, the defendants 1 and 3 took out an application for rejection of plaint. According to them, the suit is barred by virtue of Partnership Act and the Commercial Courts Acts. Further, they pleaded there is no cause of action for the suit. Hence they sought for rejection of the plaint.

8. A detailed counter was filed by the plaintiffs that the suit to be retained very much on file and therefore, opposed the application for rejection of plaint.

9. The learned Principal District Judge came to a conclusion that, as the plea raised by the defendants 1 and 3 is mixed question of law and fact, the plaint deserves to remain on file and therefore dismissed the application. Hence this revision.

10. It is pertinent to point out that though the third defendant was a co-applicant with the first defendant in the application for rejection of plaint, for



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reasons undisclosed, he has not joined the first defendant in this revision.

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11. I have heard Colonel Ganesan for the civil revision petitioner and Mr.M.Rajasekar for the respondent/caveator.

12. Colonel Ganesan pleads that the suit is liable to be rejected as it is barred under Sections 44 and 69 of Partnership Act of 1932. He adds the firm “FOOD SCAPE” has not been impleaded as a party defendant to the suit and the same applies to the 36 tenants also. He argues the firm, tenants and the land owners should have been made parties to the suit. Therefore, the suit has to fail for non-impleading of parties. He further pleads that the suit being a commercial suit under Section 2(1)(c)(i) and 2(1)(c)(vii) of the Commercial Courts Act, the jurisdiction of the Civil Court is barred and the suit has to be thrown out as it is hit by Section 41(h) of Specific Relief Act. He states that there is no privity of contract between the plaintiffs and the first defendant and similarly with the tenants and the plaintiffs and since there is no privity of contract, the suit has to fail. His final submission is that the FOOD SCAPE had received a sum of Rs.1,85,00,000/- from the tenants and not Rs.1,20,60,000/- as alleged in the plaint and therefore, the suit is hit for under valuation and



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consequently, is liable to be rejected under Order VII Rule 11(b) of Code of Civil Procedure.

13. I have carefully gone through the records and I have analysed the submissions of Colonel Ganesan.

14. Insofar as the first two submissions are concerned that the suit is barred by virtue of Sections 44 and 69 of Partnership Act. I have to refer to the said provisions. Under Section 44 of the Partnership Act, it gives the manner in which a suit for dissolution has to be presented. Similarly, Section 69(2) speaks about the presentation of the suit by or against a Firm. According to Colonel Ganesan, the reliefs that have been sought for under clause (a) implies that, the plaintiffs are seeking for dissolution of Firm FOOD SCAPE.

15. A careful perusal of the plaint shows that the plaintiffs do not concede to the existence of the entity by name “FOOD SCAPE”. According to them, “FOOD SCAPE” is a device that has been invented by the defendants 1 and 2 in order to knock off the investments that had been made by the plaintiffs at Semmancherry and Padur through the second defendant/their former employee.



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Section 44 contemplates a situation where there exists a Firm and the person suing for dissolution claims that he was a partner of the Firm and had agreed to the profit and loss of the Firm and finds that the purpose for which the Firm was floated need not be continued and hence sues for its dissolution.

16. On the contrary, in this particular case, the plaintiffs do not accept to the existence of the Firm. According to them, as pointed out above, the Firm itself is a device to take away the assets of the plaintiffs. Therefore, the question of Section 44 applying does not arise. In addition, under Section 44 of the Partnership Act, a suit can be presented only by the partners. The plaintiffs, even as per the best case of the first defendant, are not partners of the said Firm. Therefore, Section 44 of the Act is a red herring argument raised only for the purpose of its rejection.

17. The second plead is that Section 69 is a bar for presentation of the plaint. The relief as pointed out above seeks for cancellation of the Partnership Firm as it is a fraudulent entity. It is not a case where the plaintiffs agreed that the partnership firm had lawfully entered into occupation of the properties at Semmencherry and Padur. The plaintiffs states that the lease belongs to them as



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investors and on the basis of the agreement entered into by the landowners with their Manager, the 2nd defendant. The second defendant was acting as a Manager for their investments. The plaintiffs in clear and categorical term state is that the second defendant had at all points of time intimated the investors about his contract with the land owners at Semmencherry and Padur. Subsequently, the investment was utilised for the purpose of starting a “FOOD STREET”. It is not the plaintiffs case that the entity has taken the property on lease/sub lease from the plaintiffs' Manager. The plaintiffs' Manager viz., the second defendant, in order to cheat the plaintiffs, had come up with this make belief partnership Firm. To this act of the defendants 1 and 2, there is no necessity to apply the bar under Section 69 of the Partnership Act. In any event the bar applies only if the Firm is unregistered. If th Firm is registered, Section 69 does not operate.

18. It is here, I have to refer to the judgment that is pleaded by Colonel Ganesan in *Sharad Vasant Kotak and Ors vs Ramniklal Mohanlal Chawda and another AIR 1998 SC 877* . He placed reliance on this pleading that this judgment clinches the issue in his favour.



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19. I have carefully gone through this judgment. The issue that was framed for the Supreme Court to answer was whether the suit for dissolution of partnership firm is hit by Section 69(2A) of the Partnership Act. I find Section 69(2A) of the Act was an amendment that was made to the Partnership Act by the State of Maharashtra. It is unnecessary to deal with this issue any more since the amendment made by the Legislature in the State of Maharashtra does not apply in the State of Tamil Nadu.

20. A plea was raised by the revision petitioner stating that the Firm is a legal entity. I am unable to agree with the said submission because it is settled that a Firm is a result of contract between persons who wants to do or join together to do business or other activities in the name of such entity. A partnership firm is not a legal entity and it is merely a business entity. Therefore, the plea of Colonel Ganesan that Firm should have been impleaded is without merits. The partners represent the Firm and the partners before the Court. He argues that non partners cannot sue a Firm. This issue does not arise in the present case since neither the existence of the partnership has been admitted by the plaintiffs nor is this a suit filed by a person, claiming to be a partner, seeking dissolution under Section 44 of the Partnership Act.



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21. With respect to the plea on privity of contract, it has to be answered in the light of under Order I Rule 9 of the Code of Civil Procedure . Under the said provision, no suit or claim can be defeated on account of mis-joinder or non-joinder of parties. This is purely a dispute between the plaintiffs, who, as investors, has given money to the second defendant to enter into lease agreements with the owners to occupy the land under lease and put up superstructure to run a Food Court. In such a proceedings, the presence of the land owners or the tenant is neither essential nor necessary.

22. With respect to the plea that the tenants have not been impleaded as parties to the proceedings, it is well too settled that where a person receives money and diverts it to the hands of other person, the hands of law are long enough to trace the amounts into the hands of the persons with whom the assets are currently situated. The plaint states that the money was paid to the second defendant and the second defendant had in turn transferred the interest to the first defendant. The claim for recovery of money as well as for injunction is in order. The Enforceability of the right that the investors has as against the second defendant, and the first defendant being a successor in interest to the 2nd



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defendant is answerable to the claim. I need not dilate too much on the plea of non joinder of cause of action because, in terms of Order II Rule 6 of the Code of Civil Procedure, if the court comes to a conclusion that two causes of action are going to lead to embarrassment of the trial, it is always open to the Court to order separate trial. It is unknown that a suit to be rejected on the grounds of joinder or mis-joinder of cause of action.

23. Now turning to the plea that Commercial Courts bars the civil suit, I have to point out that the Commercial Courts Act has not created a new entity for the purpose of dealing with commercial dispute. The existing civil courts have been declared as Commercial courts and they apply the fast track procedure evolved by the Parliament under the Commercial Courts Act for the purpose of disposal. In fact, the jurisdiction of the Commercial Court is limited whereas the jurisdiction of the civil court which is plenary.

24. Neither Section 2(1)(c)(i) nor Section 2(1)(c)(vii) apply to the facts of this case. It is not the plaintiffs case that they entered into agreement with the first defendant or FOOD SCAPE. Their simple case is that the second defendant/their Manager had cheated them and had diverted funds with the



assistance of the first defendant. Section (2)(1)(c) (i) applies when any transaction between bankers, financiers or traders is admitted. None of these provisions apply to this case. Similarly, the plaintiffs have not entered into an agreement with respect to the immovable property with the defendants 1 and 2. Through their Manager, they had entered into an agreement with the land owners for running a Food Street.

25. To reiterate the plea in the plaint is that the business commenced by the plaintiff was taken over by the defendants 1 and 2 by coming up with a device of a partnership firm. There being no agreement between the plaintiffs and the defendants with respect to any immovable property, Section 2(1)(c)(vii) also does not apply to the facts of this case.

26. With respect to the bar of suits under Section 41 of Specific Relief Act, 1963, yet again I have to point out that the lease agreement between the owners and the plaintiffs had been entered at the hands of their Manager/ second defendant. Therefore, the lessees are the plaintiffs. If the lessees are the plaintiffs, they can only be dispossessed in a manner known to law. This bar applies even to the lessors. The first defendant, having surreptitiously taken



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over the property with the able assistance of the second defendant, cannot be said that he is in legal occupation of the property and therefore, Section 41(h) of the Act is a bar.

27. Finally, turning to the issue of Court fee for the purpose of court fee and jurisdiction, the averments made in the plaint alone matter. The averments made in the plaint disclose that the defendants 1 and 2 had received a sum of Rs.1,20,60,000/- as advance. The plaint shows that they have also paid court fee accordingly. If the first defendant wants to plead that he has received Rs.1,85,00,000/-, then it is always open to the plaintiffs in case they succeed in the suit to amend the plaint and seek for recovery of the amount from the first defendant.

28. In the light of the discussions, I find no merits in the revision. The only order that I have to pass in this revision is confirming the order of the Principal District Judge in I.A.No.4 of 2023 in O.S.No.467 of 2023 dated 28.06.2024.

29. I have to add the usual Manthra. Being a plea for rejection of plaint, I



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have taken the averments made in the plaint be true and thereafter I have pronounced the order. I did not and cannot enter into the merits of the case. It is open to the parties to fight out the litigation in the manner known to law.

V.LAKSHMINARAYANAN,J.,

sr

30. In the result, the Civil Revision Petition is dismissed. No costs.

12.11.2024

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

To

The Principal District Judge, Chengalpattu

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