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C.R.P.No.4366 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.4366 of 2023
and C.M.P.No.26526 of 2023

1.Pavithra Sagayamary
2.A.Jayanthi

... Petitioners

-Vs-

Aranganathan

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the order of the Principal District Judge, Tiruvallur in I.A.No.9/2022 in O.S.No.349/2021 dated 20.04.2023 is even otherwise illegal, incompetent, irregular and without jurisdiction and in any event liable to be set aside.

For Petitioners : Mr.J.Joseph Stalin
for M/s.N.Beulah John Selvaraj

For Respondent : Mr.A.R.Suresh

ORDER

This civil revision petition arises out of the order of the learned Principal District Judge, Tiruvallur in I.A.No.9 of 2022 in O.S.No.349 of 2021. For the sake of convenience, the parties will be referred to as per their rank in the suit.

2. O.S.No.349 of 2021 is a suit for declaration of the right of the plaintiff over



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the suit schedule mentioned property and consequential relief of permanent injunction. It also seeks for a declaration that the sale deed dated 12.03.2019 executed in the name of the first defendant is null and void and for permanent injunction restraining the first defendant, her men, agents and subordinates from interfering with the suit schedule mentioned property.

3. On being served with the summons, the defendants took out an application for rejection of plaint. The said application was dismissed, against which the present revision.

4. In matters of rejection of plaint, I only have to go through the plaint and the connected documents and come to a conclusion whether it falls within the four corners of Order VII Rule 11 of CPC. I am not concerned with the defence that is raised by the defendants nor with the fact whether the plaintiff will succeed if the the suit goes for trial.

5. Heard Mr.Joseph Stalin for the petitioners and Mr.A.R.Suresh for the respondent.

6. While going through the plaint, the following facts can be culled out. The property was purchased by one Mallika Joseph on 24.12.1993 in Document No.1775 of 1993. The said Mallika Joseph executed a power of attorney in favour of Jeevan



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Kumar. The said Jeevan Kumar sold the property in favour of one Jayanthi on 15.07.1997. Though according to the plaint the purchaser is Jayanthi it was actually her husband Sigamani, who had advanced the amount for the purchase. From Jayanthi, her husband Sigamani obtained a power of attorney on 28.10.1997. Thereafter, he entered into an agreement of sale with one K.P.Muthu on 21.01.1998 for a total sale consideration of Rs.1,10,000/-. K.P.Muthu was unable to maintain the property and thus, with the permission and consent of the said Sigamani, the plaintiff was put in possession of the property.

7. The plaint proceeds to state that K.P.Muthu had approached the owner of the property Jayanthi for the purpose of purchase of the same and she had also agreed to alienate the property in favour of K.P.Muthu. In the meantime, the documents have been seized by the police and they had been returned in October 2003. Thereafter, K.P.Muthu again renewed his request for purchase of the property and since Jayanthi, the second defendant was evading the conversion of the sale agreement into a sale deed, Muthu was constrained to file O.S.No.42 of 2004, a suit for specific performance. The plaint discloses this suit was dismissed for default.

8. The plaint also states that the plaintiff had taken possession of the property on the basis of the permission granted by Sigamani, the power of attorney. Fortunately for the defendant, the plaint discloses that the power of attorney is also



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no more. The plaintiff, on the strength of his possession of the property under permission and consent of the power of attorney and the agreement holder, seeks to obtain a declaration of title and for the aforesaid reliefs.

9. A decree of a civil court never creates title in a person. All that the civil court does while granting a decree for declaration is to declare the pre-existing right of the person. In order to avoid the rejection of plaint, the plaint must disclose a cause of action. Cause of action means the vital of facts necessary for the plaintiff to make a claim as against the defendant. I have to remind myself that I am not entitled to dissect the plaint and to conduct surgical operation to decide whether a cause of action exists or not. A reading of the plaint should disclose the same.

10. My reading of the plaint disclose the following.

- 1) That the property belongs to Mallika Joseph
- 2) Mallika Joseph had alienated the property in favour of Jayanthi / second defendant through her power agent Jeevan Kumar.
- 3) Jayanthi had subsequently alienated the property in favour of Pavithra.
- 4) It is this alienation made by Jayanthi in favour of Pavithra which is challenged by the plaintiff.



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11. On a reading of the plaint, there is no dispute that Jayanthi is the true owner of the property, she having purchased the property through the power agent Jeevan Kumar. In order to get a declaration that the sale deed executed by Jayanthi in favour of Pavithra as null and void, the plaintiff would have to prove that it comes within the scope of Section 34 of the Specific Relief Act. Under Section 34 of the said Act, a declaratory decree can be granted when the right of the plaintiff to any property is denied by the defendant. Therefore, this pre-supposes a right in the plaintiff. According to the plaintiff, the right that he has is through two persons viz., Power of Attorney Sigamani and K.P.Muthu. K.P.Muthu is an agreement holder. An agreement holder does not have any right, title or interest in the immovable property. An agreement, till a sale deed is executed or till a suit for specific performance is decreed, continues to be in the realm of contract and does not come into the scope of Transfer of Property Act. Therefore, the claim of the plaintiff through Muthu is nothing but an illusory cause of action.

12. When facing this problem, Mr.A.R.Suresh would argue that the power of attorney granted permission to be in possession of the property. A power of attorney is entitled to grant permission to a person to be in possession of the property. This will be co-terminus with the power that has been given to him. In this regard, it is pertinent to note the Supreme Court decision in **Southern Roadways Limited Vs S.M.Krishnan (1989) 4 SCC 603** wherein the Supreme



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Court held that an agent acquires no interest for himself in such property assigned to him by the principal. His possession is the possession of the principal for all purposes.

13. A reading of the power of attorney which has been filed in the typed set of papers from Page 51 to 57 would show that it is a general power of attorney. In terms of the Indian Contract Act, a power of attorney stands terminated on the death of the power of attorney. The plaintiff concedes in Para 6 of the power of attorney is dead. Therefore, the right of the plaintiff through the agreement holder or through the power of attorney does not give him a right and that the right he claims as stated above, is only illusory. Since the plaintiff has no right over the property, his relief to seek for declaration is otiose.

14. Facing a situation that his claim for title falls to the ground since he is either claiming title through the power of attorney or the agreement holder, Mr.Suresh would project an argument that the plaintiff is entitled to title by virtue of adverse possession. Adverse possession requires a specific plea. The plea must be that the plaintiff must be in open, hostile and continuous possession of the property, which has become adverse to the original owner. If Article 64 and 65 of the Limitation Act are to be invoked, the plaintiff would have to plead the date from which his possession has become adverse to the title holder.



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15. Plea of adverse possession implies an admission of title of the first defendant. If I were to ignore the lack of pleadings, still there is yet another problem with regard to plea of adverse possession. Neither a power of attorney, whose possession is the possession of the principal, can claim adverse possession nor can an agreement holder set up adverse possession against the title holder. The plaintiff is staking a plea of title through Sigamani, a power of attorney of Jayanthi and through K.P.Muthu, an agreement holder. When Sigamani and Muthu are not entitled to take the plea of adverse possession, the plaintiff too, taking his plea to be true, cannot take the plea of adverse possession. Therefore, the cause of action pleaded is nothing but created due to adroit drafting. As held by the Supreme Court, the Court has to look through the pleading and see if there is a cause of action. On both the pleas, I don't find any.

16. It is only a suit based on a cause of action which does not exist. A court of law declares a right only if the plaintiff has such a right. I do not see any semblance of right, title, or interest in the plaintiff in order to maintain a suit. Such a suit squarely comes within the scope of Order VII Rule 11(d) of C.P.C. as it lacks a cause of action.

17. The learned trial Judge has come to the conclusion there is a cause of action based on a paragraph in the suit as cause of action. I am amazed to read



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the order. Every plaint will have a cause of action paragraph. That does not mean that every suit has a cause of action. In fact, Courts have held that cause of action paragraph is unnecessary. A reading of the plaint should disclose the same. My reading of the plaint does not disclose such a cause of action. When the order of the learned Judge holds since there is a cause of action paragraph, there is a cause of action, I am constrained to interfere.

18. The civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. The order of the Principal District Judge, Tiruvallur in I.A.No.9/2022 in O.S.No.349/2021 dated 20.04.2023 is set aside. The suit in O.S.No.349 of 2021 on the file of the learned District Judge at Tiruvallur stands rejected. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

KST

To

Principal District Judge,
Tiruvallur.



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V. LAKSHMINARAYANAN, J.

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