



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

C.R.P.(MD)(PD)No.172 of 2020

1.N.Amutha
2.K.Aarthy

... Petitioners

VS.

Jason Kennedy

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to allow the Civil Revision Petition by setting aside the decree and judgment passed in O.S.(SR)No.10687 of 21-08-2019 dated 04.10.2019 on the file of the Principal District Judge, Thiruchirapalli.

For Petitioner :Mr.M.Ponniah
For Respondent :Mr.B.Jannath Ahmed
@ B.Janarth Kumar

ORDER

The present Civil Revision Petition has been filed against the order passed in O.S.S,R.No.10687 of 2021, dated 04.10.2019.



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2.The Revision Petitioners are the plaintiffs in the suit. The suit was filed with a prayer to direct the defendant to pay balance sale consideration of Rs.26,06,500/- to the plaintiffs as per the sale agreement dated 17.06.2016 within a time frame as may be fixed by the Court. The plaintiffs further prayed to restrain the defendant from interfering with the peaceful possession and enjoyment of the plaintiffs' suit property and for other reliefs. Upon filing the above suit in O.S.S.R.No.10687 of 2019, the case was heard on maintainability and notice was ordered to the defendant.

3.The case of the Revision Petitioners/plaintiffs is that the first plaintiff had entered into a sale agreement with the defendant on 17.06.2016 for a valuable sale consideration of Rs.71,66,500/- and a period of three months was fixed for the sale to be executed. A sum of Rs.1,00,000/- was paid towards advance and subsequently, the defendant further paid another sum of Rs.9,00,000/- to the first plaintiff on 26.06.2016.

4.The further case of the plaintiffs is that he came know that the original/parent document of the sale deed was with the sister-in-law of the



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first plaintiff, Valarmathi and despite all efforts to get the original document, the plaintiff could not get the same. Since the original sale deed was required for registering the sale deed in favour of the defendant, the first plaintiff had executed a registered settlement deed. dated 24.03.2017 in favour of her daughter, the second plaintiff. Thereafter, the second plaintiff had executed a sale deed in favour of the defendant on 03.04.2017 with the sale consideration of Rs.45,60,000/-. The defendant had paid totally a sum of Rs. 45,60,000/- including a sum of Rs.10,00,000/-, which was already paid by him.

5.The defendant had agreed to pay the balance sum of Rs.26,06,500/- to the plaintiffs on handing over the original sale deed and the possession of the suit property. There was some technical difficulties with regard to the sale deed regarding UDR Survey Number and Town Survey Number and a rectification deed was registered in favour of the defendant on 13.07.2018. According to the plaintiffs, the plaintiffs made an attempt to get back the balance sale consideration, which was agreed upon between the plaintiffs and the defendant. As the defendant did not pay the



balance sale consideration, as agreed between the plaintiffs and the defendant, the present suit was filed.

6.The trial Court observed that there is no bar or prohibition for executing a sale deed for a lesser or reduced sale price than the sale price fixed in the sale agreement. It is further observed that the first plaintiff, who was not a party to the sale deed, dated 03.04.2017, and hence, the question of claiming the balance price pursuant to the agreement dated 17.06.2016 may not arise, as the second plaintiff, who is not a party in the sale agreement, dated 17.06.2016. The second plaintiff is not entitled to claim the sale price fixed in the sale agreement, when admittedly, she had received the entire sale consideration of Rs.45,60,000/-.

7.The trial Court by assigning a reason that the plaintiffs have not canvassed any reason as to why the sale deed was executed, when the balance sale price of Rs.26,06,500/- is remained due and the trial Court had taken into consideration the scope of Sections 91 and 92 of the Indian Evidence Act and held that the plaintiffs are not entitled to adduce any



evidence contradicting the terms of the contract between the parties.

8. On the aforesaid reasons, the trial Court had rejected the plaint for want of cause of action under Order VII Rule 11 of CPC and held that the settlement deed between the first plaintiff and the second plaintiff is a sham and nominal and it is only for the purpose of registration of sale deed. As against the rejection of the plaint by the trial Court in O.S.S.R.No.10681 of 2019, dated 24.07.2019, the present Civil Revision Petition has been filed by the plaintiffs.

9. The learned Counsel for the petitioners/plaintiffs contended that the trial Court had passed the order at the SR stage itself by going into the details, which reflect the agreement of sale deed and the settlement deed, which has to be demonstrated only at the time of trial by adducing sufficient evidence by oral and documentary. The learned Counsel appearing for the petitioners/plaintiffs further contended that the order passed by the trial Court is in excess jurisdiction and disputing or distinguishing the contents in the plaint with regard to the nature of agreement between the first plaintiff



and the defendant and the settlement deed executed by the first plaintiff and the second plaintiff and the subsequent sale deed executed by the second plaintiff in favour of the defendant are all matter of evidence. Hence, the learned Counsel for the petitioners/plaintiffs contended that the trial Court ought not to have rejected the plaint at the SR stage.

10.The learned Counsel for the petitioners/plaintiffs further contended that there is no embargo or impediment for the trial Court to pass necessary orders in an application filed by the defendant with regard to the rejection of plaint, whereas, the act of the trial Court taking cognizance at the SR stage is beyond its scope under Order VII Rule 11 CPC.

11.In support of his contentions, the learned Counsel appearing for the petitioners/plaintiff relied upon a judgment of this Court reported in **2021 4 CTC 539: 2021 3 LW 677** between ***Selvaraj and others vs Koodankulam Nuclear Power Plant India Limited and others***, wherein, this Court had held as follows:-

31.Now, to facilitate the process of scrutiny of plaint at the preliminary, preregistration stage in the manner herein above stated,



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this Court tabulate the same below:



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<i>Heads</i>	<i>Permissible during scrutiny of plaint</i>	<i>Not permissible</i>
<i>Cause title and form of pleading (Order VI Rule 3)</i>	<i>Yes. Can be verified if there is a substantial compliance of Appendix A.</i>	
<i>Parties to suit Order VII Rule 1 (a) to (b) and Rule 4</i>	<i>Yes. Required to the extent required, and if the suit is laid in a representative capacity</i>	
<i>Maintainability (cause of action) Sec.9 & Order VII Rule 1(e)</i>	<i>Yes. Only to the extent of ascertaining if the plaintiff has a legally recognised or enforceable right on a plain reading of the plaint, and no more.</i>	<i>?Sufficiency or adequacy of pleading cannot be gone into. Hence grounds of fraud as in Order VI Rule 4 CPC cannot be insisted. ?Proof of any of the allegations in the plaint should not be sought. ?Merits of the matter or correctness of the pleadings cannot be gone into.</i>



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Maintainability (Jurisdiction) Sec.9 CPC	<i>?If the inherent jurisdiction of the Court is barred in granting the relief sought by any statute. ?Caution must be exercised before returning a plaint. The entire plaint, the cause of action and the relief sought must be understood as are stated or disclosed in the plaint alone need to be considered. ?The statutory provision barring the institution of the civil suit or excluding the civil court's inherent jurisdiction to take cognizance of the civil dispute must be strictly under stood.</i>	
Maintainability (Limitation)	<i>Yes. Where a suit is ex facie barred by limitation. Only the allegation in the plaint should be the basis. However, where the plaintiff pleads exemption from the law of limitation under Order VII Rule 6, this should be left to be tested post registration of the suit at the appropriate stage.</i>	<i>Newer or clarificatory material or proof of any fact pertaining to limitation should not be insisted.</i>
Maintainability Territorial and Pecuniary jurisdiction Order Sec.15 to 21 r/w Order VII Rule 1(f)	Yes	
Money suits Order VII Rule 2	<i>If precise amount is stated</i>	



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<i>Description of Property Order VII Rule 3</i>	<i>Yes</i>	<i>However, sufficiency of the description cannot be gone into. Again, if there is any variance of extent or boundary description with any title deed, even that may be formally notified for a possible typographical or clerical mistake, but if any explanation is offered justifying the extent stated, the plaint has to be registered. This is because, looking for proof and correctness of pleadings is not contemplated at the stage when the suit is registered.</i>
<i>Relief Order VII Rule 7 and 8</i>	<i>Yes, but limited to ascertaining if a relief at all is sought</i>	<i>Appropriateness or suitability of the relief sought cannot be gone into. This is not Court's job. Seeking the relief is the prerogative of the plaintiff. The fact that the Court may not grant it ultimately is a matter for adjudication, and is part of its judicial act and not part of its ministerial act of numbering the plaint. [See AIR 1942 Mad 446]</i>



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Valuation court fee	and	<i>Yes. But the basis for the the valuation must be as stated by the plaintiff. If any objection as to valuation must be done, then the defendant can always raise it during the first hearing under Sec. 12(2) of the Tamil Nadu Court Fee & Suit Valuation Act, 1955</i>	<i>Proof of value of subject matter of the suit such as expert's valuation report cannot be insisted.</i>
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Documents

If enclosed can be verified with the list provided in the plaint

Production of the documents cannot be insisted. It needs to be realised that, given the level of poverty and illiteracy in this country it cannot be expected that every one will possess all the documents all the time, anticipating the possibility of laying a suit 24 x 7. No law compels any person to possess all the documents all the time either. A cause of action for the suit invariably arises at a time convenient to the defendant, but it is the plaintiff who has to approach the Court to protect his/her right. All that the plaintiff therefore needs is only a cause of action and not proof of it when he enters the courtsystem. This apart After all under Order VII Rule 14(3) CPC documents, including title documents can be produced subsequently. Production of documents may be relevant for considering the granting of interim relief, but is not mandatory for

Documents



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<i>Signing the plaint Order VI Rule 14</i>	<i>Yes</i>	
<i>Verification of plaint Order VI Rule 15</i>	<i>Yes</i>	
<i>Accompanying papers</i>	<i>1. Copy of plaint and affidavit. 2. Vakalath. 3.Any application for leave to sue 4. Process along with copies of plaint.(Plaint cannot be returned for not providing it since under Order VII Rule 9, they have to be provided only after the suit is numbered and the Court orders summons to the defendant) 5.Any other applications with affidavit</i>	
<i>Others</i>	<i>Any formal typographical or clerical error apparent on the face. Any doubt as to pecuniary or territorial jurisdiction. This is consistent with Order VII Rule 1(a) CPC</i>	

12.The learned Counsel appearing for the respondent/defendant in the suit contended that the trial Court had heard the matter on the point of maintainability to ensure whether there is a cause of action for the plaintiffs to maintain a suit. The Court also heard the learned Counsel for the plaintiffs on 30.08.2019 and after hearing the learned Counsel for the plaintiffs, the aforesaid order has been passed. The learned Counsel for the



respondent/defendant contended that when the case on hand did not make out a case of cause of action, there is no impediment for the trial Court to reject the plaintiff under Order VII Rule 11 of CPC.

13. The learned Counsel for the respondent/defendant had relied on the following judgments:

13.1. The Hon'ble Supreme Court in ***(2003) 1 SCC 557 (between Saleem Bhai and others vs State of Maharashtra and others)***, had held as follows:

“9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”



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13.2. The Hon'ble Supreme Court in (2020) 7 SCC 366, (*between Dahiben vs Arvindbhai Kalyanji Bhanusali and others*), had held as follows:

*“23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in **Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I** [**Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I**, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)*

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

*23.12. In **Hardesh Ores (P) Ltd. v. Hede & Co.** [**Hardesh Ores (P) Ltd. v. Hede & Co.**, (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. **D. Ramachandran v. R.V. Janakiraman** [**D. Ramachandran v. R.V. Janakiraman**, (1999) 3 SCC 267; See also **Vijay Pratap Singh v. Dukh Haran Nath Singh**, AIR 1962 SC 941].”*



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13.3.This Court in ***C.R.P.No.2662 of 2021 (between N.Natesan vs Mani and others)***, dated 05.01.2024, had held as follows:

“8.It is also useful to refer to the judgement of this Court reported in MANU/TN/2570/2016 ([A.Ramanathan vs. Tamarai Mills Ltd](#)) wherein this Court after referring to the unreported judgement of the Division Bench of this Court made in C.R.P. (PD).No.1211 of 2013 dated 28.08.2014 observed as follows:-

“12. The Division Bench of this Court, in the unreported Judgment dated 28.08.2014 referred supra, has clearly held that if a Court of Law passes an order for rejection of plaint, under Order 7 Rule 11 of Civil Procedure Code, it has the force of”Decree” and therefore, regular “Appeal” lies under Civil Procedure Code and in fact, no “Revision” would lie.”

9. In view of the discussions made above, this Court has no hesitation in holding that this Civil Revision Petition challenging the order passed by the Court below rejecting the plaint in unnumbered stage is not maintainable.”

14.Relying on the above judgments, the learned Counsel appearing for the respondent/defendant submitted that the as against the impugned order passed rejecting the plaint, the Civil Revision Petition is not maintainable and the only the appeal will lie and further contended that the order passed by the trial Court needs no interference by this Court.



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15. It is seen from the records that there was an agreement for sale between the first plaintiff and the defendant dated 17.06.2016 and the settlement deed between the first plaintiff and the second plaintiff, dated 24.03.2017 and a sale deed between the second plaintiff and the defendant dated 03.04.2017. Even assuming for a moment that the settlement deed between the first plaintiff and the second plaintiff, dated 24.03.2017, which is a registered document, is a sham and nominal, the trial Court could only come to the conclusion, only when evidences are adduced and subjecting the witnesses for cross examination to cull out the truth behind it. When the trial Court has a duty cast upon to see whether *prima facie* has been made out in the suit, the trial Court is not expected to analyse the veracity of the contents in the suit, which is the subject matter of trial. For the sake of convenience, Order VII Rule 11 of CPC is extracted hereunder:

“11. Rejection of plaint. *The plaint shall be rejected in the following cases-*

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to*



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be barred by any law:

***Provided** that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”*

16. Under Order VII Rule 11A CPC, where, it does not disclose a cause of action, the trial Court can reject the plaint. It is the case of the plaintiffs that there was an agreement of sale between the first plaintiff and the defendant and there was a settlement deed between the first plaintiff and the second plaintiff and the sale deed executed by the first plaintiff and the defendant are all matter of fact and the important ingredient as found in the plaint is that the suit itself was filed for recovery of money/ balance of sale consideration. The trial Court ought not to have jumped into the conclusion that the contents and genuineness or the veracity of the truthfulness in the plaint that the sale consideration was whether agreed upon the sale amount or a reduced sale amount or the circumstances arising out for executing such a sale deed is absolute a matter for evidence.



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17.This Court is of the view that the finding rendered by the trial Court at SR stage in O.S.S.R.No.10687 of 2019 by going into the details of documents, which has to be marked through witness and which would be subjected to cross examination. If on pleadings, if a Court comes to the conclusion at the SR stage saying that there is want of cause of action, in the absence of any categorical finding with regard to cause of action, when the plaintiffs specifically plead that a part amount alone was paid by the defendant and the balance sale consideration is not paid, then it is a matter of evidence, which has to be adduced before the Court through their respective evidence and in the cross examination.

18.The learned Counsel for the respondent/defendant would contend that the Civil Revision Petition itself is not maintainable as against the order rejecting the plaint. In this connection, the learned Counsel relied upon the judgment as cited supra. It is not in dispute that whether a Revision Petition is maintainable or not is based on the facts of the impugned order. If the plaint lacks on jurisdictional error upon taking cognizance after summons, then the arguments advanced by the learned Counsel for the respondent has



sufficient force.

19. In this case, the trial Court has evaluated the sale agreement dated 17.06.2016, settlement deed dated 24.03.2017 and sale deed dated 03.04.2017 and the circumstances surmising all these documents were evaluated and passing a final order rejecting the suit is not in accordance with law and it is contrary to Order VII Rule 11 CPC.

20. It is a word of caution and this order is a tip of iceberg to show that numbering the suit itself has become an herculean task. The contents of the plaint are only to establish the cause of action and the circumstances. If the Court starts to evaluate by reading the plaint and coming to the conclusion disputing the facts in the plaint submitted by the plaintiff along with the documents and the veracity of the documents will only lead to reject the plaint without an application by the Court at the SR stage itself .

21. The Courts are justice delivery system and it is not meant for technicality at the stage of filing the application itself. The jurisdiction point



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as decided by the trial Court is bundle of facts and law. When there is clear and specific documents to show or to determine the limitation point, the trial Court by relying upon the documents filed along with the plaint and examining the genuineness or veracity of the same, came to a finding with regard to the limitation, which may not be appropriate. When a fact is disputing a question of fact and law, then the same has to be adjudicated by numbering the suit and allowing the full fledged trial. The defendant is always at liberty to file an application to dispute with regard to the contents in the plaint by filling appropriate application. Without following the process of trial, coming to a finding with regard to the documents enclosed along with the plaint, cannot be countenanced. If such exercise is denied, then the essence of justice delivery system will be peril.

22. In view of the same, the order passed by the trial Court in O.S.SR.No.10687 of 2019 is hereby set aside and the trial Court is directed to number the suit and conclude the same at the earliest as expeditiously as possible.



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23. In the result, this Civil Revision Petition is allowed. No costs.

13.11.2024

Internet : Yes/No
NCC : Yes/No
Speaking Order : Yes/No

To

The Principal District Judge, Thiruchirapalli.



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N.SENTHILKUMAR, J.

cmr

Order made in
C.R.P.(MD)(PD)No.172 of 2020

13.11.2024