



CRP(MD)No.671 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.07.2024

Delivered on : 23.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRP(MD)No.671 of 2022
and
CMP(MD)No.2752 of 2022

N.Periyasamy

... Revision Petitioner/3rd Defendant

vs.

1.Mohamed Bilaldeen

... 1st Respondent/Plaintiff

2.RM.Karupiya Chettiyar

3.KR.Kannappan

4.The Sub Registrar,
II Sub Registrar Office,
Dindigul.

5.The State Through Represented
The Collector,
Collector Office,
Dindigul.

... Respondents 2 to 5/Defendants 1, 2, 4 & 5



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PRAYER : Petition filed under Article 227 of the Constitution of India praying to strike off the plaint in O.S.No.291 of 2021 on the file of the Mahila Judge, Dindigul.

For Petitioner : Mr.M.Vallinayagam
Senior Counsel
for Mr.AN.Ramanathan

For Respondents : M/s..N.Krishnaveni
Senior Counsel
for Mr.P.R.Prithiviraj for R1

Mr.M.P.Senthil for R2 & R3

Mr.SR.A.Ramachandran
Additional Government Pleader for R4

ORDER

The Civil Revision Petition is filed to strike off the plaint in O.S.No.291 of 2021 on the file of the learned Mahila Judge, Dindigul.

2.On a perusal of the plaint, it is the case of the plaintiff that the second defendant is the son of the first defendant. The second defendant had also



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executed a power of attorney appointing the first defendant as his power agent.

They are the owners of the suit schedule property admeasuring an extent of acres 23.87 cents. On 05.10.2020, the defendants 1 and 2 had entered into a oral agreement of sale with the plaintiff offering to sell the suit schedule property and the total sale consideration was fixed at Rs.1,77,83,150/- and it was agreed that the plaintiff should pay an advance of Rs.20,00,000/- and the balance sum should be paid before December 2021 and get the sale deed executed. The plaintiff also paid the said sum of Rs.20,00,000/- for which, the second defendant executed a receipt. As per the oral contract, the defendants also assured to vacate the tenants and survey the property, but they did not do so. Therefore, the plaintiff filed a suit in O.S.No.42 of 2021 for a mandatory injunction directing the defendants to vacate their tenants and for mandatory injunction to survey the suit properties. The plaintiff also withdrew the said suit and thereafter, filed the present suit. Before filing the present suit, the plaintiff sent a legal notice that the plaintiff was ready and willing to perform his part of the contract on 06.02.2021. However, the defendants 1 and 2 sold part of the property in the meanwhile on 11.02.2021 in favor of the third defendant. Therefore, the present suit is filed with the following reliefs:



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“Wherefore, it is humbly prayed that this Hon'ble Court may be pleased to pass a decree in favour of the plaintiff against the defendant.

A] Granting a decree for specific performance for directing the 1st and to receive the balance of Sale amount of Rs.1,57,83,150/-(Rupees One Crore Fifty Seven Lakhs and Eighty Three Thousand One Hundred and Fifty Three only) and to execute the sale deed in favour of the plaintiffs in respect of the suit properties and hand over the possession of the suit properties without any encumbrances over the suit properties, within the date to be stipulated period stated by this Hon'ble Court.

If the defendant fails to execute the sale deed, within the date stipulated by this Hon'ble Court, the Hon'ble court will permit the plaintiffs to get the sale deed executed and registered through this Hon'ble Court and to take possession of the suit property through the court.

b.] To declare that the sale deed D No; 959 of 2021 is executed by the 1st defendant in favour of the 3rd defendant on 11.2.21 is null and void.

c) To Mandatory injunction the Hon'ble court may be direct its office person and to send this suit decree and to make an endorsement in the registered book No;1 handling the 4th defendant that the document No; 959 of 2021 sale deed executed by the 1st defendant in favour of the 3rd defendant on 11.02.2021 is null and void.

d] To direct the defendant to pay the Plaintiffs the cost of the suit.

Upon service of summons, the third defendants has filed the present Civil Revision Petition to strike off the plaint.



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3. Heard *Mr.M.Vallinayagam*, learned Senior counsel appearing on behalf of the petitioner; *M/s.N.Krishnaveni*, learned Senior Counsel appearing on behalf of the first respondent; *Mr.M.P.Senthil*, learned counsel appearing on behalf of the respondents 2 and 3; and *Mr.SR.A.Ramachandran*, learned Additional Government Pleader appearing on behalf of the fourth respondent.

4. *Mr.M.Vallinayagam*, the learned Senior counsel for the petitioner, firstly, would submit that without adverting to any of the defenses on the part of the defendants, by a reading of the plaint alone, it can be concluded that the suit is an abuse of process of law, illegal and expressly barred by the provisions of law. When the suit cannot be sustained on the face of it and the relief cannot be granted to the plaintiff, this is a case for this Court to interfere by way of striking off the plaint in exercise of the power under Article 227 of the Constitution of India.

5. It is the first contention that on perusal of the plaint in the present suit as well as the plaint in the earlier suit in O.S.No.42 of 2021, as per the case of the plaintiff that there is a oral agreement between the plaintiff and the defendants 1



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and 2 to evict the tenants from the suit property. Admittedly, the properties are agricultural properties and the cultivating tenants cannot be evicted except by due process of law. Therefore, even as disclosed in the plaint, the agreement is with an illegal purpose, then a suit for enforcement of the same can never be entertained by Courts of law as the subject matter, cannot be said to be a civil matter within Section 9 of the Code of Civil Procedure.

6. It is the second contention that the plaintiff had filed the earlier suit in O.S.No.42 of 2021 as against the same defendants with reference to the same subject matter and he withdrew the same by not pressing the suit on 26.08.2021. No liberty whatsoever is prayed for or granted by the Court. In view thereof, the suit is expressly barred as per Order XXIII Rule 4 of CPC.

7. This apart, it can be seen that even while filing the earlier suit, it has been specifically averred in Paragraph No.7 that even after several demands made by the plaintiff, the defendants have not executed the sale deed. It is further mentioned in Paragraph No.7 itself that the defendants without valid reason dragging to perform their obligations under the contract. It is expressly averred in



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Paragraph No.7 that the defendants are proclaiming to alienate the suit properties and therefore, even the Sub Registrar and the Collector were added as defendants 3 and 4 to the earlier suit. Therefore, when the case of the plaintiff is that there is an oral sale agreement and the defendants are not honouring the oral sale and completing the sale transaction and are dragging on the proceedings and are even attempting to sell the property to third parties, the same clearly discloses a cause of action for suing for specific performance. But however, the defendants omitted the sue for the relief of specific performance. No leave of the Court was also obtained. In view thereof, the defendants are expressly precluded from filing the fresh suit under Order II Rule 2 of CPC. Therefore, the present suit is again expressly barred by law. For all the above reasons, the continuance of the suit would be a vexatious exercise and would cause grave prejudice to the petitioner/third defendants and therefore, the suit has to be struck off by exercise of the powers under Article 227 of the Constitution of India by this Court.

8. In support of his contentions, the learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Rajesh Kumar Vs.***



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Anand Kumar and Others¹, more specifically placing reliance upon paragraph No.18, where the Court would refuse the relief of specific performance even if the suit is within limitation, but however, if there is a delay on the part of the plaintiff in approaching the Court. The learned Senior Counsel would rely upon the judgment of the Co-ordinate Single Bench of this Court in **Gunasekar Vs. Balasubramaniam²**, more specifically relying upon paragraph No.10 to contend that the present suit would be expressly barred by under Order II Rule 2 of CPC.

9. The learned Senior counsel would rely upon the judgment of the Hon'ble Supreme Court of India in **Virgo Industries (Eng.) Private Limited Vs. Venturetech Solutions Private Limited³**, to contend that the cause of action for the plaintiff had already arisen in view of the averments and there was no necessity for the plaintiff to have waited upto the last date mentioned in the agreement and further reliance was also placed in paragraph No.17 to contend that the present suit is barred by the principles of Order II Rule 2 of CPC. To press home the point that the jurisdiction of this Court is very wide to look into this kind of illegalities under Article 227 of the Constitution of India, the

1 (2024) 3 MLJ 705 (SC) : LNIND 2024 SC 240

2 2021 (4) CTC 439

3 (2013) 1 SCC 625



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judgment of the Co-ordinate Single Bench of this Court in ***Rt.Rev.Timothy Ravinder Dev Pradeep Vs. Rev.Charles Samraj and another***⁴, is relied upon. To contend that if the second litigation is filed on the basis of the same cause of action, it would be vexatious in nature and its also an abuse of process of Court, the learned Senior Counsel would rely upon the judgment of this Court in ***Moderator, Church of South India, C.S.I. Centre and Others Vs. J.S.Kingsley for himself and on behalf of members of the C.S.I Vellore Diocese and others***⁵.

10.Per contra, *M/s.N.Krishnaveni*, learned Senior Counsel appearing on behalf of the first respondent would firstly submit that for every ground raised by the learned Senior Counsel, there is an alternative remedy by way of contesting the issues in the same suit, including filing an application under Order VII Rule 11 of CPC. When the alternative remedies are available, the petition to strike off the plaint under Article 227 of the Constitution is not maintainable.

11. Secondly, the third defendant in the suit has approached this Court. He is only a subsequent purchaser. He has purchased only part of the property. He

⁴ 2022-1-L.W.10

⁵ (1999) 2 MLJ 277



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cannot have grievance over the suit being filed in respect of the larger extent of the property, which is the subject matter of suit. Therefore, he can only be aggrieved of his 14 acres, which he purchased. Therefore, the plaint cannot be struck off with reference to his the part of the property alone and therefore, the petition is not maintainable.

12. As far as the question relating to the bar under Order XXIII Rule 4 of CPC is concerned, it can be seen that it will be applicable only in respect of such subject matter or such part of the claim. The subject matter of the earlier suit was non-removal of the tenants and not surveying the suit property. The present suit is not brought with reference to the said subject matter. Therefore, the bar under Order XXIII Rule 4 of CPC is not applicable in the instant case.

13. As far as the contention regarding the Order II Rule 2 of CPC is concerned, the cause of action in the earlier suit was only with reference to not conducting the survey and not vacating the tenants. The earlier suit was filed on 09.02.2021, whereas the last date within which, the plaintiff was entitled to pay the money and complete the transaction was 31.12.2021. Therefore, the plaintiff



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was only worried about the actions which are to be performed in the meanwhile and in law he is entitled to wait upto the said period. Even though it was averred in the earlier suit that the defendants are dragging on the matter, the plaintiff was waiting as he genuinely thought that the defendants would come forward as it was a viable sale transaction. The defendants have duly signed the receipt for the payment of Rs.20,00,000/-. In such view of the matter, the plaintiff did not immediately file the suit for specific performance and the cause of action as such had not arisen as on date of the filing of the earlier suit and it has been held by the Courts that the matter has to be considered in detail for the purpose of deciding whether the suit would be barred under Order II Rule 2 of CPC or not at the same cannot be decided at the threshold.

14. In support of her submissions, that the civil revision petition is not maintainable, the learned Senior Counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Rathnavathi and another Vs. Kavita Ganashamdas***⁶, for the proposition that in a sale transaction, first when the suit for injunction is filed, that was a different cause of action and the specific

⁶ 2014 (6) CTC 333



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performance will be a different cause of action, therefore, the bar under Order II Rule 2 of CPC would not apply. For the proposition that the agreement of sale can even be signed by the vendor alone and therefore, the receipt for a sum of Rs.20,00,000/- executed by the vendor alone will not be invalid, the learned Senior Counsel would rely upon the judgment in *Aloka Bose Vs. Parmatma Devi and others*⁷. To contend that the questions relating to the bar under Order II Rule 2 of CPC should be decided only by framing an issue and considering it in the Trial she would rely upon the judgment of the Division Bench of this Court in *C.Mani and Others Vs. K.Sampath and others*⁸.

15.I have considered the rival submissions made on either side and perused the material records of the case.

16.To consider the first issue raised by the learned Senior Counsel that the subject matter of the suit is illegal, the Court can interfere on the said ground if only as per the plaint, the illegal purpose could be made out. Even though it is averred that the vendors promised the purchaser that they will vacate the tenants,

⁷ 2008 (6) CTC 509

⁸ 2023-2-L.W.755



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it is not averred in the plaint about the process. If there is an agreement by the parties that the tenants shall be vacated, it shall mean only by due process of law and therefore, if there is a cultivating tenant, the vendor has to go only before the appropriate authority, the Revenue Court for relief and if only the agreement is that the tenants will be thrown out except than by due process of law, then the question of illegality will arise. Therefore, at this stage, on a perusal of the plaint, it cannot be concluded that the parties have agreed to throw the tenants away by illegal means or otherwise that by due process of law. Therefore, at this stage, without any evidence on record, since there is no factual premise to conclude that the parties agreed only for an illegal action, at this stage, this Court cannot consider the first question argued by the learned Senior Counsel that whether the purpose of agreement has any illegality and if so the entire suit itself should be thrown out an account of the same.

17. The second and third contentions of the learned Senior counsel are inter connected. If only the cause of action is one and the same, then the principles of Order II Rule 2 of CPC will apply and then the bar under Order XXIII Rule 4 of CPC would also apply since in the said suit, which was filed in which, no leave



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was prayed for and was also simply withdrawn without any liberty to file a fresh suit on the same cause of action.

18. In this regard, though the learned Senior Counsel would rely upon paragraph No.7 of the plaint in the first suit wherein the averments are made, it is to be noted that the present petition is filed only by the third defendant, who is the subsequent purchaser of a part of the suit property. Though he would also be entitled to contend with reference to the express bar under law, it must be seen that the second defendant has signed a receipt for receiving a sum of Rs. 20,00,000/-. In the suit, even without the plaintiff praying, the Court can also pass a decree directing the defendants 1 and 2 to return the said advance amount. Therefore, it cannot be said that the suit is totally vexatious or an abuse of process of Court.

19. Though, the averments in paragraph No.7 in the earlier plaint is pointed out to mean that the plaintiff had disclosed a cause of action to sue for specific performance also, still the question has be decided with reference to the return of the advance amount of Rs.20,00,000/-, which can be granted to the plaintiff



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without there being a prayer also and as such, whether with reference to the same the principles under Order II Rule 2 of CPC would apply is also question to be decided. Therefore, when the issue as to the applicability of Order II Rule 2 of CPC would require a detailed inquiry by this Court, then either it should be raised by way of an application under Order VII Rule 11 of CPC or should be framed as an issue and tried in the suit and it would not be a case for this Court to strike off the plaint under Article 227 of the Constitution of India.

20. A reading of the Judgments of the Hon'ble Supreme Court of India in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and Others*⁹ and *Surya Dev Rai Vs. Ram Chander Rai and Others*¹⁰ it can be seen that the Court under Article 227 of the Constitution of India has jurisdiction to nip at the bud any vexatious plaint or where the process is a gross abuse of process of law. But at the same time, not in every such case, the Court would exercise its jurisdiction, there must be compelling reasons to strike off the plaint by considering the urgency involved or by considering that even relegating the parties to contest the matter before the

⁹ AIR Online 2019 SC 2691

¹⁰ (2003) 6 SCC 675 : 2003 SCC Online SC 829



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Court itself would be injustice to the parties. In other cases, when alternative remedy is available, this Court will not interfere in exercise of Jurisdiction under Article 227 of the Constitution of India.

21. As such, with liberty to the petitioner herein to raise all the grounds raised in the present the Civil Revision Petition before the Trial Court in appropriate proceedings, the Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

23.08.2024

NCC : Yes
Index : Yes
sjj

To

- 1.The Sub Registrar,
II Sub Registrar Office,
Dindigul.
- 2.The Mahila Judge, Dindigul.



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D.BHARATHA CHAKRAVARTHY,J.

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Pre-Delivery Order Made In
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DATED : 23.08.2024