



C.R.P.(MD).No.1438 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.03.2024

DELIVERED ON : 04.06.2024

CORAM

THE HON'BLE MR. JUSTICE G.ILANGO VAN

C.R.P.(MD).No.1438 of 2023

M/s.Varshini Properties and Developers,
represented by its Partner,
Mr.S.Rajan,
S/o Swamynathan,
No.65/19, West Mada Street,
Kaladipet,
Thiruvottiyur,
Chennai – 600 019.

... Petitioner/Petitioner/Plaintiff

Vs.

- 1.S.Samuvel Sundarraaj
- 2.S.Serli @ Lakshmi
- 3.R.Dasarathan
- 4.D.Dinakaran

- 5.M/s.Kodai Properties & Developers
represented by one of its Partners
 - 1.Dasarathan
 - 2.K.Sha Mohamed Siddique
 - 3.S.Samuvel Sundarraajregistered office at
Plot No.25, 3rd Cross Street,
Thirumalai Nagar,
Perungudi,
Chennai – 600 096.



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6.Malathi Subramanian

7.Priya Deetshit

8.Gokul Deetshit

9.The Sub Registrar,
Sub Registrar Office,
Kodaikanal.

... Respondents/Respondents/
Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 31.03.2023 made in I.A.No.131 of 2021 in O.S.No.45 of 2021 passed by the District Munsif cum Judicial Magistrate No.I, Kodaikanal.

For Petitioner : Mr.Akbar Khalifulla for
Mr.B.Govindaprabhu

For Respondents : Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates for R1 to R5

Mr.V.Meenakshi Sundaram for R6 to R8

Mr.J.Ashok for R9
Additional Government Pleader

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order dated 31.03.2023 made in I.A.No.131 of 2021 in O.S.No.45 of 2021 passed by the District Munsif cum Judicial Magistrate No.I,



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Kodaikanal.

2.The facts in brief:

Suit in O.S.No.45 of 2021 was filed by the revision petitioner herein seeking the relief of declaration that the power of attorney document dated 08.02.2021 in favour of the defendants noted in the plaint are null and void, for permanent injunction restraining the 5th defendant from alienating or encumbering the properties and for permanent injunction restraining the defendants 1 to 8 not to interfere in their peaceful possession and enjoyment. Along with the plaint a petition in I.A.No.131 of 2021 was filed under Order 2 Rule 1 and 2 of Civil Procedure Code seeking permission of the Court to file a separate suit, later that came to be dismissed by the trial court. Against which this revision is preferred.

3.The brief averments made in the plaint are as follows, so that we can have a better idea over the issue; The first defendant approached the plaintiff stating that valuable properties are available in the Village, which belongs to the defendants 6 to 8; Coming for sale. The plaintiff



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was also willing to purchase the property and pay the advance amount as detailed in the plaint. The first defendant received Rs.14,94,750/- between 05.05.2018 and 07.11.2020 through the Bank account. At the request made by the first defendant, the plaintiff paid Rs.43,64,500/- to the fourth defendant through the bank account for making and level the ground. Believing the words of the first defendant, he transferred a total amount of Rs.60,64,250/-. At the request made by the first defendant, he made further payment also. The first defendant also assured that after levelling work is completed, sale deed will be executed. It is further submitted that when ever the plaintiff approached the first defendant, he used to say excuses. Later, the plaintiff approached the first defendant to execute the sale deed through the defendants 6 to 8. But, the first defendant evaded. Later, he came to know that K.Sha Mohamed Syed, obtained General Power of Attorney from the defendants 6 to 8 in favour of the second defendant. They executed the sale deed on 08.02.2021 in favour of the fifth defendant by suppressing the sale agreement entered between the plaintiff and the defendants 6 to 8. The first defendant played fraud upon the plaintiff. Later, he also informed that the first defendant is not practising advocate before any Court. The plaintiffs are



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in possession of the property. Having paid major sale consideration on November 2020 itself, the defendants now are disturbing their possession. This is the sum and substances of the pleadings mentioned in the plaint.

4.In the factual circumstances, the necessity of filing the present suit seeking declaration and permanent injunction without filing suit for specific performance must be addressed.

5.The second defendant filed the written statement. So also the other defendants namely 3 to 5. Now in the present petition, it has been stated by the petitioner that the defendants 1 to 8 cheated him and suffered huge loss and due to the covid-19 lockdown period, he suffered financial loss also. So he is not in position to file the suit for specific performance immediately. So this petition is filed seeking leave of the Court granting him an opportunity to file the suit on the same cause of action for specific performance in future.

6.The trial Court dismissed the petition observing that there was no



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written of sale agreement between the plaintiff and defendants 6 to 8.

Unless the sale agreement is proved, the plaintiff is not entitled for any relief in the present petition. In cryptic order the trial court dismissed the petition.

7.Heard both sides.

8.This Court is completely at loss to understand the reason mentioned by the petitioner. In the present petition, it has been simply stated that due to the lockdown they suffered financial loss in their business. So they are not in position to file the suit for specific performance immediately and this is not the ground which is available to the petitioner. Having failed to file suit for declaration and for permanent injunction, the reason assigned by the petitioner for not filing a suit for specific performance apparently due to the lack of fund for the payment of court fee is absolutely unreasonable and may not be acceptable at all. Moreover, the reason for Order 2 Rule 2 CPC is mentioned in the following judgment of the Honourable Supreme Court in the case of ***Virgo Industries (Eng.) Private Limited Vs. Venturetech Solutions***



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Private Limited reported in ***(2013) 1 Supreme Court Cases 625***. The relevant portion is extracted hereunder.

*The object behind enactment of Order II Rule 2 (2) and (3) of the CPC is not far to seek. The Rule engrafts a laudable principle that discourages/prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the Court which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons. The situations where the bar under Order II Rule 2 (2) and (3) will be attracted have been enumerated in a long line of decisions spread over a century now. Though each of the aforesaid decisions contain a clear and precise narration of the principles of law arrived at after a detailed analysis, the principles laid down in the judgment of the Constitution Bench of this Court in *Gurbux Singh v. Bhooralal* may be usefully recalled below:*

“In order that a plea of a bar under O. 2. r. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out



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(1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar.”

The above principles have been reiterated in several later judgments of this Court. Reference by way of illustration may be made to the judgments Deva Ram & Anr. v. Ishwar Chand & Anr. and M/s. Bengal Waterproof Ltd. v. M/s Bombay Waterproof Manufacturing Co.& Anr.

11. The cardinal requirement for application of the provisions contained in Order II Rule 2(2) and (3),



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therefore, is that the cause of action in the later suit must be the same as in the first suit. It will be wholly unnecessary to enter into any discourse on the true meaning of the said expression, i.e. cause of action, particularly, in view of the clear enunciation in a recent judgment of this Court in the Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman v. Ponnamman Educational Trust represented by its Chairperson/Managing Trustee. The huge number of opinions rendered on the issue including the judicial pronouncements available does not fundamentally detract from what is stated in Halsbury's Law of England, (4th Edition). The following reference from the above work would, therefore, be apt for being extracted hereinbelow:

“Cause of Action” has been defined as meaning simply a factual situation existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. ‘Cause of action’ has also been taken



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to mean that particular action the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

9.Sole ground behind the provision is to avoid multiplicity of proceedings. One of the cardinal principle is that the cause of action should not have arisen for filing the suit for specific performance. For this reason only, I have elaborated the plaint averments. Reading of the plaint averments does indicate that cause of action for specific performance has also ripened. Even though there was no written sale agreement between the plaintiff and the defendants 6 to 8, oral sale agreement is permissible under law. So, it is a matter for trial on evidence. But, the reason assigned for filing fresh suit for specific performance on the very same cause of action must be genuine and bonafide in nature. Absolutely, I find the reason assigned by the petitioner are not bonafide. For what purpose they are reserving the right for filing separate suit is also not stated. When the cause of action ripened for getting substantial relief, they ought to have pleaded it.



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Having failed to do so without sufficient reason, I am of the considered view that it is a vexatious petition filed by the petitioner, with a hidden motive or idea. It should not be permitted. On the sole ground, I am of the considered view that the order passed by the trial Court requires no interference though for different reasons. For the reasons sated above the revision fails

10. Accordingly, this civil revision petition stands dismissed. The Order passed by the trial court is confirmed. No costs.

04.06.2024

Index : Yes/No
Internet : Yes/No
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To

1. The District Munsif cum Judicial Magistrate No.I, Kodaikanal.

2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

TM

PRE-DEIVERY ORDER MADE IN

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