



C.R.P.(MD)Nos.1837 & 1839 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.02.2024

Pronounced on : 05.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)Nos.1837 and 1839 of 2019

and

C.M.P.(MD)No.9458 of 2019

1. T.Selvaraj

2.Umarani : Petitioners/Petitioners/Defendants 1 & 4
(in both revisions)

Vs.

K.S.Karutharajan : Respondent/Respondent/Plaintiff
(in both revisions)

Prayer in C.R.P.(MD)Nos.1837 of 2019 :: The Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.766 of 2009 in O.S.No.494 of 2008, dated 25.09.2018 on the file of the Principal Subordinate Judge, Madurai.

Prayer in C.R.P.(MD)Nos.1839 of 2019 :: The Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.767 of 2009 in O.S.No.494 of 2008, dated 22.10.2018 on the file of the Principal Subordinate Judge, Madurai.



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(in both revisions)

For Petitioners : Mr.R.Subramanian

For Respondent : Mr.Ananth C.Rajesh
and Mr.T.Balakrishnan

COMMON ORDER

The Civil Revision in C.R.P.(MD)No.1837 of 2019, is directed against the order passed in I.A.No.766 of 2009 in O.S.No.494 of 2008, dated 25.09.2018 on the file of the Principal Subordinate Judge, Madurai, allowing the petition filed under Order XII Rule 2 of the Code of Civil Procedure.

2. The Civil Revision in C.R.P.(MD)No.1839 of 2019, is directed against the order passed in I.A.No.767 of 2009 in O.S.No.494 of 2008, dated 22.10.2018 on the file of the Principal Subordinate Judge, Madurai, dismissing the petition filed under Order VII Rule 11 of the Code of Civil Procedure.

3. The learned counsel on either side would submit that in the impugned order passed in I.A.No.766 of 2009, dated 25.09.2018, while



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allowing the petition, the learned trial Judge has framed two preliminary issues, first one is as to whether the suit is properly valued and the proper Court fee has been paid and the second one is as to whether the Court has jurisdiction to try the suit; that thereafter, the trial Court has taken the preliminary issues along with petition filed in I.A.No.767 of 2009 for rejection of plaint jointly and passed a common order holding that two preliminary issues in favour of the plaintiff and by dismissing the petition for rejection of plaint.

4. The learned counsel for the petitioner would submit that since preliminary issues were already tried and the trial Court has already given a finding therefor, nothing survives for further adjudication in the Civil Revision in C.R.P(MD)No.1837 of 2019 and has become infructuous.

5. Considering the above and taking note of the submissions made by the learned counsel on either side, the Civil Revision in C.R.P(MD) No.1837 of 2019 is dismissed as infructuous.



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6. The revision petitioners are the defendants 1 and 4. The respondent/plaintiff has filed a suit in O.S.No.494 of 2008 against the revision petitioners and two others claiming declaration that the decree, dated 27.08.2002 passed in O.S.No.551 of 2001 on the file of the Additional Subordinate Court, Madurai, obtained by the first defendant in active collusion and connivance with the second defendant by procuring the documents in clear violation to the Advocates Act by playing fraud upon the Court is null and void and void ab-initio and vitiated by fraud and false representation and not binding upon the plaintiff and for declaration that the sale deed, dated 06.08.2007, obtained by the first defendant in his name with active collusion and connivance with the defendants 2 and 3 by playing fraud upon the Court is null and void and void ab-initio and vitiated by fraud and false representation and not binding upon the plaintiff and for permanent injunction restraining the defendants and their men from in any way either alienating or encumbering the suit property in pursuance of the alleged sale deed, dated 06.08.2007 obtained by him in his favour by playing fraud upon the Court and also in detrimental to right and interest of the plaintiff over the suit property.



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7. The defendants 1 and 4, who are husband and wife and the defendants 2 and 3 have filed separate written statements and are contesting the suit.

8. The case of the plaintiff is that the suit property as well as other properties are the absolute property of the plaintiff; that the plaintiff and his father were well acquainted to the first defendant, since 1988; that the first defendant had sent several legal notices, filed several cases and conducted several cases for the plaintiff, his father and other family members; that the first defendant at that time obtained the signature of the plaintiff, his father and other family members cunningly in unfilled and blank concur papers and white papers alleging that he has to use the same in the absence of the parties; that the first defendant and his wife have become the tenants of the suit property; that the first defendant has paid a sum of Rs.80,000/- as advance; that the first defendant suggested that the amount given by him may be treated as loan amount and in lieu of interest, he may be allowed to enjoy the suit property; that the first defendant has subsequently paid a sum of Rs.1,50,000/- as advance as per their



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arrangement and as per the request of the first defendant, the plaintiff has executed a demand promissory note in his favour; that since the relationship between the plaintiff and the first defendant became strained in 2005, the plaintiff by paying a sum of Rs.1,50,000/- requested the first defendant to vacate the premises; that though the first defendant was dodging under one pretext or other, has specifically refused to vacate and started to threaten the plaintiff with his henchmen; that the plaintiff has then lodged a police complaint and at the police enquiry, he came to know that the first defendant has filed a suit against the plaintiff and obtained a decree; that the plaintiff after enquiry came to know that the first defendant had filed a suit in O.S.No.551 of 2001 against the plaintiff for recovery of Rs.1,71,200/- with interest alleging that as if, the plaintiff had borrowed the money from the first defendant, that the first defendant had also engaged the third defendant, who is a close associate to the first defendant to appear on behalf of the plaintiff and subsequently, he allowed the suit to be decreed ex-parte that the first defendant has then filed a execution petition and engaged his close associate/2nd defendant to appear on behalf of the plaintiff; that the second defendant has also made some payment and that the suit property was brought in Court auction for



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realizing the alleged decretal amount; that the first defendant himself had participated in the auction and purchased the property; that the first defendant in active collusion with connivance with the defendants 2 and 3 had done all the above acts; that no summons or notices were served on the plaintiff at any point of time; that the first defendant by forging the signatures of the plaintiff had engaged the defendants 2 and 3 to appear on behalf of the plaintiff and therefore, the entire proceedings are null and void and that the plaintiff after coming to know about the above proceedings, has filed the above suit.

9. The defendants 1 and 4 have filed the above petition for rejection of plaint, mainly canvassing two grounds that the plaintiff was a party to the earlier suit in O.S.No.551 of 2001 and he appeared through counsel, but subsequently allowed the suit to be decreed ex-parte and the judgment and decree passed in the earlier suit is binding on the parties and that therefore, the present suit is barred by the doctrine of *res judicata*; that the plaintiff has also appeared in the execution proceedings in E.P.No.21 of 2005 through his counsel, but subsequently, allowed the execution proceedings to be proceeded ex-parte; that the sale held through the Court



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auction is valid and binding on the plaintiff and that therefore, the present suit is barred under Section 47 of C.P.C.

10. The plaintiff has filed an elaborate counter statement denying the averments of the defendants 1 and 4; that the points canvassed by the defendants 1 and 4 cannot be gone into in the present stage and are matter for trial; that the above petition has been filed only to drag on the proceedings and that the defendants 1 and 4 have not canvassed any acceptable reason or ground for rejecting the plaint.

11. Order 7 Rule 11(d) C.P.C. contemplates that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. It is settled law that in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Hon'ble Supreme Court in the case of ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and others*** reported in ***2021 (3) MWN (Civil) 243***, after perusing various authorities, has summarized the following guiding principles for deciding an application under Order 7 Rule 11(d) C.P.C.:



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1. *To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;*
2. *The defense made by the defendant in the suit must not be considered while deciding the merits of the application;*
3. ...
4. ...
5. *Since an adjudication on the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous Suit', such a plea will be beyond the scope of Order 7, Rule 11(d), where only the statements in the plaint will have to be perused.*

12. It is settled law that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments raised in the plaint and the pleas taken by the defendant in the written statement or in the affidavit filed in support of the application for rejection of plaint are wholly irrelevant and the matter is to be decided only on the plaint averments.

13. Now turning to the first contention of the revision petitioners, that the present suit is barred by doctrine of *res judicata*, it is pertinent to



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note that in the earlier suit, the issue involved therein is as to whether the plaintiff has borrowed any amount from the first defendant and executed any promissory note therefor. But in the case hand, the main issue is as to whether the first defendant in collusion with the defendants 2 and 3 have taken legal proceedings fraudulently and in pursuance of the same, had purchased the property in the alleged Court auction and that the judgment and decree passed in the earlier suit is null and void as alleged by the plaintiff or valid and legal as canvassed by the first defendant. Considering the above, this Court is at loss to understand as to how the doctrine of *res judicata* can be invoked to the facts of the case on hand.

14. Now turning to the second contention that the present suit is barred under Section 47 of C.P.C., Section 47 of C.P.C., specifically deals with objections to execution, discharge and satisfaction of a decree. To put it in other way, the Executing Court has been exercising the jurisdiction on all matters related to execution, discharge or satisfaction of a decree.

15. As per Section 47, once a suit has been adjudicated and a decree has been passed, then all the questions related to the execution of the



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decree must be taken up and determined by the executing court. It is pertinent to mention that Section 47 of C.P.C., bars the filing of a separate suit for this purpose, but whether the decree passed is fraudulent cannot be gone into, in the petition filed under Section 47 of C.P.C. As already pointed out, the plaintiff has taken a specific plea that the decree and the sale deed came to be obtained fraudulently and as such, Section 47 of C.P.C., cannot be applied.

16. The learned counsel for the petitioners has relied on the judgment of the Hon'ble Supreme Court in the case of ***Sree Surya Developers and Promoters Vs. N.Sailesh Prasad*** reported in **(2022) 5 Supreme Court Cases 736**, wherein the plaintiff therein filed a suit challenging the compromise decree; that the trial Court rejected the plaint under Order VII Rule 11(d) on the ground that the suit is not maintainable in view of the specific bar under Order XXIII Rule 3(a) of C.P.C; that the High Court has held that it could not enter into merits of the validity of compromise decree on the ground that the same was hit by Order 32 Rule 7 of C.P.C, which was not permissible at this stage of deciding the application under Order VII Rule 11 and when the same was challenged



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before the Hon'ble Apex Court, the Hon'ble Apex Court has specifically observed that an independent suit challenging the compromise/consent decree on ground that it is not lawful, is not maintainable and restored the order of the trial Court rejecting the plaint. But the above decision has no application to the case on hand.

17. The learned counsel for the respondent/plaintiff has relied on the judgment of the Hon'ble Supreme Court in the case of ***Satluj Vidyut Nigam Vs. Rajkumar Rajinder Singh (dead) through Lrs*** reported in ***2018 0 Supreme (SC) 920***, wherein the Hon'ble Apex Court has dealt with fraud and the relevant passage is extracted hereunder :

"Fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. On behalf of appellants, reliance has been placed on the definition of fraud as defined in the Black's Law Dictionary, which is as under:

"Fraud means (1) A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (esp when the conduct is willful) it may be a crime. (2) A misrepresentation made recklessly without belief in its truth to induce another person to act. (3) A tort arising from a knowing



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misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment. (4) Unconscionable dealing, esp in contract law, the unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain"

Halsbury's Law of England has defined fraud as follows :

"Whenever a person makes a false statement which he does not actually and honestly believe to be true, for purpose of civil liability, the statement is as fraudulent as if he had stated that which he did know to be true, or know or believed to be false Proof of absence of actual and honest belief is all that is necessary to satisfy the requirement of the law, whether the representation has been made recklessly or deliberately indifference or reckless on the part of the representor as the truth or falsity of the representation affords merely an instance of absence of such a belief."

In KERR on the Law of Fraud and Mistake, fraud has been defined thus :

"It is not easy to give a definition of what constitutes fraud in the extensive significance in which that term is understood by Civil Courts of Justice. The Courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud."



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Fraud is infinite in variety Courts have always declined to define it, reserving to themselves the liberty to deal with it under whatever form it may present itself Fraud may be said to include property all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed and are injurious to another, or by which an undue or unconscientious advantage is taken of another. Al surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a willful act on the part of any one, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled too.”

18. It is settled law that fraud vitiates every solemn act. Any order or decree obtained by practicing fraud is a nullity. The Hon'ble Supreme Court in ***A.V. Papayya Sastry and others Vs. Government of Andra Pradesh*** reported in ***2007 4 SCC 221***, has observed that it is settled law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed "Fraud avoids all judicial acts, ecclesiastical or temporal" and the relevant passage is extracted herein :

“ It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court,



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Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.”

19. In view of the above legal position, as rightly contended by the learned counsel for the respondent/plaintiff, whether the judgment and decree passed in O.S.No.551 of 2001 is a nullity and non est in the eye of law, is a matter to be gone into at the trial.

20. The learned counsel for the petitioners have also taken a stand before this Court as well as before the trial Court that the plaint does not disclose any cause of action and that the plaint has been drafted in such a way as if there existed cause of action. The Hon'ble Supreme Court in ***Kamala Vs. K.T.Eshwara Sa*** reported in **2008 (5) MLJ 617 (SC)** has held that whether the plaint discloses a cause of action or not, is a question of fact depending upon the facts and circumstances of each case and the same must be found out from a reading of the plaint itself.



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21. No doubt, the Hon'ble Supreme Court in the case of ***I.T.C. Ltd. Vs. Debts Recovery Appellate Tribunal*** reported in ***AIR 1998 SC 634***, has also held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 C.P.C.

12. It is also settled law that while deciding the application filed under Order VII Rule 11 C.P.C., the whole plaint has to be read, that there cannot be any compartmentalization, dissection, segregation of various paragraphs/averments in the plaint, that the substance not the form that has to be looked into and that the plaint pleading has to be construed as it stands and the intention of the party concerned has to be gathered primarily from the tenor and the terms of the pleadings. The Hon'ble Supreme Court in ***T.Arivandandam Vs. T.V.Satyapal*** reported in ***AIR 1977 SC 2421***, has also specifically held that if clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code.



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23. In the present case, as already pointed out, the plaintiff in his plaint has specifically narrated the entire factual aspects and the way in which, the ex-parte decree was obtained in the suit and ex-parte orders were obtained in the execution proceedings. At this point of time, the Court has to see as to whether the plaintiff has pleaded any cause of action or not and it is not required to see as to whether the cause of action pleaded is genuine or not. Except the above pleas, the defendants 1 and 4 have not raised any other ground for rejecting the plaint.

24. On considering the entire facts and circumstances of the case and the legal position above referred, the defendants have not made out any ground for rejection of plaint and as such, the impugned order dismissing the petition filed under Order 7 Rule 11 of C.P.C cannot be found fault with. Consequently, this Court concludes that the Civil Revision is devoid of merits and the same is liable to be dismissed.

25. In the result, this Civil Revision Petition in CRP(MD)No.1837 of 2019 is dismissed as infructuous and the Civil Revision Petition in



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CRP(MD)No.1839 of 2019 is dismissed. Since the suit is pending from 2008 onwards, the learned Principal Subordinate Judge, Madurai is hereby directed to complete the trial and dispose of the suit within a period of three months from the date of receipt copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

05.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

- 1.The Principal Subordinate Judge,
Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-Delivery Order made in
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and
C.M.P.(MD)No.9458 of 2019

Dated : 05.04.2024