



O.S.A.No. 143 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

O.S.A.No. 143 of 2025

S.Vijaya Kumar

.. Appellant

VS

E.Jeevanandam

.. Respondent

Prayer : Appeal filed under Order XXXVI Rule 9 of O.S.Rules read with Clause 15 of Letters Patent against order dated 11.01.2024 made in A.No.4183 of 2022 in C.S.No. 656 of 2008.

For Appellant : Mr.Srinath Sridevan
Senior Counsel
for Mr.C.Thiagarajan

For Respondent : Mr.S.Thanka Sivan

JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

The appellant is the defendant in suit. The suit had come to be filed by the respondent seeking the following prayers:-

“(a) declaring that the notice dated 25.6.2007 and the consequential rejoinder dated 29.8.2007 issued



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O.S.A.No. 143 of 2025

by the defendant seeking to cancel the Agreement/MOU dated 5.7.2002 entered into between the plaintiff and the defendant, regarding the suit schedule property is concerned, as illegal and not enforceable

(b) granting permanent injunction restraining the defendant or any person claiming under the defendant from executing any deed or action disturbing the plaintiff's right under the MOU/agreement dated 5.7.2002 with respect to the suit schedule property or in any manner encumbering or dealing with the suit schedule property by executing sale deed, mortgage deed, agreement for sale or carrying out any development or in any other manner, contrary to the rights of the plaintiff.

(c) Mandatory injunction directing the defendant to comply with the defendant's obligations under clauses 9 & 10 of the MOU dated 5.7.2002 between the plaintiff and the defendant, and enable the plaintiff to purchase the suit property within 180 days from the date of finality of the pending litigation in respect of the suit property.

(d) to pay the cost of the suit

(e) to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

2. The pleadings of the suit are complete, in that, the respondent has also filed a written statement.

3. While so, several applications came to be filed, inter alia one



O.S.A.No. 143 of 2025

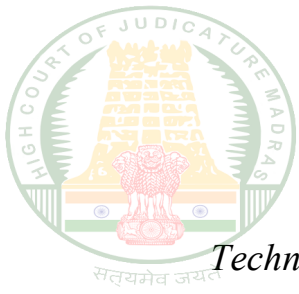
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seeking amendment of plaint (A.No. 3566 of 2019). That application came to be rejected by the learned Single Judge vide order dated 06.09.2019. The learned Judge considered the arguments in detail and the amendment of the plaint sought for came to be negatived. In appeal, order of the learned Single Judge came to be confirmed by order dated 18.08.2022.

4. The order dated 18.08.2022 takes note of various submissions by the parties qua a Memorandum of Understanding (MoU) executed inter se the parties and finally, the Division Bench rejects the plea for amendment based on the judgment of the Supreme Court in the case of *Saradamani Kandappan v S.Rajalakshmi and Ors* [(2011) 12 SCC 8].

5. The appellant had argued before the Division Bench that the clauses under MoU would clearly reveal that the MoU was only an agreement to enter into further agreement of sale. Hence and relying on the judgment of the Supreme Court in the case of *Speech and Software Technologies (India) Private Limited v Neos Interactive Limited* [(2009) 1 SCC 475], the Court concluded that the applications seeking amendment could not be permitted.

6. Paragraph 22 of the judgment in *Speech and Software*



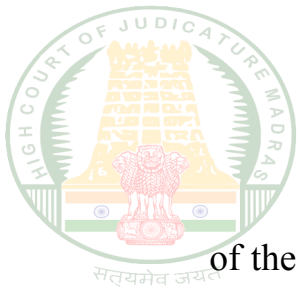
O.S.A.No. 143 of 2025

Technologies (supra), to the effect that an agreement to enter into an agreement is not enforceable, and neither does it confer any right upon the parties has been extracted.

7. The matter was taken up in appeal before the Supreme Court, which while dismissing the Special Leave Petition in S.L.P(C) Diary Nos. 42163 of 2022, dated 24.04.2023, left all contentions open to be raised in the suit. The Supreme Court also made it clear that none of the observations made in the order of the Division Bench, as above, shall prejudice the rights of the parties in the trial.

8. Taking a cue from the aforesaid orders, the appellant moved an application before the learned Single Judge in terms of Order 14 Rule 2 of the Code of Civil Procedure (CPC). That application has come to be dismissed on 11.01.2024, as against which, the present appeal has been filed.

9. Mr.Srinath Sridevan, learned Senior Counsel appearing for Mr.C.Thiagarajan, appearing for the appellant, would press the diktat of Order 14 Rule 2 CPC to state that it is open to the Court to dispose the suit on an issue of law, even at the first instance. According to the appellant, the issue raised in the application is related to the jurisdiction



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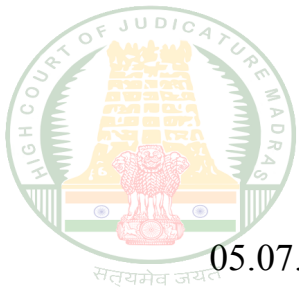
of the Court and hence the appellant argued that, that issue must be heard as a preliminary issue and the suit decided on that issue alone.

10. Again, the judgments of the Supreme court in *Speech and Software Technologies* (supra) and in *Agricultural Produce Marketing Committee, Bangalore v State of Karnataka and others* [(2022) 7 SCC 796] are pressed into service.

11. Per contra, Mr.Thanka Sivan, who appears for the respondent would point out that although the order of the Division Bench was confirmed by the Supreme Court, all triable issues have been left open and further more the Supreme Court has also made it clear that the proceedings shall not continue in such a manner so as to prejudice the rights of the parties. He would also rely on the judgment of the Supreme Court in the case of *Sathyanath and another v Sarojamani* [(2022) 7 SCC 644].

12. We have heard both learned counsel in detail and perused the relevant and material papers carefully.

13. The parties had entered into the MoU on 05.07.2022. At prayer (a) of the plaint, reference is made to notices dated 25.06.2007 and 29.08.2007, whereby, the appellant had sought to cancel MOU dated



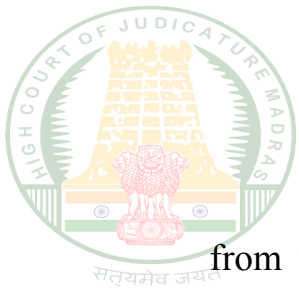
05.07.2022. Hence prayer (a) seeks a declaration to the effect that the aforesaid notices should be declared to be illegal and non-enforceable.

The remaining two prayers relate to permanent and mandatory injunctions seeking implementation of the clauses of the MoU.

14. Before us and before the learned Single Judge, the appellant has prayed that the MoU was only an agreement to enter into an agreement, which is not legally enforceable and hence the suit is itself not maintainable.

15. Per contra, the respondent has strenuously denied that the MoU is an agreement to enter into an agreement. Learned counsel has taken us through the clauses in the MoU that indicate that all essential ingredients of the same have been finalized qua the parties such as the consideration, acknowledgement of payment of advance, understanding as to further terms of the payment, and others.

16. He would also draw attention to the fact that the original title of the agreement was 'Memorandum of Agreement' and it was subsequently amended in hand by the Appellant, by striking out the word 'agreement' and replacing the same with the term 'understanding'. In all, he would argue that there are definite rights and entitlements that flow

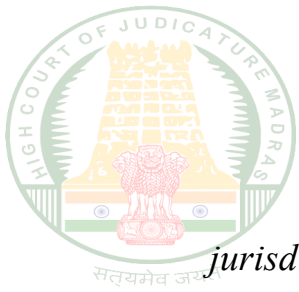


from the MoU itself. There are disputes on facts inter se the parties, which would militate against the claim under Order 14 Rule 1 CPC.

17. On a careful consideration of the matter, we agree with the respondent. In *Sathyanath* (supra), the Supreme Court has considered the scope of Order 14 Rule 2 CPC. Undoubtedly, the provisions of Order 14 Rule 2 CPC are part of procedural law. The *raison d'etre* for the procedure set out is to ensure expeditious disposal of the lis. The provision was amended by the Act No. 104 of 1976, effective from 1.4.1977, in order to obviate the possibility of remand which was a consequence of the language prior to amendment.

18. However, post amendment, the provision makes it clear that if the issue for consideration is a mixed issue of law and fact, a decision on the legal issue depending on the decisions on facts, such issue cannot be tried as a preliminary issue.

19. The Bench states *'In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks*



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jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext. '

20. The Court has referred to various judgments to show that the framing of preliminary issue in terms of Order 14 Rule 2 CPC must be carefully done only after ensuring that they were no disputed facts at play.

21. In the present case, it is apparent that the facts are not admitted by the parties. While the appellant would urge that the MoU is only an agreement to enter into an agreement, the respondent would object to the same, pointing to clauses in the MoU as per which definite entitlements flow to the parties. In *Sathyanath* (supra), the Supreme Court has drawn a comparison with Order 7 Rule 11 of the CPC dealing with rejection of plaint, in circumstances where only the averments in the plaint may be adverted to and there is no necessity for any other pleading or evidence to establish the non-maintainability of the suit.

22. We do not believe that the present case is one such as it is only after consideration of all the pleadings and the process of trial can the



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issues be decided one way or another. The issues framed would thus have to go through the process of trial for an answer to emerge.

23. In *Speech and Software Technologies* (supra), there is a finding of fact at paragraph 22 that the letter of intent was nothing but an agreement to enter into another agreement. The Court states that '*both parties agreed to have set a deadline to sign this agreement dated 15.09.2006*', thus rendering a clear and categoric finding that the letter of intent was nothing but an agreement to enter into a further agreement. We cannot categorically state so in the present case.

24. That apart, the Supreme Court, in the order dated 24.04.2023 has observed that '*all contentions are left open to be urged in the suit and any of the observations contained in the impugned order shall not prejudice the right of the parties in the Trial Court*'. The factual matrix is thus at large and has to be marshalled in the course of the trial after consideration of the evidence led by the parties. It is only once the facts have been established that the legal issue may be decided on the pedestal of those facts. Hence, the liberty granted by the Supreme Court is yet another factor to be taken note of in deciding this appeal.

25. On all accounts, we agree with the conclusion of the learned



O.S.A.No. 143 of 2025

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Judge to the effect that the issue now sought to be raised as preliminary issue may form part of the triable issues to be decided in the course of hearing of the suit itself.

26. Finding no merit in this appeal, we dismiss the same. No costs.

27. Seeing as suit is of the year 2008, a request is made for fixation of time frame for the disposal thereof and we accede to the request. Let the parties appear before the learned Judge on 20.06.2025 i.e., Friday, for framing of issues with draft issues. The evidence and arguments will be concluded within a period of four months from 20.06.2025.

[A.S.M., J] [N.S., J]
09.06.2025

Index: Yes/No
Neutral Citation: Yes/No
ssm

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.



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and
N.SENTHILKUMAR, J.

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