

C.R.P.(PD)No.3710 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.03.2025

Delivered on : 28.05.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD)No.3710 of 2022

and

C.M.P.No.19614 of 2022

K.Suganthi

...Petitioner

Vs

R.Chandrasekaran (died)

1.C.Rajalakshmi

2.C.Ramanathan

3.C.Anisha

4.R.V.Narashimhan

5.Prema Babu Nageswaran



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WEB COPY 6.B.Viswanathan

7.H.Srividya

8.S.Rajalakshmi

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint in OS.No.178 of 2022, on the file of the Sub Court, Kancheepuram.

For Petitioner : Mr.V.Ragavachari
Senior Counsel
For Mr.A.Gouthaman

For Respondents : Mr. V.Manisekaran
1 to 3

For Respondent 4 : Mr. R.Thiagarajan

For Respondents : No Appearance.
5 to 8.



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ORDER

The above Civil Revision Petition is filed to strike off the plaint originally filed in OS.No.363 of 2010 on file of the District Court, Chengalpet and later transferred to the file of the Additional Sub Court, Kancheepuram and re-numbered as OS.No.178 of 2022.

2. Before proceeding to discuss the grounds on which this revision has been filed it would be necessary to briefly set out the facts in the said suit. The parties, for ease of understanding, are being referred to in the same ranking as before the Trial Court.

3. The present Civil Revision Petition has been filed by the 6th defendant in the suit.



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Facts of the case:

4. The plaintiff has filed the suit for the following relief:

“(a)Directing the defendants specifically to perform the terms and conditions of the MOU dated 24.05.2005 by executing sale deeds in favour of the plaintiff in respect of 6.43 acres of lands more fully described in the schedule hereunder belong to them and to do all the acts necessary to put the plaintiff in full possession of the same immediately after the receipt of the sale consideration agreed thereto; and also for a consequential.

(b)permanent injunction restraining the defendants herein from alienating the suit property more fully described in the schedule hereto;”



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5. It is the case of the plaintiff that the 1st defendant and his late brother R.V.Babu Nageswaran had entered into a contract with the plaintiff to sell 33 acres of land jointly possessed by them at Vadakkupattu Village, Sriperumbudur Taluk, Chengalpet, for a sale consideration of Rs.40,00,000/-. This agreement was reduced into a writing as a MOU, hereinafter referred to as MOU dated 24.05.2005 and on the said date a sum of Rs.2,00,000/- was paid as an advance. It is the further case of the plaintiff that R.V.Babu Nageswaran the brother of the 1st defendant passed away on 13.09.2006. Therefore, his wife has been impleaded as the 2nd defendant.

6. The MOU was executed as the lands of the defendants were interspersed with the lands belonging to the Triveni Academy, measuring 7 acres of lands and 35.39 acres of land belonging to the various third parties.



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7. The plaintiff would submit that the Triveni Academy had been taken over by the Official Liquidator and the MOU was entered into specifically to prevent intrusion by the Official Liquidator or other third parties into the lands agreed to be sold to the plaintiff. The plaintiff would submit that out of 33 acres of land promised, the defendant had only sold 19.11 acres. Not only did the defendants not sell the remaining extent to the plaintiff but the plaintiff came to learn that the sister of the 1st defendant one Sasikala Viswanathan had executed a sale deed dated 24.07.2006 registered as Doc.No.335/2006 on the file of the SRO, Wallajabad in respect of 3.69 acres of lands through her power agent V.Chandrasekaran. This sale had taken place after the MOU was entered into between the plaintiff and defendants and by totally suppressing the sale in favour of the plaintiff.



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8. The plaintiff would submit that after sale deed that was executed on 24.03.2006 the defendant did not come forward to execute any further sale deeds in favour of the plaintiff. The plaintiff had therefore issued a legal notice dated 04.03.2008 calling upon the defendants to execute the sale deed in respect of the available lands i.e., an extent of 6.43 acres arrived at after deducting the area of 19.11 acres sold to the plaintiff and an extent of 3.69 acres sold by their sister including the shortfall of 3.77 acres from out of the total area of 33 acres.

9. Though the said notice was received by defendants they had not come forward to execute the sale deed nor had they issued any reply. The plaintiff was informed by the third parties that the defendants were making attempts to alienate their property which constrained the plaintiff to approach the Court.



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10. After the suit was filed and the defendants had entered appearance, they came to know the details of the other legal heirs of Babu Nageswaran, besides the 2nd defendant and therefore in order to get an effective adjudication defendants 3 to 5 were impleaded as parties to the suit. Thereafter, the plaintiff has filed IA.No.526 of 2018 to implead the 6th defendant who had purchased the property pending the suit. The said application was allowed on 08.02.2018 and the petitioner herein had been impleaded as the 6th defendant. After entering appearance the 6th defendant has come forward with this revision petition to strike of the plaint.

11. Grounds for striking off the plaint:

The grounds on which the 6th defendant seeks to strike off the plaint through this revision petition is herein below set out briefly:



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(i)The MOU on the basis of which the suit has been filed contemplates the execution of another contract. The MOU not being a concluded contract capable of execution, the relief claimed cannot be granted.

(ii)The MOU does not spell out that the 1st defendant and his brother have to purchased the lands of the villagers and sold it to the purchasers of the Triveni Academy.

(iii)The terms of the MOU have not been pleaded, which is contrary to the provisions of Order VI Rule 6 of the CPC as also Order IV.

(iv)The pleadings with reference to the extent promised to be sold and the extent sold does not correlate.

(v)The fourth document filed along with the plaint i.e., the certified copy of the sale deed dated 14.09.2005,



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does not make any reference to the MOU. In fact none of the sale deeds make reference to this MOU, which is the basis for filing the above suit.

(vi)Even according to the plaintiff the last sale deed executed in their favour was on 24.03.2006. Therefore, the suit filed in the year 2010 is clearly barred by limitation.

(vii)The 6th defendant has been impleaded in the year 2018 and there is no relief claimed to set aside the sale deed executed in her favour. That apart the suit against the 6th defendant is barred by limitation.

(viii)The suit is bad for non joinder of necessary parties in as much as besides the 1st defendant and the husband of the 2nd defendant there are other legal heirs of Viswanathan and his wife Lakshmi. In fact even in the plaint the plaintiff has made reference to one Sasikala



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Viswanathan as the sister of the 1st defendant. Even this Sasikala has not been impleaded as party to the proceedings.

Submission:

12. Mr. V.Raghavachari, learned Senior Counsel appearing on behalf of Mr. A.Gouthaman, learned counsel for the petitioner would reiterate that the MOU contemplates the execution of further documents, namely, an agreement of sale in clause 5 of the MOU. Therefore, when such an agreement has not been entered into the relief for executing the sale deed is not maintainable. In support of the said proposition the learned senior counsel would rely upon the following Judgements:

(i) **1983 (1) MLJ 467** – H.G.Krishna Reddy and Co., Vs. M.M.Thimmaiah and others.



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(ii)**2006 (1) SCC 751** – Dressler Rand Vs. Bindal Agro Chem Ltd
and others.

13. He would further submit that the suit is nothing but an abuse of process of Court in as much as the suit has been filed even without the cause of action arising which is evident from the very pleadings contained in the plaint and the documents filed in support thereof. The plaintiff has approached the Court seeking relief much beyond the period of limitation and that too without impleading all the necessary parties. With reference to the issue of abuse, he would rely upon the following Judgements:

(i)**2016 (4) CTC 353** – Sub Continental Equities Limited Vs.
R.V.D.Ramaih and others.

(ii)**2011 (7) MLJ 339** – Lakshmi and others Vs.Prasannamani
and others.



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(iii) **1998 (3) SCC 573** – K.K.Modi Vs. K.N.Modi and others.

14. With regard to the issue of limitation he would rely upon the Judgement reported in **1964 Madras 386 – Thangavelu Chettir Vs. Kuppu Bai and others.**

15. Since a question had been put by this Court as to how the plaintiff after invoking the provisions of Order VII Rule 11 of the CPC before the Trial Court could simultaneously file this revision petition for striking off the plaint invoking the provisions of Article 227 of the Constitution of India, he would rely upon the following Judgements:

(i)CRP.No.2481 of 2023 – M/s.Tripower Enterprises Ltd., Vs., Selvam Aruldoss and others.

(ii)CRP.No.1491 of 2024 – M/s.V.N.R. Homes Private Ltd., Vs. Sky Owner's Association.



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16. On the other hand Mr.V.Manisekaran, learned counsel appearing for the plaintiff / respondents 1 to 3 would submit that this Civil Revision Petition is not maintainable in as much as the petitioner herein, namely, the 6th defendant has already filed a petition to reject the plaint by filing an application under Order VII Rule 11 of the CPC. Therefore, the petitioner cannot contest the same issue before two fora. He would submit that the application to strike off the plaint is not maintainable and in support of this he would rely upon the following Judgements:

“(i)**CRP.(PD).No. 1512 of 2021** – M.Kishanlal Vs. K.Pushpavalli @ Elizabeth Pushpavalli.

(ii)**Civil Appeal No.7764 of 2019** – Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others.



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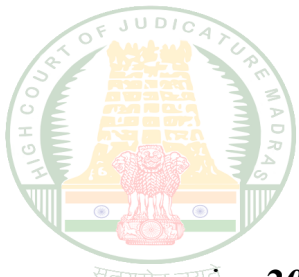
(iii) **CRP.(MD).No. 2635 of 2023** – Annadurai Vs.

Santhanakrishnan and others.

17. On going through the pleadings, the arguments and documents, the following issue emerge for consideration:

Whether the invocation of this revision petition when a petition under Order VII Rule 11 of the CPC was pending before the Trial Court is correct? If so, whether the petitioner has made out a case for striking off the plaint?

18. The learned counsel for the respondent had taken out a preliminary objection that the filing of this revision pending a petition under Order VII Rule 11 of the CPC before the Trial Court was totally misconceived and therefore this revision had to be dismissed. In support of the said argument he has submitted the Judgement reported



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in 2019 (9) SCC 538 – *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Others Vs. Tuticorin Educational Society and others.*

19. A perusal of this Judgement would indicate that the Hon'ble Supreme Court had discussed the distinction between (i) the cases where alternative remedy is available before the Civil Court in terms of CPC and (ii) cases where such alternative remedy is available under special enactments and / or statutory rules and the fora provided therein happen to be quasi judicial authorities and tribunals.

20. With references to the cases falling under the first category the Hon'ble Supreme Court had held that the availability of appellate remedy in terms of provisions of CPC would act as a near total bar, whereas in the case of the second category such near total bar will not apply.



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21. The said Judgement has been followed by the Single Judge of this Court in ***CRP (PD).No.1512 of 2021 dated 05.01.2022 – M.Kishallal Vs. K.Pushpavalli @ Elizabeth Pushpavalli.***

22. Therefore, we have to first analyse as to whether the grounds for striking of the plaint raised in the instant case falls within the provisions of Order VII Rule 11 of the CPC. For this purpose it would be necessary to extract the provisions of Order VII Rule 11 of the CPC:

“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;



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(c) where the relief claimed is properly valued, but the plaintiff 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 be barred by any law :

[144] [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.]



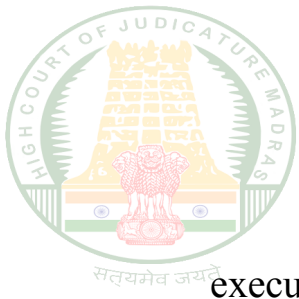
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23. Whether there exists concluded contract:

The petitioner herein seeks to have the plaint struck off on the ground that the suit itself is an abuse of process of Court and that there is no concluded contract giving rise to a cause of action. An abuse of process of Court does not come within the circumstances that have been enumerated in Order VII Rule 11 of the CPC. The petitioner also raised a plea of suppression of facts which again does not come within the purview of Order VII Rule 11 of the CPC.

24. The suit in question has been filed for specific performance of the terms of the MOU dated 24.05.2005 and the plaintiff seeks to specifically enforce the MOU by executing sale deed in his favour. The document No.1 filed along with the plaint is the original MOU. A mere perusal of the terms of this MOU clearly sets out that this MOU is not a concluded contract between the parties but it contemplates the



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execution of an agreement of sale for it to become enforceable.

25. Under clause 5 of this MOU, it has been clearly stated that the MOU is valid for a period of 6 months and before the lapse of this MOU, the agreement of sale had to be entered into between the parties 1, 2 and 3, i.e., brother of the 1st defendant, 1st defendant and the plaintiff. Admittedly, the agreement of sale has not been entered into and as per the express terms of the MOU it is only after the execution of agreement of sale that the plaintiff gets a right to claim for a specific performance by execution of sale deeds.

26. The plaintiff by an astute drafting had indicated that the MOU is one that gives right to the plaintiff to claim the relief of execution of sale deeds. Therefore, even without having a concluded contract and suppressing this fact the plaintiff has rushed to this Court.

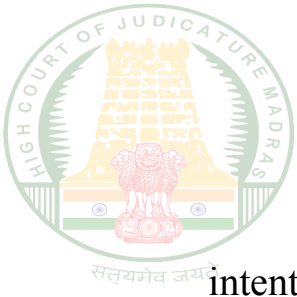


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27. In the Judgement of this Court reported in **1983 (1) MLJ 467** – ***H.G.Krishna Reddy and Co. Vs. M.M.Thimmaiah and others***, the Division Bench of this Court was considering a similar case of suit for specific performance based on a contract of sale. The contract of sale contemplated the execution of regular contract of sale. The Division Bench after referring to various Judgements and after perusing terms of the contract held that there was no concluded contract. Therefore, the suit for specific performance was not maintainable and set aside the decree for specific performance granted by the Trial Court.

28. Yet another Judgement which has been relied upon by the counsel for the petitioner deals with the effect of the contract which contemplates the execution of further contract reported in **2006 (1) SCC 751 – *Dresser Rand SA. Vs. Bindal Agro Chem Ltd., and others***, where arbitration was sought to be invoked on the basis of letter of



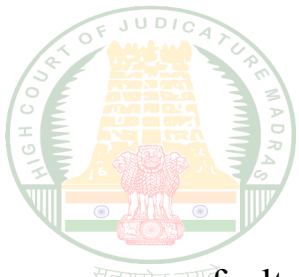
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intent. The letter of intent contemplated the execution of regular and detailed purchase order subject to general conditions of purchase.

29. The Hon'ble Supreme Court held that since the arbitration clause was contemplated in the general conditions of purchase the invocation of arbitration was wrong as the Letter of Intent merely indicated the parties intention to enter into contract with the other parties in future. In the light of the above and considering the terms of MOU not being a concluded contract, the suit is premature.

30. The Judgement in **2019 (9) SCC 538 – Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Others Vs. Tuticorin Educational Society and others** would not apply to the facts of the instant case since the grounds on which the suit is sought to be struck off is on the ground of abuse of process of Court. Therefore, the invocation of the jurisdiction of this under Article 227 cannot be found



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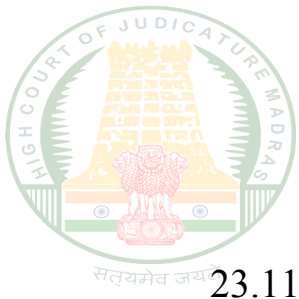
fault with.
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31. Whether there is a cause of action for filing the suit:

In the light of the above discussion it is clear that cause of action for filing the suit has not crystalised. Further, the terms of the MOU clearly spells out that MOU is valid only for a period of 6 months before which the agreement of sale had to be entered into. The MOU was entered into on 24.05.2005. Therefore, the MOU was valid only upto 23.11.2005. There is no other agreement entered into pursuant to the terms of the MOU. Therefore, the very basis on which the suit has been filed is flawed as there is no cause of action.

32. Whether the suit is barred by limitation:

Though limitation is a mixed question of fact and law in the instant case the MOU, which is a document on which the suit claim has been instituted, would spell out that the MOU is valid only till



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23.11.2005 and before 24.11.2005 the parties had to necessarily enter into an agreement of sale. The instant suit has been filed only in the year 2022. That apart, even according to the plaintiff the last of the sale deed that has been executed by the defendant in their favour is on 24.03.2006 and legal notice issued on 04.03.2008. Thereafter, the plaintiff has not taken any steps to enforce the MOU by seeking the execution of an agreement of sale within 3 years and the suit has been filed after a period of 17 years, from the date of the expiry of the MOU. Therefore, the suit on the face of the record is barred by limitation.

33. Whether the suit is an abuse of process of Court:

The plaintiff knowing fully well that the MOU contemplated the execution of further agreement of sale has very astutely drafted his plaint without setting out the terms of the MOU. From a reading of the plaint an impression is sought to be put forward that the MOU is the document which gave the right to the plaintiff to demand specific



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performance by way of sale deed. This is contrary to the terms of the very MOU. Therefore, there is a case of an abuse of process of Court.

34. In the Judgement of the Hon'ble Supreme Court reported in **1998 (3) SCC 573 – K.K.Modi Vs. K.N.Modi and others**, the Hon'ble Supreme Court had observed as follows:

“Frivolous or vexatious proceedings may also amount to an abuse of the process of Court especially where the proceedings are absolutely groundless. The Court then has the power to stop such proceedings summarily and prevent the time of the public and the Court from being wasted. Undoubtedly, it is a matter of Courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.”



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35. In the instant case since there is no concluded contract and the chance of the plaintiff succeeding is near impossible as he seeks to enforce the MOU by directing the defendant to execute the sale deed. Considering the fact that the plaintiff's claim for execution of a sale deed on the basis of the MOU, which itself contemplates the execution of an agreement of sale, cannot be granted as there is no concluded contract no useful purpose would be served directing the Lower Court to consider and pass orders in the Order VII Rule 11, CPC. Therefore, on the ground of abuse of process and on the ground of there being no concluded contract this plaint has to necessarily be struck off. The Civil Revision Petition is allowed and OS.No.178 of 2022 on the file of the Sub Court, Kancheepuram is struck off. Consequently, the connected miscellaneous petition is closed. No costs.

28.05.2025

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Index : Yes/No

Speaking order/non-speaking order

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To,

The Sub Court,
Kancheepuram.



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Pre-Delivery order in
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