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CRP. No.4146 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:07.08.2025

Pronounced on:14.08.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.4146 of 2023
and CMP. No.25289 of 2023**

Gunasekaran

Petitioner

Vs

Praveenraj

Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 30.06.2023 in I.A. No.3 of 2023 in O.S. No.238 of 2022 on the file of the learned Additional District Judge at Dharmapuri.

For Petitioner : Mrs.L.Lakshmiswaroopu

For Respondent : Mr.Suhrith Parthasarathy for
Mr.R.Sethuvarayar

ORDER

The revision petitioner is the defendant in a suit for specific performance of an agreement of sale. Pending suit, the defendant filed IA.No.3 of 2023 seeking to reject the plaint under Order VII Rule 11(d) read with Section 151 of the Code of Civil Procedure. On contest, the



Trial Court has dismissed the Application as against which, the present revision petition has been filed.

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2. I have heard Mrs.L.Lakshmi Swaroopa, learned counsel for the revision petitioner and Mr. Suhrith Parthasarathy for Mr.R.Sethuvarayar, learned counsel for the respondent.

3. The learned counsel for the revision petitioner would submit that the plaintiff has come to Court with unclean hands and the suit was clearly barred for more than one reason. The learned counsel for the petitioner would contend that even as early as on 13.04.2018, a lawyer's notice had been issued by the plaintiff's father referring to an agreement of sale dated 11.10.1993 and calling upon the defendant to come forward to execute the sale deed and a suit had also been filed by the revision petitioner against the said Shivam in O.S.No.96 of 2018 for the relief of a permanent injunction and the said suit came to be decreed on 06.10.2018.

4. It is the further contention of the learned counsel Mrs.Lakshmi Swaroopa that suppressing entire earlier litigation, the present suit has been instituted as if the starting point of the dispute was only the subject agreement of sale in the present suit. The contention of the learned



counsel is therefore that when the plaintiff has suppressed material facts and circumstances from the Hon'ble Court, it amounted to gross abuse of process warranting rejection of the plaint. The learned counsel would also state that the suit is hopelessly barred by limitation and the plaintiff cannot plead an oral extension of time in order to bring the suit within the period of limitation.

5. The learned counsel for the petitioner in support of her contentions has relied on the following decisions:

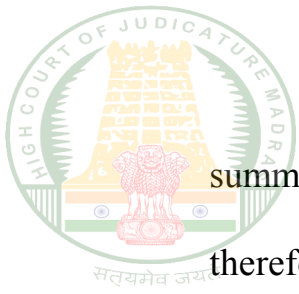
(i) *A.E.Rathina Naicker vs V.Thirumalai*, reported in (2017) SCC Online Mad 17048;

(ii) *B.Suresh Chand vs State of Tamil Nadu*, reported in 2006 (4) CTC 805;

(iii) *Nesammal and another vs Edward and another*, reported in 1998 (II) CTC 537; and

(iv) *Mrs.Kalithai and another vs P.Karunanidhi and others*, reported in CRP.PD.No.3007 of 2015 dated 25.04.2017.

6. Per contra, Mr.Suhrith Parthasarathy, learned counsel for the respondent would state that the agreement of sale is admitted and when the specific case of the plaintiff is that in the presence of witnesses, time was extended for execution of the sale deed, the issue cannot be



summarily decided under Order VII Rule 11 of CPC and he would therefore state that, rightly, the Trial Court has dismissed the Application seeking the rejection of the plaint.

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7. Insofar as limitation, Mr.Suhrith Parthasarathy, learned counsel for the respondent would state that in the facts of the present case even for deciding the issue of limitation, parties will have to lead evidence and therefore, the plaint cannot be rejected as per the law.

8. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the order passed by the learned Additional District Judge, Dharmapuri dismissing the Application for the rejection of the plaint. I have also gone through the decisions on which the learned counsel for the petitioner places reliance on.

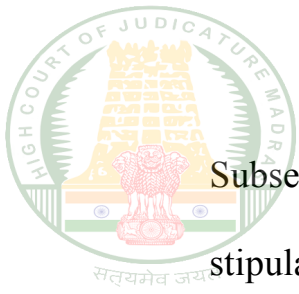
9. Admittedly the respondent has filed the suit for specific performance of an agreement of sale dated 18.01.2018. According to the plaintiff, the time agreed for execution of sale deed under the said agreement was extended orally on 31.01.2021 and thereafter, the



defendant refused to execute sale deed, compelling the plaintiff to seek relief from the Court. No doubt, as rightly contended by Mrs.Lakshmi Swaroopa, learned counsel for the revision petitioner, the plaintiff does not disclose the earlier transactions viz., the notice issued by the plaintiff's father to the defendant as well as the suit filed by the defendant against the plaintiff's father in O.S. No. 96 of 2018.

10. According to learned counsel for the petitioner, the plaintiff had to disclose all material facts when approaching the Court and failure to disclose these vital facts would be fatal to the case of the plaintiff. It should be seen whether the non-reference or non-mentioning of the notice issued by the father of the plaintiff and the suit filed by the defendant against the father of the plaintiff are relevant or material to decide the present suit. If they are material circumstances, then certainly the plaintiff is guilty of suppression.

11. On reading the plaint as well as the cause of action, I am able to see that the plaintiff has come to Court with a definite case that the plaintiff has entered into an agreement with the defendant on 18.01.2018 for purchase of the suit property and he has paid an advance of Rs.1 lakh.



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Subsequently, the parties agreed for extending the time of 3 months stipulated in the said agreement dated 18.01.2018, by consent. The reason for the said extension is claimed to be a dispute between the defendant and his father pertaining to the suit property. It is further contended that the defendant requested the plaintiff to wait till such time he is able to sort out the disputes with his father and on 31.01.2021, in front of witnesses and villagers, the defendant had orally agreed and promised to execute sale deed in favour of the plaintiff within 15 months.

12. It is also alleged in the plaint that the plaintiff approached the defendant in person with the witnesses on 07.09.2022 and the defendant refused to execute the sale deed and left with no other option, the plaintiff filed the present suit.

13. An application for rejection of the plaint has to be decided based on the plaint averments and allegations and also taking into account the documents that are filed along with the plaint. It is trite law that even the affidavit filed in support of the Application for rejection of a plaint cannot be looked into. The law is fairly well settled on this aspect. The request of the defendant to reject the plaint should be within



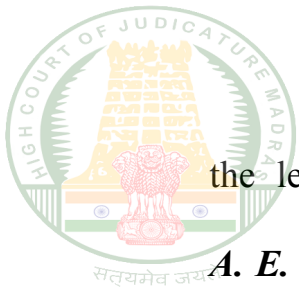
the ambit of any of the limbs to Rule 11 of Order VII C.P.C.

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14. In the present case, though the learned counsel for the petitioner has argued regarding suppression, non-disclosure and limitation, I am unable to countenance the arguments of the learned counsel for the petitioner that from a reading of the plaint, it is abundantly clear that the plaint is liable to be rejected.

15. Insofar as limitation, especially in suit for specific performance, the issue will be a mixed question of fact and law and even in the present case, I do not find any requirement to deviate from the said principle since the plaintiff claims that subsequent to the agreement of sale entered into on 18.01.2018, there was an oral extension in the presence of witnesses and that on 07.09.2022 alone, the defendant has refused to execute the sale deed and therefore, unless the parties lead evidence and establish their respective contentions regarding all these disputed questions of fact, the Court will not be in a position to find out if the suit is in time or not.

16. With regard to suppression of material facts and circumstances,



the learned counsel for the petitioner has relied on the decision in

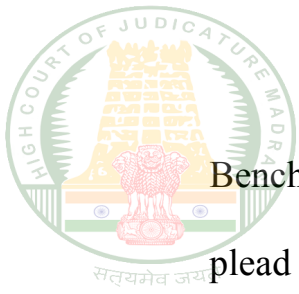
A. E. Rathina Naicker's case, (referred herein supra), where this Court

held that Order VII Rule 11 of the CPC lays down an independent remedy which is available to the defendant to challenge the maintainability of the suit, irrespective of his right to contest the same on merits and that the real object is to only keep out irresponsible law suits.

This Court referring to the decision of Patna High Court held that, if it is found that the suit is an abuse of process or being a bogus and irresponsible litigation, then the jurisdiction of this Court under Order VII, Rule 11 can be exercised.

17. In **Nesammal's** case, (referred herein supra), this Court held that provisions of Order VII Rule 11 CPC, are not exhaustive and the Court has got inherent powers to see that vexatious litigations are not allowed to take or consume the time of the Court and in appropriate cases, if on reading the allegations in the plaint, it reveals that the same is an abuse of process of law, then there is nothing wrong in rejecting the plaint at the threshold.

18. In **B. Suresh Chand's** case, (referred herein supra), the Full

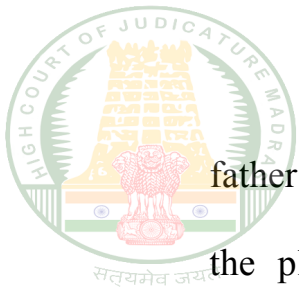


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Bench of this Court held that Order VI Rule 2 CPC mandates a party to plead all material facts on which he means to rely at the trial and even if one of the material fact is omitted, then the statement of claim is bad and it would amount to there being no cause of action for the suit. Even in the said decision, the Hon'ble Full Bench has held that material facts are primary and basic facts which must be pleaded by the party in support of the case set up by him, either to establish his cause of action or defence and it is only failure to state a material fact which would entail dismissal of the suit, a distinction was also drawn between material facts and particulars.

19. In *Kalithai's* case, (referred herein supra), this Court, in a suit for specific performance, finding that the plaintiff had not mentioned facts relating to payment of advance, would constitute a material non-disclosure and also plain fraud on the Court.

20. Keeping the ratio laid down in the above decisions and testing the facts of the present case in the light of the settled position of the law, I am unable to see how the non-mentioning of the notice issued by the plaintiff's father and a suit filed by the defendant against the plaintiff's



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father would constitute material facts for the purposes of the suit filed by the plaintiff seeking relief of specific performance, pertaining to a different sale agreement altogether. The earlier transaction between the plaintiff's father and the defendant was arising out of an agreement of sale dated 11.10.1993. It is not in any way related to the cause of action in the present suit and therefore, I am unable to hold that the non-mentioning of these facts, which at best would only be non-disclosure of particulars and not material facts which ought to have been necessarily pleaded.

21. In so far as the ratio laid down in ***Rathina Naicekr's case*** as well as ***Nesammal's case***, (referred herein supra), in view of subsequent march of law and decisions of the Hon'ble Supreme Court, a plaint can be rejected only if it is shown by the defendant that, on a reading of the plaint and on a consideration of the plaint documents, the plaint is not maintainable or is hit by any of the limbs of Order VII Rule 11 CPC. In the case of ***Kalithai***, (referred herein supra), this Court in a suit for specific performance after noticing that the plaintiff had not even pleaded with regard to advance payments found the same to be non-disclosure of a material fact. However, in the said case, the very same agreement of



sale was a subject matter in issue and therefore, this Court applied the ratio of the Full Bench and proceeded to reject the plaint.

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22. As already discussed, the case of the plaintiff as set out in the plaint cannot be thrown out at the threshold. The parties have to necessarily undergo the rigor of trial, before the entitlement of the plaintiff to the suit relied can be decided.

23. I do not find any infirmity or perversity in the order of the Trial Court dismissing the application for rejection of the plaint. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

14.08.2025

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Index : Yes / No

Internet : Yes / No

To:

The Additional District Judge at Dharmapuri.



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P.B.BALAJI, J.,

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Pre-delivery order in
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