
(2011) 03 MAD CK 0231

In the Madras High Court

Case No : O.S.A. No. 135 of 2006 and C.M.P. No. 6048 of 2006

Conveyors India Fabricators P. Ltd.

APPELLANT

Vs

Venturetech Solutions Pvt. Ltd.

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Constitution of India, 1950 — Article 227
Original Side Rules — Order 14 Rule 8

Citation : (2011) 03 MAD CK 0231

Hon'ble Judges : V. Periya Karuppiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : Sriram Panchu for V. Achuthan, for the Appellant; T.K. Seshadri for T.K. Bhaskar, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—Challenge in these appeals are the Orders of learned single Judge dated 8.2.2006 in Application No. 222 of 2006 in C.S.

No. 831 of 2005 and Application No. 242 of 2006 in C.S. No. 833 of 2005 on the file of this Court dismissing the applications filed under Order

7 Rule 11(d) CPC read with Order 14 Rule 8 of Original Side Rules. O.S.A. No. 135 of 2006 was filed by M/s. Conveyors India Fabricators

Private Limited, who is the Defendant in C.S. No. 831 of 2005. O.S.A. No. 136 of 2006 has been preferred by Virgo Industries (Engineers)

Private Limited, who is the Defendant in C.S. No. 833 of 2005. Since the issues arising in both the appeals are one and the same, both appeals

were heard together and shall stand disposed by this Common Judgment.

2. The Appellant in O.S.A. No. 135 of 2006 entered into an agreement with the Respondent on 27.7.2005, whereby the Appellant agreed to sell

the superstructure and land forming plot No. 66 (old No. 42), Second Main Road, Ambattur Industrial estate. The Appellant in O.S.A. No. 136

of 2006 entered into an agreement of sale with the Respondent on 27.7.2005 for the sale of property -superstructures and land bearing Door No.

65 (old No. 43), Second Main Road, Ambattur Industrial Estate, Chennai. The details of the appeals and the property agreed to be sold and the

sale consideration are as under:

O.S.A. No.

Plots agreed to be sold

Details

O.S.A. No. 135 of 2006

A. No. 222/2006 in

C.S. No. 831/2005

Superstructure and land in

Plot No. 66

(Old No. 42)

measuring an extent of

2,992.5 sq. ft.

for Rs. 25,00,000/-

S.F. No. 220(Part) of

Mannur village

and

S.F. No. 513(Part);

523(Part); 527(Part);

528(Part) of Mugappair,

village, Ambattur Taluk,

Tiruvallur District.

O.S.A. No. 136 of 2006

A. No. 242/2006 in

C.S. No. 833/2005

Superstructure and land

Bearing, Door No. 65
(Old No. 43), measuring
an extent of 39,375 sq.
ft. for Rs. 3,55,00,000/-
S.F. No. 220 (Part) of
Mannur village
and
S.F. Nos. 513(Part);
523(Part); 527(Part);
528(Part) of Mugappair,
village, Ambattur Taluk,
Tiruvallur, District.

3. Case of Respondent/Plaintiff is that immediately, after the agreement, the Appellant/Defendant sent letter dated 1.8.2005 stating that Central

Excise Department was contemplating issuance of a notice restraining alienation of the property by the Appellants and also returning the advance

cheque. Alleging that the Respondent/Plaintiff is always ready and willing to perform its part of the contract and that any Government's liability can

be cleared by performance of the sale transaction and that Appellant/Defendant is attempting to frustrate the agreement entered into between the

parties and the Appellant is trying to alienate the property, the Respondent/Plaintiff filed C.S. No. 831 of 2005 in respect of plot No. 65 for

permanent injunction seeking the following prayers:

(a) Granting a Permanent injunction restraining the Defendant, its men, agents, servants or persons acting on its behalf from in any manner

alienating, encumbering or dealing with the plaint schedule property, to any third party other than the Plaintiff;

(b) Directing the Defendant to pay costs of the suit; and

(c) Pass such further or other orders as this Hon"ble Court may deem fit and necessary in the circumstances of the case and thus render justice.

In C.S. No. 831 of 2005, Respondent/Plaintiff filed Application No. 4163 of 2005 and obtained leave to sue.

4. On the same averments, the Respondent/Plaintiff filed suit C.S. No. 833 of

2005 for permanent injunction against Virgo Industries (Engineers) P.

Ltd., seeking the following prayers:

(a) Granting a Permanent injunction restraining the Defendant, its men, agents, servants or persons acting on its behalf from in any manner

alienating, encumbering or dealing with the plaint schedule property, to any third party other than the Plaintiff;

(b) Directing the Defendant to pay costs of the suit; and

(c) Pass such further or other orders as this Hon'ble Court may deem fit and necessary in the circumstances of the case and thus render justice.

5. The Appellant(s)/Defendant(s) filed Application No. 222 of 2006 in C.S. No. 831 of 2005 and application No. 242 of 2006 in C.S. No. 833

of 2005 respectively under Order 7 Rule 11 CPC to reject the plaints. The Appellants sought for rejection of the plaint on the ground that the suit

schedule properties being situated outside the jurisdiction of the Court at Ambattur within the jurisdiction of the District Munsif's Court, Ambattur

and within the jurisdiction of District Court, Chengalpet, Original Side of the High Court has no jurisdiction to try the suits. It was further averred

that in any event, that the suits as framed seeking only a bare injunction restraining the Defendant/s from dealing with or alienating the suit properties

is not maintainable and that the Respondent/Plaintiff's relief is only by way of a suit for declaration and specific performance.

6. Upon consideration of the contention of the Appellant(s)/Defendant(s) and Respondent/Plaintiff, the learned single Judge dismissed the

Application - A. No. 222 of 2006 by the impugned order dated 8.2.2006 on the ground that even though the suit is relating to immovable property

situated outside the jurisdiction of the Court, the question whether there was recession recession of the contract and whether contract came to an

end are the questions to be decided only in the suit. The order of the learned single Judge reads as under:

... 5. Admittedly, two agreements were entered on 27.7.2005 between the parties and the contention put forth by the Defendant that the

properties were under the clutches of income tax authorities by way of attachment and that there was recession of contract, and the same was

intimated to the Plaintiff, thus, the contract came to an end, all these questions have got to be decided before the court only after having adduced

evidence by the parties and not at this stage.

6. In so far as the second contention that the suit is hit by Order II Rule 2 is concerned, it has got to be dismissed. In the instant case, it has been

specifically averred that the period for the execution of performance of the contract at the time of the filing of the suit was not over and there was

imminent necessity for filing the suit for permanent injunction at that stage.

7. Hence, at this juncture, it cannot be stated that there was neither cause of action nor a suit can be filed for injunction. According to the Plaintiff it

would be suffice to file a suit for injunction and the Defendant cannot get shelter under Order II Rule 2 by seeking rejection of the plaint. Hence,

the Court is of the opinion that the application for rejection of the plaint deserves to be dismissed. Accordingly, the same is dismissed.

The order in Application No. 242 of 2006 in C.S. No. 833 of 2005 is also on the same lines.

7. The learned Senior Counsel for the Appellants Mr. Sriram Panchu has contended that the cause of action arises out of an agreement of sale

dated 27.7.2005, which pertains to the immovable property situated at Ambattur outside the Original Side Jurisdiction of the High Court. It was

further submitted that once it is held that the suit is for land, the learned single Judge ought to have held that the suit is not maintainable and ought to

have rejected the plaint. It was further submitted that the suit for permanent injunction restraining the Appellant(s)/Defendant(s) from alienating or

encumbering or dealing with the property has a substantial bearing upon the land and therefore the suit is primarily in respect of the land situated

outside the jurisdiction of the Court and therefore the learned single Judge ought to have rejected the suit as barred by law.

8. In so far as the "leave to sue" obtained in C.S. No. 831 of 2005, the learned Senior Counsel contended that Clause 12 of Letters Patent

contains three parts and the 1st part relates to suit for land and when the immovable property is situated outside the jurisdiction of the Court, even

if the Court has granted leave, such a leave is non est. The learned Senior Counsel placed reliance upon a judgment of the Supreme Court 2001

VII AD 513 (SC) , wherein it was held as under:

9. Thus, it is clear that under Clause 12 of the Letters Patent, the High Court in exercise of its ordinary original jurisdiction will have power to

receive, try and determine: (1) suits for land or other immovable property if such property is situated within the local limits of original jurisdiction of

the High Court; or (2) all other cases (a) if the cause of action has arisen wholly within the local limits of the ordinary original jurisdiction of the High

Court; (b) if prior leave of the Court has been obtained and the cause of action has arisen in part within the local limits of the ordinary original

jurisdiction of the High Court; or (c) if the Defendant dwells or carries on business or personally works for gain within such limits.

9. The learned Senior Counsel contended that when cases coming under Category (1), i.e., suit for land, categories 2(a) and 2(b) stand excluded

and when other categories are not attracted, the very grant of leave to sue is non est. The contention of the Appellant is that grant of leave in C.S.

No. 831 of 2005 will not be an embargo to consider the question of want of jurisdiction of the Court.

10. The learned Senior Counsel Mr. T.K. Seshadri has contended that in so far as the application under Order 7 Rule 11 C.P.C., the averments in

the plaint as a whole have to be seen to find out whether any clauses of Order 7 Rule 11 C.P.C are applicable. Taking us through the plaint, the

learned Senior Counsel would contend that the Plaintiff has clearly averred that the suit is based on contract and the breach of contract by the

Appellants/Defendant/s. The learned Senior Counsel further submits that the agreements in both the suits having been written in Chennai, cause of

action arose at Chennai and therefore the suit filed in Chennai is well maintainable. The learned Senior Counsel would further contend that in

paragraph 6 of the plaint, Respondent/Plaintiff has clearly averred as to why the Plaintiff is not claiming the specific performance of the agreement

of sale dated 27.7.2005 as the time for exercising the right under the agreement has not arisen and since cause of action for specific performance

has not yet arisen and in view of the conduct of the Appellant(s)/Defendant(s), Plaintiff was constrained to file the suit for permanent injunction

mainly to preclude the Appellant(s)/Defendant(s) from in any manner committing further breach of contract and therefore the suit based on contract

is well maintainable.

11. In so far as C.S. No. 831 of 2005, the learned Senior Counsel would contend that the suit was filed only after obtaining leave from the Court.

The learned Senior Counsel Mr. T.K. Seshadri has contended that the suit for bare injunction is a preventive relief on the allegation that the

Appellant(s)/Defendant(s) committed a breach and therefore it cannot be said to be a suit for land and therefore even though property is situated

outside the jurisdiction of Madras High Court, the High Court has got jurisdiction to entertain the suit. The learned Senior Counsel Mr. T.K.

Seshadri in support of his contention that while considering the Application under Order 7 Rule 11 C.P.C., the Court has to consider the plaint

averments on the whole, placed reliance upon decisions of Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express

and Others, ; Popat and Kotecha Property Vs. State Bank of India Staff Association, ; C. Natrajan Vs. Ashim Bai and Another, and Kamala and

Others Vs. K.T. Eshwara Sa and Others, .

12. In support of his contention that the suit for bare injunction cannot be construed as a suit for land, the learned Senior Counsel Mr. T.K.

Seshadri placed reliance upon decisions of Dhanalakshmi v. Ekanthan (1997) 3 LW 391; P.M.A. Velliappa Chettiar and Ors. v. Saha Govinda

Doss and Others (AIR 1929 Mad 721; and Tridandeeswami Bhakti Kusum Sraman Maharaj and Others Vs. Mayapore Sree Chaitanya Math

and Others, .

13. Refuting the above contentions, the learned Senior Counsel Mr. Sriram Panchu has submitted that the expression ""suit for land"" is not confined

to a suit for recovery of possession of land, but would also cover the suits, where the relief sought for has some control over the immovable

property. The learned Senior Counsel would further submit that the suit for land, which is situated outside the jurisdiction of the High Court, cannot

be sought to be brought by astute drafting of the plaint. Contending that if clever drafting has created illusion of the cause of action the suit has to

be rejected at the threshold, learned Senior Counsel placed reliance upon a decision of Supreme Court in T. Arivandandam Vs. T.V. Satyapal and

Another, .

14. Contending that the suit for permanent injunction restraining the Defendants from in any manner alienating the suit property is a suit for land, the

learned Senior Counsel Mr. Sriram Panchu placed reliance upon a judgment of First Bench of this Court in the case of Thamiraparani Investments

Pvt. Ltd. v. Meta Films Pvt. Ltd. (2006(1) CTC 270), wherein the Court has held as under

8. In *M/s. Moolji Jaitha and Company v. The Khandesh Spinning and Weaving Mills Company Ltd.* AIR 1950 FC 83, the Court noted that the

first prayer in the plaint was that it may be declared that the lands belonged to and are the properties of the Plaintiff company and the Defendants

have no beneficial interest therein. In the said Judgment, the Court held that in order to consider whether a suit is covered by the expression "suit

for land" in Clause 12 of the Letters Patent, one has to consider whether it is for the purpose of obtaining a decree for possession, or a decision in

title to land, or is something different, but involves the consideration of the question of title to the land indirectly. The expression "'suit for land

covers three classes of suits (i) suits for determination of title to land; (ii) suits for possession of land; and (iii) other suits in which the relief's

claimed if granted would directly affect title to, or possession of, the land. The words "suits for land or other immovable property" in Clause 12,

besides obviously covering claims for recovery of possession or control of land, or Appellant to connote also suits, which are primarily and

substantially seeking an adjudication upon title to immovable property or a determination of any right or interest therein. The words "'suit and land

means establishing title to land or any interest in the same, or for possession or control thereof, and the decree sought for must be intended proprio

vigore to be enforceable against and binding on the land itself.

In the said judgment, it is also stated that the nature of the suit and its purpose have to be determined by reading the plaint as a whole. The

inclusion or absence of a prayer is not decisive of the nature of the suit, nor is the order in which the prayers are arrayed in the plaint. The

substance or object of the suit has to be gathered from the averments made in the plaint on which the reliefs sought for in the prayers are based. In

the case on hand, undoubtedly, looking to the averments made in the plaint as a whole, and the relevant relief sought for, the suit is clearly,

substantially, and mainly for land.

9. A reference may also be made to the decision of the Supreme Court in *Adcon Electronics Pvt. Ltd. v. Daulate and Anr.* 2001(4) CTC 39. In

that case, the Supreme Court considered a suit for specific performance and an

application for leave filed under Clause 12 of the Letters Patent

before the High Court of Judicature at Bombay. The said Clause is in pari materia to Clause 12 of the Letters Patent of the High Court of

Judicature at Madras. While considering the said Clause, the Supreme Court held that if a suit is for determination of title to land, or suit for

possession of land, or other suits in which the relief's claimed, if granted, would directly affect the title of possession of land, the suit could be filed

only in the Court in which jurisdiction the land is situate.

10. In Southern Petrochemical Industries Corporation Ltd. v. Durga Iron Works and 3 others 1955(2) CTC 602, a Division Bench of this Court

has held that a suit involving determination of title and interest of land for recovery of possession and control of land would be a ""Suit for land"".

11. The Plaintiff has filed the present suit alleging that the Defendant has encroached upon the land which has allegedly been sold by the

Defendant's sister concern Citrex Products Ltd. to the Plaintiff. In fact, in paragraph 18 of the plaint, the Plaintiff has stated as follows:

Since the Defendant is attempting to encroach upon the ""A"" Schedule property and action with the police has not brought about the desired result

in view of the stand taken by the Defendant, the Plaintiff is left with no other alternative but to seek necessary relief from the Court.

12. Further, a reading of paragraph 20 of the plaint clearly shows that the allegations of the Plaintiff is that since the Defendant is encroaching upon

the suit ""A"" schedule property which is beyond the territorial jurisdiction of this Court, the Plaintiff has sought for a decree for permanent injunction.

It is not disputed that the registered office of the Defendant is at No. 157/1, G.N.T. Road, Chinnambedu Post, Kavarapet-601 206, Tiruvallur

District, which is situated outside the jurisdiction of this Court and the Defendant has no office within the jurisdiction of this Court. The present suit

being one for bare injunction, it is a suit for land. In other words, it is a suit for the purpose of acquiring possession of or safeguarding possession of

or establishing title to or a right in land viz., the suit schedule property. It is well settled that the expression "suit for land" should not be confined

and limited to suits for recovery of possession of land or to obtain a declaration of title to land only. The present suit being one for control of land

lying outside the jurisdiction of this Court, this Court has no jurisdiction to

entertain the suit and consequently, the learned single Judge has rightly revoked the leave....

15. The learned Senior Counsel Mr. T.K. Sehadri tried to make factual distinction of Thamiraparani Investments case (2006(1) CTC 270)

contending that in the said case the Plaintiff had also prayed for permanent injunction restraining the Defendant from disturbing the possession of

Plaintiff, whereas in the case on hand the Respondent/Plaintiff has prayed only for bare injunction restraining the Appellant(s)/Defendant(s) from

encumbering or alienating the property and therefore suits C.S. No. 831 and 833 of 2005 cannot be said to be suits for land.

16. We have carefully considered the rival submissions and also the order of the learned single Judge.

17. The impugned order of the learned single Judge dated 8.2.2006 and the judgment of the First Bench in Thamiraparani Investments case

(2006(1) CTC 270) came to be passed on 21.12.2005. Even though the decision of the First Bench was prior in point of time, we find that the

decision of the First Bench was not placed before the learned single Judge. Even though the Respondent/Plaintiff has filed the suit for permanent

injunction restraining the Appellant(s)/Defendant(s) from alienating or encumbering the suit property, Respondent/Plaintiff has also prayed for

injunction restraining the Appellant(s)/Defendant(s) from ""dealing with the property"". Prayer sought for in the plaint ""dealing with the property"" has

to be interpreted and the prayer in the plaint has to be reconsidered in the light of the judgment of the First Bench in Thamiraparani Investments

case (2006(1) CTC 270). In our opinion, it would be appropriate to remit the matter back to the learned single Judge to re-consider the matter in

the light of the judgment of the First Bench of this Court in Thamiraparani Investments case 2006(1) CTC 270.

18. Order 7 Rule 11 C.P.C., enumerates the circumstances under which a Civil suit can be dismissed without trial. Dismissal as a consequence of

rejection of plaint under Order 7 Rule 11 of the Code in the following grounds:

(i) where it does not disclose a cause of action;

(ii) where the relief in the plaint is undervalued and the Plaintiff fails to correct the valuation within the time fixed;

(iii) where the court fee paid is insufficient and the Plaintiff fails to make good

the deficit within the time fixed by court;

(iv) where the suit appears from the statement in the plaint to be barred by law;

(v) where it is not filed in duplicate and where the Plaintiff fails to comply with the provisions of Order 7 Rule 9 of the Code.

19. As pointed out earlier, in Application No. 4163 of 2005 in C.S. No. 831 of 2005, leave to sue was obtained. When Court has granted leave

to sue, even though the Appellants/Defendants contends that such leave granted by the Court is non est., in our opinion, it would have been in

order, if an application to revoke leave has been filed. Since we remit the matter back to the learned single Judge, liberty is granted to the

Appellant/Defendant in C.S. No. 831 of 2005 to file application to revoke the leave.

20. Two subsequent happenings are relevant to be noted. Subsequent to the order passed by the learned single judge, the Respondent/Plaintiff

filed suits O.S. Nos. 202 and 203 of 2007 for specific performance on the file of the Principal District Court, Tiruvallur. The

Appellants/Defendants filed petitions in I.A. Nos. 569 of 2007 in O.S No. 202 of 2007 and I.A. No. 572 of 2007 in O.S. No. 203 of 2007 for

interim injunction restraining the Defendants from in any manner alienating, encumbering or otherwise deal with the property. Invoking the

supervisory jurisdiction of the High Court under Article 227 of the Constitution of India, Appellant(s)/Defendant(s) have filed revisions in C.R.P.

Nos. 3758 and 3759 of 2007 to strike off the plaints in O.S. Nos. 202 and 203 of 2007. Both the revisions came to be dismissed by the

Common Order dated 6.10.2008, against which the Appellant(s)/Defendant(s) are stated to have preferred SLP Nos. 1088 and 1184 of 2010

before the Supreme Court and the same are said to be pending.

21. Yet another development is that consequent to the enhancement of pecuniary jurisdiction of the City Civil Court, C.S. Nos. 831 of 2005 and

833 of 2005 have been transferred to the City Civil Court and re-numbered as O.S. Nos. 10189 and 10745 of 2010 respectively. Since earlier

the matter has been dealt with by learned Judge of the High Court, it would be appropriate that the matter be again heard by a learned single Judge

of the High Court. In such view of the matter, both the suits # O.S. Nos. 10189 (C.S. No. 831 of 2005) and 10745 of 2010 (C.S. No. 833 of

2005) on the file of City Civil Court, Chennai shall be re-transferred to the High Court.

22. In the result, both the appeals are allowed and the Orders of the learned single Judge dated 8.2.2006 in Application No. 222 of 2006 in C.S.

No. 831 of 2005 and Application No. 242 of 2006 in C.S. No. 833 of 2005 are set aside by (i) remitting the applications back to the learned single

Judge for consideration of the matter afresh in the light of the judgment of the First Bench of this Court in Thamiraparani Investments case 2006(1)

CTC 270; (ii) suits in O.S. Nos. 10189(C.S. No. 831 of 2005) and 10745 of 2010 (C.S. No. 833 of 2005) on the file of City Civil Court,

Chennai are ordered to be re-transferred to the Original Side of the Madras High Court and ordered to be restored in their Original Number i.e.,

C.S. Nos. 831 and 833 of 2005 and (iii) both parties are at liberty to file additional affidavits/counter affidavits.

However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.