
(2016) 04 MAD CK 0026

In the Madras High Court

Case No : C.R.P.(PD) Nos. 710 and 711 of 2015 and M.P. Nos.1 and 2 of 2015

Devaneethi

APPELLANT

Vs

T. Sathiah

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2016) 2 MadWN(Civil) 254

Hon'ble Judges : P.R. Shivakumar, J.

Bench : Single Bench

Advocate : C.R.P.(PD) Nos. 710 and 711 of 2015; K.V. Subramanian, Senior Counsel for K.V. Subramanian Associates, for the Petitioner; C.R.P.(PD) No.710 of 2015; K. Chairman Selvaraj, Advocate, for the Respondent No. 1; Given up, for the Respondent Nos.2 to 13; K. Ch

Final Decision : Disposed Off

Judgement

P.R. Shivakumar, J.—These two Civil Revision Petitions have arisen out of a Common Order and Decretal Orders dated 10.9.2014 made in I.A. No. 12786 of 2011 in O.S. No.12139/2010 on the file of the I Additional District Judge, City Civil Court, Chennai and I.A. No.12785/2011 in O.S. No. 12140/2010 on the file the same Court. Both the Applications were filed under Order 7, Rule 11 , C.P.C. for rejection of the Plaint in the respective Suits. The learned Trial Judge, after hearing both sides, dismissed both the Applications and hence, these Civil Revision Petitions have been filed by the Petitioner herein, who figures as the Third Defendant in both the Suits.

2. The First Respondent has entered appearance and he is represented by a Counsel Respondents 2 to 13 in C.R.P.(PD) No 710/2015 have been given up as they are Co-Defendants. Similarly Respondents 4 to 21 in C.R.P (PD) No 711/2015 have been given up. The arguments advanced by Mr. K.V. Subramanian, learned Senior Counsel representing the Counsel on record for the Petitioner in both the Revisions and by Mr. K. Chairman Selvaraj, learned Counsel

for the First Respondent in C.R.P. (PD) No.710/2015 and for Respondents 1 to 3 in C.R.P. (PD) No 711/2015 were heard. The certified copies of the Common order and the Decretal Orders of the Trial Court, grounds of Revision and the copies of other documents produced in the form of typed set of papers were also perused.

3. The First Respondent in C.R.P.(PD) No.710/2015, namely P Sathiah, is none other than the husband of Dr. S. Vasanthamala and father of Dr. T.S. Deepa and minor T.S. Vijaya Shankar, who are the Respondents 1 to 3 in the other Civil Revision Petition, namely C.R.P.(PD) No. 711/2015. In both the cases, Devaneethi is the Petitioner and he figures as the Third Defendant in both the Suits. O.S. No 12139/2010 was filed by T. Sathiah, the First Respondent in C.R.P. (PD) No.710 2015 against K.A. Thirumurugan and 12 others, out of whom, the Revision Petitioner-Devaneethi figures as the Third Defendant O.S. No. 12140/2010 was filed by the Respondents 1 to 3 in C.R.P.(PD) No.711/2015 against T. Tayanthi and 20 others, out of whom, Devaneethi, the Revision Petitioner, figures as the Third Defendant O.S. No 12139/2010 was filed by T. Sathiah, the First Respondent in C.R.P. (PD) No 710/2015, originally on the file of the High Court of Madras on its Original Side as C.S. No. 318/2001 for the following reliefs:

(1) Specific performance directing the Defendants 1 to 10 therein to execute and register a Sale Deed in respect of the Suit properties, namely an extent of 10,172 sq.ft. bearing Plot Nos.3, 4, 8 & 9, out of a total extent of 1.93 acres comprised in S Nos 483, 485 & 486 of Mogappair Village, Saidapet Taluk, Chengalpattu District within the Registration District of Central Madras and Sub-Registration District of Ambattur, after accepting the balance amount of sale consideration in accordance with the Agreement for Sale relied on by him or in the alternative for the refund of the advance amount with interest at the rate of 21% per annum;

(2) a declaration that the Sale Deeds dated 22.7.1997 registered as Document Nos. 3164 3165 & 3167 of 1997 on the file SRO, Villivakkam, executed in favour of the Defendants 11 to 13 therein to be illegal, null and void and not binding on the First Respondent/Plaintiff,

(3) a direction to the Defendants 1 to 10 to pay a sum of Rs. 1,00,000 with interest from the date of Complaint towards damages to the non-compliance of the Agreement for Sale from the Defendants 1 to 10 in the Suit, and

(4) a direction for payment of Cost.

The Prayer (1) does not refer to the date of Agreement, based on which the relief of Specific Performance or in the alternative refund of advance amount was sought for. Cause of action for the Suit has been provided in Paragraph 17 of the Complaint and the same reads as follows:

"17. The cause of action arose at Madras when the Plaintiff and Tenth Defendant

executed an Agreement of Sale dated 3.3.1995 for registration of Sale Deed for the Schedule mentioned property herein belongs to Defendants 1 to 9 herein and advance amount was paid on the date of Agreement to the Tenth Defendant herein which has been acknowledged by him. Subsequently on 8.4.1995 further sale consideration of Rs. 1,00,000 (Rupees one lakh only) was acknowledged by the Tenth Defendant herein. And on 3.3.1995 arrangements for mediation was done in the presence of Witness of the Sale Agreement. Subsequent on 15.7.1996, Legal Notice was sent to the Tenth Defendant herein. The same was returned with an endorsement as "refused" on 12.8.1996 when the same Legal Notice was sent to the Tenth Defendant again Again in December 1996, Legal Notice was sent through their Advocate-Thiru. N. Shanmugavelu, Advocate. Subsequently Criminal Complaint dated 14.5.1997 was lodged before the Assistant Commissioner of Police, Chennai-600 008. Subsequently on 1.6.1997 and on 16.6.1999 discussion were done by the Plaintiff and the Tenth Defendant herein. Finally on 19.10.2000 Legal Notice was sent to the Tenth Defendant, same was returned as "not claimed" Since negotiation was made with Defendant 11 to 13 for completing the sale transaction by the Defendants 1 to 10 herein and as the Plaintiff is ready and willing to perform his part of the obligations under the Agreement Further on 28.8.1997, the 1st, 3rd & 10th Defendants gave assurance for return of the advance amount, on 24.9.1997, agreed to do registration by the 10th Defendant, subsequently on 15.12.1998, 10th Defendant gave an Memorandum of Undertaking to the Plaintiff and to his family members, to offer alternative property to compensate their advance amount, again on 30.11.1999 executed a Deed of Agreement by the 10th Defendant, and insisted for further, period till 27.12.1999."

4. Besides narrating the earlier transaction, the Plaintiff has also referred to an alleged assurance given on 28.8.1997 by Defendants 1, 3 and 10 for the return of the advance amount. He has also referred to an alleged Agreement dated 20.4.1999 by the 10th Defendant to register a Sale Deed in his favour. In addition, he has also referred to a Memorandum of Understanding dated 15.12.1998 given by the 10th Defendant in favour of the Plaintiff and his family members, offering an alternative property to compensate the advance amount paid by them. At last, the Plaintiff has also relied on a Deed of Agreement dated 30.11.1999 executed by the 10th Defendant as the last cause of action.

5. Relying on the said averments, the Revision Petitioner/Third Defendant filed the Application under Order 7, Rule 11 , C.P.C., contending that the Suit as against the Revision Petitioner/Third Defendant, based on the Original Agreement is not maintainable. He contended that when the Plaintiff himself has made an averment that the same was novated by a fresh Agreement executed by the Tenth Defendant, the Suit based on the Original Agreement is not maintainable and that the cause of action for suing for Specific Performance and other reliefs on the basis of the Original Agreement dated 3.3.1995 no longer subsists. Based on the same, he prayed for the rejection of the Plaint, contending that the Plaint averments themselves will show non-existence of the cause of action for suing

on the Original Agreement.

6. The Suit in O.S. No. 12140 2010 was filed by the Respondents 1 to 3 in C.R.P. (PD) No.711/2015 originally on the file of the High Court of Madras on its Original Side as O.S. No.967/2001 for the following reliefs:

(a)(i) directing the Defendants 1 to 11 to execute Sale Deeds in favour of the 1st Plaintiff after receiving the balance sale consideration of Rs. 4,50,000 (Rupees four lakhs and fifty thousand only) from the 1st Plaintiff in respect of Item No. 1 of the Suit Schedule of property (Plot Nos 1, 2, 6 & 7), and if the Defendants 1 to 11 failed to execute such Sale Deed, this Hon''ble Court may be pleased to execute Sale Deeds in favour of the 1st Plaintiff relating to the said property after permitting the 1st Plaintiff to deposit the balance sale consideration of Rs. 4.50,000 (Rupees four lakhs and fifty thousand only) before this Hon''ble Court to the credit of this Suit.

(ii) directing the Defendants 1 to 11 to execute the Sale Deeds in favour of the 2nd Plaintiff after receiving the balance sale consideration of Rs. 6,00,000 (Rupees six lakhs only) from the 2nd Plaintiff in respect of Item No.2 of the Suit Schedule of property (Plot Nos. 11, 12, 13 & 14) and if the Defendants 1 to 11 failed to execute such Sale Deed, this Hon''ble Court may be pleased to execute Sale Deeds in favour of the 2nd Plaintiff relating to the said property after permitting the 2nd Plaintiff to deposit the balance sale consideration of 76,00,000 (Rupees six lakhs only) before this Hon''ble Court to the credit of this Suit.

(iii) directing the Defendants 1 to 11 to execute the Sale Deeds in favour of the 3rd Plaintiff after receiving the balance sale consideration of Rs. 3,00,000 (Rupees three lakhs only) from the 3rd Plaintiff in respect of Item No. 3 of the Suit Schedule of property (Plot Nos.5 & 10). and if the Defendants 1 to 11 failed to execute such Sale Deed, this Hon''ble Court may be pleased to execute Sale Deeds in favour of the 3rd Plaintiff relating to the said property after permitting the 3rd Plaintiff to deposit the balance sale consideration of Rs. 3,00,000 (Rupees three lakhs only) before this Hon''ble Court to the credit of this Suit,

(b)(i) to declare that the documents namely Sale Deed bearing Nos 3159/97, 3160/97, 3161/97, 3164/97, 3165/97 & 3166/97 dated 22.7.1997 and document No.3447/97 dated 11.8.1997, registered in the office of the Sub-Registrar. Konnur, executed in favour of the Defendants 12 to 17 relating to the Suit Schedule of property are sham and nominal, null and void and to set aside the same;

(ii) to declare that the Memorandum of Deposit of Title Deeds bearing Document Nos. 1287 99 & 1284/99 dated 22.9 1999, registered in the office of the Sub-Registrar. Konnur, executed in favour of the Defendants 18 and 19 are sham and nominal and null and void and to set aside the same;

(c) If this Hon''ble Court deems that the Plaintiffs are not entitled to specifically

enforce the Agreements dated 3.3.1995, entered into between the Plaintiffs and Defendants 1 to 9 & 11, directing the Defendants 1 to 9 & 11 jointly and severally refund the advance amount of Rs. 5,00,000 (Rupees five lakhs only) to the 1st Plaintiff together with 24% Interest from 3.3.1995 till the date of payment, Rs. 2,21,000 (Rupees two lakhs and twenty one thousand only) to the 2nd Plaintiff with 24% Interest from 5.3.1995 till the date of payment and Rs. 3,87,000 (Rupees three lakhs and eighty seven thousand only) to the 3rd Plaintiff with Interest at 24% per annum from 3.3.1995 till the date of payment;

(d) directing the Defendants to pay the Cost of the Suit to the Plaintiffs.

7. In the said Plaint, no separate paragraph setting out cause of action has been provided. However, Paragraphs 12 & 13 of the Plaint contain averments relating to the cause of action. They are reproduced as under:

"12. The Plaintiffs submit that the Suit Agreements were entered into on 3.3.1995. The Plaintiffs sent Notices on 15.7.1996 and the same was refused by the 11th Defendant, where by the 11th Defendant indicated his intention of not executing Sale Deeds in favour of the Sale Deeds as per the said Agreements of Sales. On 15.12.1998, the 11th Defendant gave a Memorandum of Understanding, wherein he acknowledge the receipt of Rs. 17,00,000 (Rupees seventeen lakhs only), including the advances paid by the Plaintiffs, and he promised to give an alternative site. Again the 11th Defendant has given a Deed of Assurance on 30.11.1999 and promised to refund Rs. 17,00,000 (Rupees seventeen lakhs only) with interest, which includes the advances paid by the Plaintiffs, on or before 27.11.1999 Therefore, the present Suit filed today is well in time and it is not barred by limitation.

13. The Plaintiffs further submit that all the Plaintiffs have joined together and filed the present Suit, since the right of Plaintiffs' reliefs arose out of series of transactions between the Plaintiffs individually on the one hand and the Defendants 1 to 11 on the other hand. Moreover, a common question of facts and law involved in this Suit and therefore separate Suits by individual Plaintiffs were not filed. Further the Cause of Action to file this Suit also arise from a common factor that the Defendants 1 to 9 & 11 illegally denied the execution of Sale Deeds in favour of the Plaintiffs. Therefore, a single Suit is filed and the same is maintainable in law."

The causes of action recited therein are (a) execution of Agreement dated 3.3.1995, (b) the execution of Memorandum of Understanding dated 15.12.1998 by the 11th Defendant acknowledging the receipt of Rs. 17.00 lakhs and promising to give an alternative site, and (c) execution of a Deed of Assurance by the 11th defendant as on 30.11.1998 undertaking to refund Rs. 17.00 Lakhs with Interest.

8. Relying on the aforesaid averments, which implies a novation of the Original Agreement with a subsequent Agreement, which was accepted by the Plaintiffs in the said Suit, the Revision Petitioner C.R.P. (PD) No. 711 of 2015/Third

Defendant has approached the Trial Court with an Application under Order 7, Rule 11 , C.P.C., for rejection of the Plaintiff, contending that the Plaintiff allegations negative the survival of the cause of action based on the Original Agreement for Sale

9. The Suit filed by T. Sathiah. the First Respondent in C.R.P.(PD) No.710 of 2015 on the file of the High Court on its original side as C.S. No. 318/2001 and the Suit filed by his wife and children, namely Respondents 1 to 3 in C.R.P. (PD) No 711/2015, were subsequently transferred to the City Civil Court and re-numbered as O.S. Nos.12139/2010 & 12140/2010 respectively and were made over to the First Additional Judge, City Civil Court, Chennai for disposal according to law. Even before the transfer of the cases to the City Civil Court, Chennai the proceedings were completed, issues were framed, joint trial of the cases was started and evidence came to be recorded in the High Court. Only on change of law enhancing the Pecuniary jurisdiction of the City Civil Court, the cases came to be transferred to the said Court at the part-heard stage. At that point of time, the Revision Petitioner in both the Civil Revision Petitions, who figures as the Third Defendant in both the Suits, filed the Applications concerned in these Revisions, both under Order 7, Rule 11 , C.P.C., for rejection of the Plaintiff.

10. The sole ground on which the Revision Petitioner sought rejection of the Plaintiff is that the Suits were filed based on the Original Agreements for Sale, when the Plaintiff averments are to the effect that the Suit Agreements were substituted by fresh Agreements and Memorandum of Understanding executed by the 10th Defendant and 11th Defendant respectively. A reading of the Plaintiff, especially the prayer portion of the Plaintiff, will make it clear that the Plaintiffs have not made it unambiguous in their Plaintiff, as to whether the claim was made based on the Original Agreements for Sale dated 3.3.1995 or on the latest Agreements substituting the Original Agreements. In fact in the prayer portion, date of Agreement based on which the Suit has been filed has not been mentioned. The mere omission to mention the date of Agreement based on which the Suit has been filed shall not be enough to reject the Plaintiff. Assuming that the Suit has been filed based on the Original Agreements dated 3.3.1995, which were admittedly substituted by subsequent Agreements, had the Suit been filed for the enforcement of the Original Agreement alone, there would not be any difficulty in holding that the cause of action for suing on the Original Agreement is no longer available. On the other hand, the Suits have been filed also for the alternative relief of refund of advance amount with interest and for other reliefs. However in the other Suit, namely O.S. No 12140/2010 concerned in C.R.P.(PD) No 711/2015, though prayer (a) with reference to Item Nos.1 to 3 of the Suit properties is one for the relief of Specific Performance, it does not refer to the date of Agreement based on which the relief of Specific Performance is sought for Prayer (b) contains two prayers for declaration that the Sale Deeds and the Memorandum of Deposit of Title Deeds bearing Document Numbers 3159/97, 3160/97, 3161/97, 3164/97, 3165/97 & 3166/97 (all dated 22.7.1997) and Document No. 3447/99 dated 11.08.1997 to be null and void. Prayer (c)

alone refers to the Original Agreement dated 3.3.1995 based on which the alternative relief of refund of advance amount with Interest at the rate of 24% has been sought for.

11. If at all the relief of Specific Performance alone was sought for, there would not be any difficulty. The prayer for alternative relief, namely refund of the advance amount, namely the amount undertaken to be paid under the Memorandum of Understanding dated 15.12.1998, can be taken as a prayer based on such Memorandum of Understanding. The Court below, could have considered whether the prayer could be construed to be a prayer made based on such MoU or Memorandum of Assurance. If not, then the question whether the Suit based on the original cause of action, namely on the basis of the Original Agreement is available should have been gone into by the Trial Court. The learned Trial Judge also could have gone into the question whether some of the prayers made in the Suit could be construed to be the prayers made on the basis of the subsequent Agreements with which the Original Agreements were substituted. The learned Trial Judge, without taking into the account the above said aspects, by a crippled Order held that the Petitions could not be allowed as they were filed at a belated stage, that too, in the part-heard stage and that on the said ground alone the Petitions were liable to be dismissed.

12. Order 7, Rule 11 C.P.C., makes it clear that the Plaint shall be rejected, if the Suit falls under any one of the sub-clauses of Rule 11 Order 7, Rule 11, C.P.C., is reproduced here under

"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, or where the relief claimed is properly valued, but the Plaint is written 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;
- (c) where the Suit appears from the statement in the Plaint to be barred by any law;
- (e) where it is not filed in duplicate,
- (f) where the Plaintiff fails to comply with the provision of Rule 9.

Provided that the time fixed by the Court for the collection of the valuation or supplying of the requisite Stamp Papers 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 Papers, 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"

Without considering the scope of the Rule, the learned Trial Judge, chose to adopt an easy way of dismissing the Applications on the ground that they were filed at a belated stage after filing of the Written Statement and after the cases were made part-heard. The reason assigned by the learned Trial Judge for dismissing the Applications cannot be sustained. The learned Trial Judge has committed an error in exercise of jurisdiction, which resulted in the non-exercise of jurisdiction for the rejection of Plaint under Order 7, Rule 11 , C.P.C. Hence the Civil Revision Petitions are bound to be allowed and the Common Order and Decretal Orders of the Trial Court dated 10.9.2014 made in I.A. No. 12786 2011 in O.S. No. 12139 of 2010 and I.A. No. 12785/2011 in O.S. No. 12140 of 2010 are liable to be set aside I.A Nos 12786/2011 and 12785/2011 are to be remanded back to the Trial Court to reconsider the same in the light of the foregoing observations and pass fresh Orders in accordance with law, after giving both parties to put forward their additional submissions for rendering complete justice

In the result, the Civil Revision Petitions are allowed and the Decretal Orders of the Trial Court dated 10.9.2014 made in I.A. No. 12786/2011 in O.S. No 12139 of 2010 and I.A. No. 12785/2011 in O.S. No. 12140 of 2010 are set aside. I.A. No. 12786/2011 in O.S No. 12139 of 2010 and I.A. No. 12785/2011 in O.S. No. 12140 of 2010 are remanded back to the Trial Court for fresh disposal, after giving an opportunity to both parties to put forward their additional submissions in the light of the observations made by this Court. It is hereby clarified that it shall be open to the Plaintiffs in the suits, if so advised, to seek permission to amend the Plaint to give up their claim for Specific Performance on the basis of the Original Agreements dated 03.03.1995 and restrict their claim for refund/recovery of money based on the subsequent Memorandum of Understanding dated 15 12.1998. However, there shall be no order as to Cost in these Revisions. Consequently, the connected Miscellaneous Petitions are closed.