
(2013) 06 MAD CK 0002

In the Madras High Court

Case No : C.R.P. (PD) (MD) . No. 945 of 2013 and M.P. (MD) No. 1 of 2013

G. Subramani

APPELLANT

Vs

V. Rajasekaran and S. Radhakrishnan

RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 11

Citation : (2013) 4 CTC 468

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

Bench : Single Bench

Advocate : K.S. Sankhar Murali, for the Appellant; A. Edwin Prabakar, for the Respondent

Judgement

P.R. Shivakumar, J.—The arguments advanced by Mr. K.S. Sankhar Murali, learned counsel for the petitioner and by Mr. A. Edwin

Prabakar, learned counsel for the first respondent are heard. The first defendant in the Original Suit in O.S. No. 81 of 2011 is the petitioner in the

Civil Revision Petition. The suit was filed by the first respondent herein for the following reliefs:

- (a) Dissolution of partnership;
- (b) Rendition of accounts; and
- (c) Equal distribution of the assets of the partnership.

All those prayers have been made based on another prayer that a deed of retirement from partnership dated 19.05.2010 was null and void and

that the said document should be declared null and void. Of course, while framing the suit, the prayers for the other reliefs had been placed above

the prayer for the relief of declaration of the deed of retirement to be null and

void. Such a defect shall be only in the form and it cannot be stated

to be a material defect to assume that the earlier prayers were not based on the subsequent prayer.

2. The first defendant, viz., the petitioner in the Civil Revision Petition, after entering appearance and filing a written statement in the suit in O.S.

No. 81 of 2011, chose to file an Interlocutory Application in I.A. No. 105 of 2012 under Order 7 Rule 11 of the CPC for the rejection of the

plaint on the following grounds:

(a) The plaint does not disclose a cause of action;

(b) The suit is barred by Section 4 of the Benami Transactions (Prohibition) Act, 1988;

(c) The plaint is liable to be rejected on the ground of suppression of material fact and abuse of process of Court insofar as the first

respondent/plaintiff had chosen to deny the execution of a document executed by him and receipt of a huge amount viz., Rs. 2,30,00,000/-

(Rupees Two Crores and Thirty Lakhs only) for his retirement from the partnership.

3. The learned trial Judge, after hearing, opined that a plea made in the plaint to the effect that some of the properties purchased in the name of one

Meenakshi, who was not a partner at the relevant point of time, were purchased out of the partnership assets and hence, the property should also

be construed to be a property of the partnership firm, was hit by Section 4 of the Benami Transactions (Prohibition) Act, 1988. However, taking

into account the fact that the said plea of the first respondent/plaintiff was not the ground on which the main reliefs in the suit had been sought for

and the said claim was only incidental to the main reliefs, the learned trial Judge chose to stop with the observation that such a plea would be

barred by Section 4 of the Benami Transactions (Prohibition) Act, 1988.

4. So far as the contention of the revision petitioner that the plaint did not disclose a cause of action is concerned, the learned Trial Judge

considered in proper perspective the averments made in the plaint and came to a conclusion that the plaint disclosed a cause of action and hence,

the prayer for rejection of the plaint on the ground that the plaint does not disclose a cause of action was bound to be discountenanced.

5. So far as the other ground alleged by the revision petitioner is concerned, the

learned Trial Judge disagreed with the contention of the revision petitioner, which resulted in the dismissal of the Interlocutory Application in I.A. No. 105 of 2012 by order dated 17.04.2013, which is impugned in the present Civil Revision Petition.

6. The matter stands listed today for admission. Mr. K.S. Sankhar Murali, learned counsel for the revision petitioner put forward the very same arguments, which were advanced before the lower Court, in the Civil Revision Petition also. The main submission of the learned counsel for the revision petitioner is that the first respondent/plaintiff, having admitted the receipt of Rs. 2,30,00,000/- (Rupees Two Crores and Thirty Lakhs only) by executing a document of undertaking and thereafter, confirming the same by executing a document of retirement from the partnership firm, had chosen to deny and dispute the said facts and file the suit as a vexatious suit containing false and untenable averments.

7. It is the further submission of the learned counsel for the revision petitioner that one of the averments made in the plaint being hit by the bar provided u/s 4 of the Benami Transactions (Prohibition) Act, 1988, the learned Trial Judge ought to have rejected the plaint, when it concurred with the submissions made on behalf of the revision petitioner/first defendant in this regard. It is the further contention of the learned counsel for the revision petitioner that the question of genuineness of the deed of retirement was challenged before the Registrar of Firms and the Registrar of Firms, as a quasi judicial authority, decided the question genuineness and validity of the same in the affirmative and the same would amount to a bar of res judicata to the suit.

8. With due regard to the submissions made by the learned counsel for the revision petitioner, this Court holds that none of the above said submissions made by the learned counsel for the revision petitioner can be countenanced. As pointed out supra, the question of attraction of the bar provided u/s 4 of the Benami Transactions (Prohibition) Act, 1988 is nothing but an incidental issue to the main issues viz., whether the deed of retirement by which the first respondent/plaintiff is alleged to have retired from the partnership firm is legally not valid and is to be declared null and void? and whether the plaintiff's prayer for dissolution of partnership firm, rendition of accounts and distribution of the partnership assets can be

sustained?. A plaint can be rejected in toto and it cannot be rejected in part.

9. So far as the question of suppression of material fact is concerned, this Court is of the considered view that the revision petitioner has not made

out any case that there has been a suppression of a material fact on the question of jurisdiction or cause of action, which can be viewed as an

abuse of process of Court. The contention that the first respondent/plaintiff has chosen to deny the receipt of an amount allegedly paid to him in

consideration of his retirement from the partnership firm and the denial of due execution of the retirement deed by him, shall not be the ground on

which the plaint can be rejected, as the contention of the revision petitioner, in this regard, is that the first respondent/plaintiff has made a false

allegation. Such a contention has to be tried as an issue and decided in the suit and the same can never be a ground for rejection of the plaint.

10. The other contention that the decision of the Registrar of Firms that the retirement date was genuine and valid would operate as res judicata

and hence, the same shall be a statutory bar for the present suit is also bound to be rejected, because the learned counsel is not in a position to

show any provision which says that the decision of the Registrar of Firms shall be final and that Civil Court's jurisdiction to go into the question

stands barred. Even otherwise, the question of bar of res judicata shall not be the ground on which a plaint can be rejected. What Section 11 of

the CPC says is that a question, which has been substantially and directly raised as an issue in a previously decided suit, shall not be tried by the

Court dealing with the subsequent suit. So, the said provision can be interpreted to mean that such a suit can be dismissed on the ground of bar of

res judicata and it cannot be stretched too much to say that the bar of res judicata shall be the ground for rejection of the plaint. The question of res

judicata shall be a mixed question of law and fact. It has got to be raised and decided. A plaint can be rejected based on the pleadings made in the

plaint and the documents produced along with the plaint. A plaint cannot be rejected based on the defence statement of the defendant made in the

written statement or any averment made in the affidavit filed in support of the application filed under Order 7 Rule 11 of the Code of Civil

Procedure. The above said observations made by this Court shall be sufficient to hold that there is no merit in the Civil Revision Petition and the

same deserves dismissal. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is also dismissed. No costs.