
(2001) 01 MAD CK 0039

In the Madras High Court

Case No : C.R.P. No. 3928 of 1999 and C.M.P. No. 22015 of 1999

K. Thakshinamoorthy and another

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4, Order 7 Rule 11
Specific Relief Act, 1963 — Section 31, 38, 41

Citation : AIR 2001 Mad 167 : (2001) 3 LW 83

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : Mr. Parthasarathy, for the Appellant; Mr. S. Thiyagarajan, for the Respondent

Judgement

1. The defendants in O.S.No.69 of 1999 in I.A.No.63 of 1999 are the petitioners in this revision petition. The respondent is the plaintiff. The

present revision petition has been filed as against the order of the learned First Additional Subordinate Judge, Madurai made in I.A.No.279 of

1999 in I.A.No.63 of 1999 in O.S.No.69 of 1999. The parties are referred to as they are arrayed in the suit.

2. The plaintiff-State Bank of India, Arasaradi Branch, Madurai represented by its Branch Manager filed a suit against the defendants for a

judgment and decree for permanent injunction restraining the defendants from alienating/selling the scheduled properties or to create any charge

over the same. Pending the suit, the plaintiff also filed I.A.No. 63 of 1999 seeking for interim injunction restraining the defendants from alienating

the properties.

3. The defendants filed I.A.No.279 of 1999 for a direction under Order 7, Rule 11

of C.P.C. to reject the plaint filed in O.S.No.59 of 1999 as

not maintainable. By filing a common counter, the defendants also prayed for vacation of the order of ad-interim injunction granted in favour of the

plaintiff in I.A.No.63 of 1999 dated 21.1.99.

4. Both these applications were heard together by the learned First Additional Subordinate Judge, Madurai. By order dated 20.9.99, the learned

Subordinate Judge dismissed the application filed by the defendants in I.A.No.279 of 1999 seeking for a direction to reject the plaint filed under

Order 7, Rule 11 of C.P.C. The learned Judge by the very same order also made the injunction granted on 21.1.99 absolute. Aggrieved by the

order passed in I.A.No.279 of 1999, dated 20.9.99 the defendants have preferred the present revision petition.

5. Mr. Parthasarathy, learned counsel appearing for the petitioners raised the following points:-

(i) There is no cause of action as pleaded by the plaintiff in the plaint to maintain the suit and therefore the plaint is liable to be rejected ;

(ii) In view of legal bar u/s 38 read with Section 41(h) of the Specific Relief Act, the suit is not maintainable; and

(iii) Non disclosure of materials in the plaint to show a definite cause of action shall disentitle the plaintiff to pursue the suit and therefore the plaint

itself is liable to be rejected.

6. In so far as the first contention, the learned counsel would draw my attention to paragraph 9 of the plaint which reads as follows:-

The plaintiff is waiting for the ultimate report of the CBI, the investigating agency for fuller information, details and particulars of the fraudulent

activities of the defendants mentioned above for the purpose of taking the necessary civil action for the recoveries of monies misappropriated by

the 1st defendant as stated in the above said manner; on a rough calculation, nearly a sum of Rs.3 crores of the plaintiff have been swindled in the

above manner. There are very strong grounds and evidences against the defendants 1 and 2 about their unlawful and illegal acts as contended.

The learned counsel would contend that for maintaining the suit, all that has been pleaded by the plaintiff for cause of action is the ultimate report of

the CBI. Therefore, on the date when the suit was filed, there was no cause of action actually in existence for the plaintiff to seek for a judgment

and decree and injunction restraining the defendants from alienating, selling the scheduled properties or to create any charge over the same.

Therefore, the learned counsel would contend that the suit filed without any cause of action is liable to be rejected and the learned Subordinate

Judge has erroneously rejected the request of the petitioners/defendants to reject the plaint filed under Order 7, Rule 11 of C.P.C. without

properly appreciating the above contention. Therefore, the learned counsel would contend that the order of the learned Subordinate Judge is liable

to be rejected and consequently a direction should be given by rejecting the plaint.

7. In so far as the second contention, the learned counsel would draw my attention to Section 38 read with Section 41(h) of the Specific Relief Act

which are extracted as follows:--

38. Perpetual injunction when granted--(I) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may

be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property, the court may grant a perpetual injunction in

the following cases, namely:-

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

41. Injunction when refused.-- An injunction cannot be granted-

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceedings except in case of breach of trust.

On a reading of the above proviso, it would be clear that a decree of perpetual injunction cannot be granted on the alleged cause of action as

pleaded by the plaintiff in the plaint and in the absence of any material as

contemplated u/s 31 of the Act. Further, the learned counsel submitted that the plaintiff has efficacious remedy of filing a suit for recovery of money and therefore the plaintiff cannot sustain the suit. Therefore, the learned counsel would contend that the plaint is liable to be rejected.

8. Finally the learned counsel would contend that even in the plaint there are no materials disclosed to show a definite cause of action. The learned counsel would submit that as per Order 6, Rule 4 of C.P.C., in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading. The learned counsel would contend that no such particulars have been furnished by the plaintiff in the plaint and therefore such a plaint without any particulars to sustain a definite cause of action disclosed in the plaint is liable to be rejected.

9. Per contra, Mr.S.Thyagarajan, the learned counsel appearing for the respondent/plaintiff, in so far as the first contention of the learned counsel for petitioners would contend that when the averments in the plaint are relied upon, the plaint should be read in whole and not in an isolated manner as has been done by the learned counsel for the petitioner by drawing the attention of this Court to paragraph 9 of the plaint alone. In fact in paragraphs 4, 5, 6 (a), 6 (b), 7 and 8 of the plaint, the details of the fraud committed by the defendants have been narrated. The learned counsel would contend that on a careful reading of those details mentioned in the above paragraphs would sustain an existence of a cause of action to file the suit against the defendants. In fact, the learned counsel would contend that when the 1st defendant was working as a Branch Manager of Arasaradi Branch of the plaintiff bank from 5.7.96 to 6.10.98, it was found that in his official discharge of duties, he committed certain grave acts with fraudulent motives, resulting in heavy loss to the plaintiff. For the said act the 1st defendant was suspended. It has been specifically pleaded in the plaint that, during the 1st defendant's tenure of office in Arasaradi Branch, by misusing the powers and privileges as the head of the said Branch, he tampered with the office records and wrongly utilised the demand drafts purchase system and misused the special term deposit receipt

books, committed forgery and other unlawful and illegal acts misappropriated large amounts of money on different occasions. Therefore, the learned counsel would contend that when the entire contents of the plaint is read as a whole, it would be clear that there is a cause of action for the plaintiff to sue against the defendants. Further, the learned counsel would contend that as to whether, based upon the averments contained in the plaint, a cause of action exists for institution of a suit or not is matter of evidence and the plaint itself cannot be rejected on that score alone. The learned counsel would further contend that the properties which are subject matter of the suit have allegedly been purchased by the 1st defendant either in his name or in the name of the 2nd defendant from out of the money misappropriated while he was working as an Officer of the plaintiff bank in Arasaradi Branch and there was a threat to the plaintiff that in the event that these properties are disposed of by the defendants, there would be nothing left for the plaintiff to recover from the defendants, in case if the report of the enquiry implicates the 1st defendant for having committed misappropriation of a huge sum of money nearly Rs. 3 crores. Therefore, there is an actual threat apprehended by the plaintiff from the defendants for dispossessing the properties and therefore the relief as claimed in the suit is maintainable.

10. In regard to the second contention of the learned counsel for petitioner the learned counsel for the respondent would contend that the provisions contained in the Specific Relief Act is with regard to the grant of relief and the said Act does not bar any suit more particularly with reference to a cause of action. Moreover, the learned counsel would contend that when a fraud has been pleaded in the plaint, an application filed under Order 7, Rule 11 for rejecting the plaint on the ground that no valid cause of action was shown has to be rejected. Therefore, the learned counsel contended, the submission of the learned counsel for the petitioners that by virtue of Section 38 read with Section 41(h) of the Specific Relief Act, no relief could be granted on the basis of the averment contained in the plaint and therefore the plaint is liable to be rejected is totally misconceived.

11. In so far as the third contention of the learned counsel for petitioners, learned counsel would contend that the entire plaint has to be read as a

whole and going by the details furnished from paragraphs 4 to 9, it would be very clear that the plaintiff has disclosed sufficient materials for a

definite cause of action to sustain the plaint and therefore there is no question of rejection of the plaint. With the above contentions, the learned

counsel for the respondent prays for the dismissal of the revision petition.

12. In view of the rival submissions made by the respective counsel, it is to be first considered as to whether the averments contained in the plaint

disclose any cause of action for the plaintiff to maintain the suit. It is the submission of the learned counsel for the petitioners that except the

averments made in paragraph 9 of the plaint, there are no other averments in the plaint to sustain a cause of action. Per contra, the submission of

the learned counsel for the respondent is that while considering the question of cause of action this Court has to consider the averments contained

in the entire plaint and the Court cannot dissect the pleadings into several parts and by relying upon the averments in one paragraph, the Court

cannot reject the plaint. On going through the plaint, it is true that in paragraph 9 of the plaint the plaintiff has stated that "the plaintiff is waiting for

the ultimate report of the CBI, the investigating agency for fuller information, details and particulars of the fraudulent activities of the defendants for

the purpose of taking the necessary civil action for recovery of monies misappropriated by the defendants. However, in paragraph 4 to 9, the

plaintiff has clearly mentioned the fraud that was played by the petitioners herein over the bank and the misappropriation committed by the 1st

defendant while he was serving as an Officer of the bank. While considering an application under Order 7, Rule 11 of CPC, this Court has

necessarily to take into consideration of the entire averments made in the plaint as a whole and cannot come to a conclusion only on the basis of

the averments" made in a particular paragraph. If the entire averments made in paragraph 4 to 10 of the plaint is taken into consideration, I have no

doubt in my mind that the plaintiff has a cause of action to file a suit. In the judgment reported in D. Ramachandran Vs. R.V. Janakiraman and

Others, :the Apex Court while considering the question of rejection of petition in an election matter has held that for the purpose of considering a

preliminary objection, the averments in the petition should be presumed to be true and the Court has to find out, whether those averments disclose

a cause of action or triable as such and the Court cannot probe into the facts on the basis; of controversy raised in the counter. Further the Apex

Court while considering an application under Order 7, Rule 11-A of C.P.C has held that the Court cannot consider the pleadings under several

parts and whether each one of them discloses a cause of action. It is to be further noted that even though the part of the averments contained in the

plaint disclose a cause of action, that would be sufficient to sustain the plaint. This Court in a judgment reported in Dr. Ravichander v. Karunakaran

and others, 2000 (2) L.W 720 has also held that it is elementary under Order 7, Rule 11-A the Court cannot dissect the pleadings into several

parts and consider whether each one of them disclose a cause of action and there cannot be a partial rejection of plaint- or petition. That apart it is

one thing to plead that there is no cause of action as pleaded by the plaintiff in the plaint and there is a cause of action for the plaintiff to file a suit.

Admittedly, going by the averments contained in the plaint, I have no doubt in my mind that the plaintiff has a cause of action to file a suit on the

apprehension that the defendants may dispose of the properties in question and therefore to file the suit for property injunction. Therefore, I do not

find any merit in the contention of the learned counsel for the petitioners that there is no cause of action for the plaintiff to maintain the suit.

Accordingly, I reject the said contention.

13. In so far as the second submission of the learned counsel for the petitioners as to the legal bar to file a suit u/s 38 read with Section 41(h) of the

Specific Relief Act, it is to be noted that Specific Relief Act is only an equitable and common relief or remedy and does not deal with any cause of

action. Therefore, a plaint cannot be rejected on the ground that the relief sought for in the suit cannot be granted under the provisions of the

Specific Relief Act. This is more so when an element of fraud on the part of the defendants is also alleged by the plaintiff. The Supreme Court had

an occasion to consider the question of rejection of plaint under Order 7, Rule 11 A in the judgment reported in I.T.C. Limited Vs. Debts

Recovery Appellate Tribunal and Others, . That was a case where a fraud was alleged on the part of the defendants. In paragraph 19 of the

judgment the Supreme Court has held as follows:-

If the documents presented by the seller before the Bank were forged or were

fraudulent to the knowledge of the seller, surely, the Bank would have an independent cause of action against the seller for it was an act of the seller which was responsible for inducing the Bank to release the funds.

The averments of the plaint specifically disclose a fraud on the part of the defendants which itself is sufficient cause of action for the plaintiff to

maintain a suit. Therefore, I do not agree, with the contention of the learned counsel for the petitioners that in view of the legal bar u/s 38 read with

Section 41(h) of the Specific Relief Act, the suit is not maintainable. Accordingly, I reject the said contention also. Coming to the third contention

of the learned counsel for the petitioners, in view of my finding on the first contention against the petitioners, I hold that the plaint show a definite

cause of action to pursue the suit on the basis of the averments made in paragraphs 4 to 10 and therefore I do not agree with the third contention

of the petitioners also.

14. In view of my above finding, I do not find any error apparent on the face of the record in the order of the learned First Additional Subordinate

Judge, Madurai in rejecting the application of the petitioners filed under Order 7, Rule 11 of C.P.C. Accordingly, this civil revision petition fails and

the same is dismissed. No costs. Consequently, C.MP.No. 22015 of 1999 is also dismissed.