

**(2003) 08 MAD CK 0170**

**In the Madras High Court**

**Case No :** Civil Revision Petition (PD) No. 1045 of 2003 and C.M.P. No. 6864 of 2003

Kasthuri, Sukanyalakshmi, Subathradevi, Saroja and  
Padmavathy

APPELLANT

Vs

Baskaran and K. Selvaraj

RESPONDENT

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**Date of Decision :** 22-08-2003

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2  
Specific Relief Act, 1963 — Section 41

**Citation :** (2004) 2 LW 429 : (2004) 1 MLJ 175

**Hon'ble Judges :** M. Karpagavinayagam, J

**Bench :** Single Bench

**Advocate :** V. Raghavachari, for the Appellant; T.M. Hariharan, for the Respondent

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## **Judgement**

M. Karpagavinayagam, J.—The petitioners are the defendants.

2. The respondents filed a suit for permanent injunction in O.S.No.296 of 1998 in the Court of the District Munsif, Dharapuram. The petitioners filed an application in I.A.No.541 of 2001 under Order 7 Rule 11 of C.P.C. for rejecting the plaint of the respondents in view of the bar contained in Section 41(h) of the Specific Relief Act. Rejecting the said contention, the trial Court dismissed the application. Hence, this civil revision petition.

3. According to the petitioners, the suit filed by the respondents for permanent injunction restraining the petitioners from alienating the suit properties and also from interfering with the respondents' possession is not maintainable. Since the suit was filed on the basis of the agreement of sale dated 17.4.1998 executed between the petitioners and the respondents for a sale consideration of Rs.70 lakhs in respect of the suit properties and the respondents paid Rs.50,000/- to the petitioners towards advance. On knowing fully well that the respondents could not enforce the terms of agreement, they have chosen to file the suit for

bare injunction when the efficacious remedy is available to them to file the suit for specific performance and as such, the suit is barred under Order 7 Rule 11(d) of C.P.C. by virtue of Section 41(h) of the Specific Relief Act.

4. The said contention is refuted by the respondents by contending that the respondents' possession was conceded in various proceedings in the said suit and consequently, the interim injunction was granted in I.A.No.1104 of 1998 and upheld through the order in C.M.A.No.4 of 1999 filed by the respondents. In pursuance of a compromise entered into between them, the respondents have also withdrawn the suit for specific performance in O.S.No.113 of 1999 on the file of Sub Court, Dharapuram and since the suit is for bare injunction to protect the permissive possession and legal possession of the respondents as endorsed by the petitioners, it cannot be said that there is a statutory bar to continue the present suit.

5. On the side of the respondents, it is pointed out that in pursuance of the above said compromise, at the intervention of Panchayatdars, a supplementary agreement dated 15.2.2000 was executed between the parties and in fact, after the said supplementary agreement, the petitioners have executed sale deeds over some portion of the suit properties and as such, the bar contemplated u/s 41(h) of the Specific Relief Act would not apply to the present case.

6. Mr. Raghavachari, the learned counsel for the petitioners/defendants would cite a number of authorities which are as follows:

- 1) HOLLAND-BOMBAY TRADING CO. v. ESSARDAS DHARAMCHAND 1925 Sind.175;
- 2) Narayandas S. Kanuga Vs. Sarasvatibai D. Joshi and Another, ;
- 3) Delhi Motor Company and Others Vs. U.A. Basrurkar and Others, ;
- 4) Vadla Krishnaiah and Another Vs. Nalli Narasimhareddy, ;
- 5) Ganesh Lal Sonar Vs. Mohammad Ismail and Another, ;
- 6) T. Arivandandam Vs. T.V. Satyapal and Another, ;
- 7) Satish Bahadur Vs. Hans Raj and Others, ;
- 8) Biswabani Pvt. Ltd. Vs. Santosh Kumar Dutta and Others, ;
- 9) Sivananda Roy Vs. Janaki Ballav Pattnaik and Others, ;
- 10) Sushil Kumar and Anr Vs. Ram Prakash and Ors, ;
- 11) Jawahar Lal Wadhwa and Another Vs. Haripada Chakroberty, ;
- 12) Jasmer Singh and others Vs. Kanwaljit Singh and another, ;
- 13) Rajendra Kumar Vs. Mahendra Kumar Mittal and others, ;
- 14) SATYANANDA SAHOO v. RATIKANTA PANDA A.I.R.1997 ORR 67;

- 15) K.S. Balasubramaniam Vs. S. Munuswamy, ;
- 16) LAXMI NARAIN ANAND PRAKASH v. COMM. OF SALES TAX (ALL.) 46 CTC 71;
- 17) PROBODH KUMAR DAS v. DANTMARA TEA CO.(INDIAN APPEALS VOL.LXVI 293);

7. On the basis of the above said judgments, the main thrust of the arguments advanced by the said counsel is that u/s 41(h) of the Specific Relief Act, an injunction suit, which is a discretionary equitable relief suit, cannot be maintainable when an equally efficacious relief is obtainable in any other usual mode of proceeding as contemplated under Order 7 Rule 11(d) of C.P.C.

8. Contending contra, Mr. T.R. Mani, the learned senior counsel representing Mr. T.M. Hariharan, appearing for the respondents/plaintiffs, on the basis of the decisions given below, would contend that the respondents being the plaintiffs got the permissive possession from the defendants by virtue of the agreement of sale which has been admitted by the defendants in various proceedings and as such, the defendants cannot interfere with the plaintiffs' possession. He would further contend that the plaintiffs have specifically averred in paragraph 10 of the plaint that they have reserved their right to file a separate suit for specific performance and as such, for seeking the relief of bare injunction to protect the permissive possession or legal possession, Section 41(h) of the Specific Relief Act would not stand in the way. The decisions cited by him are as follows:

- 1) Bhagwan Das Vs. Goswami Brijesh Kumarji and Others, ;
- 2) British Airways Vs. Art Works Export Ltd. and Another, ;
- 3) WILSON CHEMICALS v. M/S.PIDILITE INDUSTRIES LTD. 1990(2) L.W.368;
- 4) Narendra Kumar Jain and another Vs. Sukumar Chand Jain and others, ;
- 5) Khaja Quthubullah Vs. Government of Andhra Pradesh and others, ;
- 6) State of Orissa Vs. Klockner and Company and Others, ;
- 7) CHHAGANLAL JAIN v. HAMID SULTAN (1998 M.L.J.(SUPPLEMENT) 428);
- 8) Ashwinkumar K. Patel Vs. Upendra J. Patel and Others, ;
- 9) V.S. Achuthanandan Vs. P.J. Francis and Another, ;
- 10) M/s. Crescent Petroleum Ltd. Vs. m.v. "MONCHEGORSK" and another, ;
- 11) VIJAYALAKSHMI v. VAIYANAPERUMAL 2002 (1) M.L.J.811 ;
- 12) DURAISAMY,S.V. v. T. DAYALAN 2002(2) CTC 462.

9. I have heard the rival contentions urged by the counsel for the parties and I have given my thoughtful consideration on the respective merits of their contentions.

10. Let us refer to the parties as arrayed in the suit for the sake of convenience.

11. Before dealing with the point in question, it would be appropriate to refer to the chronological events that have taken place. They are as follows:

"(A) The defendants executed an agreement of sale on 17.4.1998 in favour of the plaintiffs for sale of 6 acres 22 cents for Rs.70 lakhs. The plaintiffs paid Rs.50,000/- as advance. The possession of the properties was given to the plaintiffs on the date of agreement. Though the period of 11 months was fixed for performance after registration and sub division, the defendants were not ready to perform their contract. Therefore, the plaintiffs filed a suit for permanent injunction in O.S.No.296 of 1998 in the District Munsif Court, Dharapuram on 20.7.1998. They also filed two applications for interim injunction in I.A.No.1104 of 1998 for restraining the defendants from disturbing the plaintiffs' possession and I.A.No.1105 of 1998 for restraining them from alienating the suit properties.

(B) The trial Court though dismissed I.A.No.1104 of 1998 in respect of possession, allowed I.A.No.1105 of 1998 for injunction from alienation. The defendants filed an appeal in C.M.A.No.2 of 1999 against the order of restraining alienation and the plaintiffs filed C.M.A.No.4 of 1999 against the dismissal order of injunction in respect of possession.

(C) As mentioned in paragraph 10 of the plaint reserving their right to file a separate suit for specific performance, the plaintiffs filed separate suit in O.S.No.113 of 1999 in March 1999 in the Sub Court, Dharapuram for specific performance of the agreement of sale dated 17.4.1998. During the pendency of the said suit, the plaintiffs filed I.A.No.508 of 1999 not to disturb the plaintiffs' possession and I.A.No.509 of 1999 to restrain the defendants from alienating the suit properties. The defendants as well filed I.A.No.836 of 1999 under Order 2 Rule 2 C.P.C. claiming that the suit for specific performance is not maintainable. Ultimately, the same was dismissed. Therefore, against that order, the defendants filed civil revision petition in C.R.P.No.3283 of 1999.

(D) At that stage, there were talks of settlement between the parties. The defendants gave consent to allow both the applications for injunction against alienation and against disturbance of possession in the suit for specific performance in O.S.No.113 of 1999. In pursuance of the said settlement, C.R.P.No.3283 of 1999 was dismissed as not pressed on 29.11.1999. Similarly, both the injunction applications in the suit for specific performance were allowed on consent by the order dated 31.1.2000.

(E) In pursuance of the said agreement, a supplementary agreement was entered into between the parties with modified terms on 15.2.2000. Thereafter, the defendants executed 12 sale deeds in favour of the plaintiffs and their nominees in respect of one portion of the suit properties. On 7.8.2000, C.M.A.No.4 of 1999, which was filed by the plaintiffs was allowed on consent of the defendants and C.M.A.No.2 of 1999 filed by the defendants against the order

of alienation was dismissed as not pressed. These were done only in pursuance of the terms of compromise entered into between the parties earlier. Similarly, as agreed by the plaintiffs in the compromise, they withdrew the suit for specific performance in O.S.No.113 of 1999 on the file of the Sub Court, Dharapuram on 9.2.2001. Subsequently, the defendants executed two more sale deeds in favour of the plaintiffs' nominees in respect of other portion of the suit properties. Thus, the order of injunction in both the applications in O.S.No.296 of 1998 on the file of District Munsif Court, Dharapuram subsists.

(F) In the meantime, the written statements were filed in O.S.No.296 of 1998 and the issues also were framed. At that stage, on 26.4.2001, the defendants filed I.A.No.541 of 2001 under Order 7 Rule 11 of C.P.C. praying the Court to reject the suit in O.S.No.296 of 1998 on the ground that the suit is not maintainable by virtue of the bar contained in Section 41(h) of the Specific Relief Act. The same was dismissed by the trial Court observing that the issue has to be decided only at the conclusion of trial on the basis of the materials placed before the Court by both the parties. This is under challenge before this Court."

12. The main plank of the arguments advanced by the counsel for the petitioners/defendants is that when the efficacious remedy by way of filing a suit for specific performance is available, the plaintiffs are prohibited from filing a suit for injunction u/s 41(h) of the Specific Relief Act as laid down in K.S. Balasubramaniam Vs. S. Munuswamy, , DELHI MUNICIPALITY v. SURESH CHANDRA AIR 1996 S.C. 2621 and Sushil Kumar and Anr Vs. Ram Prakash and Ors, .

13. The trial Court would hold that this point could be considered only at the conclusion of trial after allowing the parties to adduce evidence on the respective sides.

14. As per Order 7 Rule 11(d) of C.P.C., the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. u/s 41(h) of the Specific Relief Act, an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.

15. In order to decide whether the suit falls u/s 41(h), the trial Court has to consider the question whether equally efficacious relief can certainly be obtained or whether the possession of the plaintiff shall be protected holding that Section 41(h) will not be a bar as the allegation in the plaint as well as the materials placed before the Court would involve breach of trust which is an exception to the bar contained in Section 41(h).

16. Therefore, at this stage, as the trial Court finds, this Court is unable to say that Section 41(h) would apply to the present case, especially in the light of the fact that the plaintiffs have reserved their right to file a separate suit for specific performance as averred in paragraph 10 of the plaint.

17. Further, as admitted by the parties, the first sale agreement was entered into between the parties on 17.4.1998 and subsequently, on 15.2.2000, another supplementary agreement termed as "compromise sale agreement" was executed by both the parties. In pursuance of the said agreement, though interim injunction was not granted initially in I.A.No.1104 of 198 in respect of the plaintiffs' possession, the same was granted by the appellate Court in C.M.A.No.4 of 1999 on the basis of the consent of the defendants.

18. As held by the Supreme Court in *Ashwinkumar K. Patel Vs. Upendra J. Patel and Others*, , irrespective of the title, if the plaintiff had the "permissive possession" and the defendants were not in possession, the defendants should not interfere with the plaintiff's possession as the permissive possession has been established by the plaintiff. In the light of the above observation, this Court is unable to hold that the suit for mere bare injunction has to be rejected in limine.

19. It is settled law as held by various Courts that where on the face of the plaint, a suit appears to be barred by any law, the Court shall dismiss the suit. But where it does not so appear, but requires further consideration or, in other words, if there be any doubt or if the Court is not sure and certain that the suit is barred by some law, the Court cannot reject the plaint under Clause (d) of Order 7 Rule 11 of C.P.C.

20. In this context, it would be relevant to quote the observation made by the Bombay High Court in *A.I.R.1999 Bombay 161* (supra), with which I entirely agree. The observation is as follows:

"It is settled law that the plaint can be rejected as disclosing no cause of action if the Court finds that it is plain and obvious that the case put forward is unarguable. The phrase "does not disclose a cause of action" has to be very narrowly construed. Rejection of the plaint at the threshold entails very serious consequences for the plaintiff. This power has, therefore, to be used in exceptional circumstances. The Court has to be absolutely sure that on a meaningful reading of the plaint it does not make out any case. The plaint can only be rejected where it does not disclose a cause of action or where the suit appears from the statements made in the plaint to be barred by any provision of the law. While exercising the power of rejecting the plaint, the Court has to act with utmost caution. This power ought to be used only when the Court is absolutely sure that the plaintiff does not have an arguable case at all. The exercise of this power though arising in civil procedure, can be said to belong to the realm of criminal jurisprudence and any benefit of the doubt must go to the plaintiff, whose plaint is to be branded as an abuse of the process of the Court. This jurisdiction ought to be very sparingly exercised and only in very exceptional cases. The exercise of this power would not be justified merely because the story told in the pleadings was highly improbable or which may be difficult to believe."

This observation would squarely applicable to the present case as well.

21. Further, it is admitted by the counsel for both the parties that on 4.12.2001, the plaintiffs filed another suit in O.S.No.362 of 2001 in the Sub Court, Dharapuram for specific performance and the same is pending. As a matter of fact, though the similar suit was filed earlier in O.S.No.113 of 1999 and obtained interim orders of injunction in respect of possession and also in respect of alienation in I.A.Nos.508 of 1999 and 509 of 1999, the said suit was withdrawn on 9.2.2001 in pursuance of the supplementary agreement.

22. It is noticed that due to the subsequent development, the plaintiffs filed another suit in O.S.No.362 of 2001 and however, they have not chosen to file any interim application praying for injunction in respect of possession and alienation, probably for the reason that the plaintiffs already obtained the said interim orders in the present suit in O.S.No.296 of 1998 on the file of the District Munsif Court, Dharapuram.

23. Under those circumstances, it would be appropriate to give suitable direction in order to ensure both the suits, namely O.S.No.296 of 1998 and O.S.No.362 of 2001 can be tried together for the convenience of the parties so that all the issues can be decided comprehensively by the same Court. Accordingly, O.S.No.296 of 1998 on the file of the District Munsif Court, Dharapuram is transferred to the Sub Court, Dharapuram for trying the suit in O.S.No.296 of 1998 along with the suit in O.S.No.362 of 2001 on the file of the Sub Court, Dharapuram.

24. With the above observation, the civil revision petition is disposed of. C.M.P.No.6864 of 2003 is dismissed.