

(2002) 07 MAD CK 0182
In the Madras High Court
Case No : C.R.P. (PD) No. 3576 of 2001

K.S. Geetha

APPELLANT

Vs

Stanleybuck and Dr. P. Sedhu Ammal

RESPONDENT

Date of Decision : 12-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Court Fees Act, 1870 — Section 17A

Citation : AIR 2003 Mad 146 : (2002) 3 LW 698 : (2002) 2 MLJ 823

Hon'ble Judges : A.S. Venkatachalamoorthy, J

Bench : Single Bench

Advocate : M. Venkatachalapathy for B. Rajendran, for the Appellant; M.S. Krishnan, for Sarvabhauman Associates, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Venkatachalamoorthy, J.—Plaintiff in O.S.1545 of 1999 on the file of I Additional Subordinate Court, Coimbatore is the petitioner herein. The above revision has been preferred against the order allowing I.A.1094 of 2000, petition filed under Order VII Rule 11 read with Section 151 of CPC rejecting the plaint.

2. Petitioner as plaintiff filed the above suit against the respondents herein on the file of Subordinate Court, Coimbatore, praying the Court to grant a decree for specific performance of the contract dated 5.6.1995 and directing the respondents herein to execute the sale deed on receiving the consideration as detailed in the plaint and free of all encumbrances in respect of an extent of 9 acres of lands after adjusting the amount of Rs.21,92,000/- paid as advance either to the plaintiff or her nominees and if they commit default to have the sale deed executed and registered by the Court at the cost of the plaintiff at the first instance to be recoverable from the respondents/ defendants or in the alternative, directing the respondents/ defendants to pay a sum of Rs.21,92,000/- to the plaintiff with interest at 24% per annum from the date of the suit till the date of realisation.

3. Briefly it is the case of the petitioner/ plaintiff that an agreement was entered into between her and the defendants, in and by which the defendants agreed to receive a total consideration of Rs.3.00 crores and execute a sale deed in respect of the plaint scheduled properties, which is an extent of 88.86 acres in Mathuvarayapuram village, Coimbatore Taluk. The further case of the petitioner is that on that day a sum of Rs.3,92,000/- was paid by pay order drawn on Canara Bank, Coimbatore and defendants agreed to execute sale deed free of all encumbrances or charges within a period of six months from the date of the said agreement and possession of the properties was also delivered on the same date. The plaintiff made subsequent payments and totally in all, as on the date of filing of the suit, plaintiff had already paid a sum of Rs.21,92,000/-, which would include advance as well as part of sale consideration.

According to the plaintiff, the defendants suppressed they having mortgaged an extent of 48.75 acres of the lands in favour of M/s Indian Bank, Coimbatore and also the pendency of proceeding under Land Reforms Act in respect of 55 acres of lands before the Government. Even though the plaintiff approached the defendants a number of times to clear the encumbrances over the properties and to give a better title to her to have the sale deed executed in her favour, the defendants are evading and postponing the sale under some pretext or the other. As the defendants attempted to sell the properties to some third parties, the plaintiff was constrained to file a suit in O.S.749 of 1996 on the file of District Munsif Court, Coimbatore, for permanent injunction and on the date of filing of this suit, the earlier suit was still pending.

Coming to know about the proceedings before the Land Tribunal under Land Reforms Act is not yet disposed of and is pending, the plaintiff approached the defendants to clear the encumbrances and also get a certificate from the Land Reforms Office to enable her to have the sale deed executed in her favour. The defendants represented that they will clear the proceedings before the Land Reforms Tribunal within a short time and execute the sale deed on receiving the balance sale consideration and in view of that the period of performance has been extended from time to time. According to the suit agreement time was not the essence of the contract. In view of the fact that the contract between the plaintiff and defendant became impossible and defendants failed to perform their part of the contract, plaintiff expressed her willingness to get the sale deed executed in respect of the unencumbered lands of an extent of 9 acres. As there was no response from the defendants, plaintiff was constrained to file the present suit.

4. The defendants resisted the suit inter alia raising various contentions.

5. Pending disposal of the suit, respondents/ defendants filed an application in I.A.1094 of 2000 under Order VII Rule 11 read with Section 151 of Code of Civil Procedure, praying the Court to reject the plaint for the reasons stated in the affidavit filed in respect of the said application. The defendants disputed having delivered possession of entire extent of 88.86 acres. According to the

defendants, under the agreement the period of performance was fixed as six months from 5.6.1995 within which period the respondent was to take the sale after paying the balance of consideration excluding the amount due for certain portions of land which were involved in the Land Reforms proceedings and also the amount due to the Indian Bank by way of mortgage over the property. The specific case of the defendants is that the plaintiff was never willing and ready to perform her part of the contract and take the sale. Despite the fact that plaintiff undertook to discharge the mortgage liability over the lands to the Indian Bank, she did not discharge the mortgage liability. The suit filed by her in O.S.749 of 1996 on the file of District Munsif Court, Coimbatore praying for permanent injunction was dismissed, so also the appeal filed by her. In the affidavit it is stated that the claim of the plaintiff that the defendants should execute a conveyance for the sum of Rs.21,92,000/-, which she had paid under the agreement cannot be sustained for various reasons viz.,

- (a) A specific performance cannot be enforced as part of the contract,
- (b) Period prescribed under the agreement for performance was six months, which had expired even by 5.12.1995 and that the suit has been filed long thereafter. Consequently the suit is barred by limitation.
- (c) The extent for which the sale is to be executed is not specific by boundaries in the plaint. Hence the property to be taken by way of sale is described in a vague and bald manner.
- (d) Even according to the plaintiff suit contract has become impossible of performance, and finally,
- (e) Suit is also barred under Order II rule 2 of CPC in view of the earlier proceedings in O.S.749 of 1996 on the file of District Munsif Court, Coimbatore which is also based on the same agreement. On the date when the plaintiff filed the suit in O.S.749 of 1996 she had the right to enforce the agreement of sale by way of specific performance and plaintiff not having reserved her right to sue for specific performance later or obtained leave of the Court to file fresh suit, the present suit is not maintainable.

6. Petitioner/plaintiff filed a counter affidavit and again an additional counter affidavit resisting the petition in I.A.1094 of 2000. The plaintiff denied the contention that despite the fact that she undertook to discharge the mortgage liability over the lands, she did not take any steps. The further case of the plaintiff is that the dismissal of the suit O.S.749 of 1996 is not relevant as far as the present case is concerned. The plaintiff would contend that the enforcement of the contract on the basis of the agreement for part performance of certain portions of the land is valid under law and it is possible. It cannot be that by the time suit came to be filed, the same is barred by limitation. As to whether the prayer that is sought for can be granted or not can be decided only during trial and that being so, the application is premature to have the issues adjudicated in the interlocutory application stage.

7. The learned Subordinate Judge by an order dated 27.7.2001 allowed the said application. Being aggrieved by the said order, the present revision petition has been filed.

8. At the time of hearing, the learned counsel for the respondents/defendants raised a preliminary objection as to the maintainability of the Civil Revision Petition. The learned counsel contended, as against the order of rejection of a plaint, appeal only lies and that being so, this revision petition is liable to be dismissed. Per contra, the learned counsel for the petitioner would submit that the Courts have held that a Civil revision petition is also maintainable and that there is no substance in the preliminary objection as put forward by the learned counsel for the respondents. In the event of this Court coming to the conclusion that the preliminary objection raised by the respondents is sustainable then it will be a futile exercise to refer to and consider the other points raised. In this view of the matter, this Court desires to consider that issue first, before considering the other issues that arises for consideration.

9. Order VII Rule 11 of CPC deals with rejection of plaint. Once the plaint is rejected, then obviously nothing is pending before the Court. That order is formal expression of an adjudication, which so far as regards the Court expressing it, conclusively determines the rights of the parties. In fact, Section 2 of the CPC which defines the term decree specifically states that the decree shall be deemed to include rejection of the plaint. Section 96 of the Code deals with appeal from original decrees. The claim of the respondents is that the order rejecting plaint being the decree by the trial Court, the only remedy, if plaintiff is aggrieved, is by way of filing an appeal and not by filing revision petition.

10. The learned counsel would place strong reliance on the ruling of the Full Bench of this Court reported in Paruchuru Thirumala Satyanarayanacharyulu and Another Vs. Vannava Ramalingam and Others, . In that case, the petitioners filed a suit in the Subordinate Court for declaration and for other reliefs and paid a fixed Court fee of Rs.100/- under Sec.17-A of Schedule II, Court Fees Act valuing the suit for the purposes of jurisdiction at Rs.3,600/-. The question arose was whether the Court fee paid has been correct and after considering the objection the Subordinate Judge came to the conclusion that the suit has been grossly under valued and directed the petitioner/plaintiff to pay an additional Court fee of Rs.400/-. The order directing payment of additional Court fee was made on 14.3.1947 and a period ten days time was given for payment of the deficit court fee. The suit was adjourned to 24.3.1947 and by that time, as the deficit court fee was not paid as per the order dated 14.3.1947, the plaint was rejected. A revision was filed against the order dated 24.3.1947. The Full Bench approving the view taken in an earlier ruling reported in Ratnavelu Pillai and Another Vs. Varadaraja Pillai and Another, , ruled that if the order directing payment of additional Court fee was not complied with and it was followed by an order dismissing the suit, a revision would not be maintainable and the remedy is only by way of an appeal against the decree. Or in other words, the Court ruled that

once a plaint is rejected, the remedy for the plaintiff is only to file an appeal and not a revision petition.

A learned single Judge of this Court had occasion to consider a similar question and after considering the ruling of the Full Bench referred supra as well as other rulings viz., AIR 1924 Oudh 413 (Harihar Bakhsh Singh v. Jagannath Singh); AIR 1956 Hyd 133 (Radhakishen v. Wali Mohammed); and AIR 1957 Pep 14 (Badri Nath v. State of Pepsu), clearly ruled that both from the section and those decisions it is clear that only appeal will lie against rejection of plaint and it is not limited to such cases wherein the plaint was rejected for the reasons stated under Order VII, Rule 11 of Code of Civil Procedure.

In a recent ruling of this Court reported in Nesammal and another Vs. Edward and another, a learned single Judge referred extensively the various rulings including AIR 1976 Mad 289 (R.Shanmughavelu Pillai v. R.Karuppannan Ambalam) and concurred with it.

11. Thus, the legal position from the above rulings is that as against the order rejecting the plaint, only an appeal lies and not a revision.

12. Of course, the learned counsel for the petitioner/plaintiff referred to two rulings of a learned single Judge of this Court reported in 2001(I) CTC 594 (K.Thakshinamoorthy and another v. State Bank of India, Arasaradi Branch) and 2000 (II) MLJ 136 (Dr.Ravichander v. Karunakaran and others) and would endeavour to convince this Court that a revision will also lie. The learned counsel is not right in his submission since the first case is one where an application filed by the defendant was dismissed and against which a revision was filed. Certainly when an application is dismissed and the suit is pending before the trial Court, the question of filing of an appeal would not arise.

So far as the second case is concerned, it could be seen from a perusal of Judgment that in that case the Court rejected the plaint only in so far as item No.1 of "B" schedule. When a revision is filed, the Court ruled that the trial Court cannot dissect the pleadings into several parts and the plaint cannot be partially rejected and only in these circumstances the Court ruled that when the Court passed an order without jurisdiction and which is patently illegal, there is nothing wrong in invoking supervisory power of the Court u/s 115 of CPC and rectify the illegality committed by it. Hence this ruling also may not come to the rescue of the petitioner.

In this view of the matter, the preliminary objection raised by the respondents/defendant is upheld and the revision petition is dismissed as not maintainable.

13. In view of the fact that this Court is dismissing the revision petition for the reasons stated supra, the necessity to take up the exercise of considering other issues really do not arise.

14. In the result, the civil revision petition is dismissed as not maintainable. No costs.