

(2012) 07 MAD CK 0085
In the Madras High Court
Case No : CRP (NPD) (MD) No. 1543 of 2012

M. Chinnaiyah

APPELLANT

Vs

Naina Mohammed and Noorjahan Beham

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

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

Citation : (2012) 5 LW 250

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : J. Anandkumar, for the Appellant;

Final Decision : Allowed

Judgement

Aruna Jagadeesan, J.—This Civil Revision Petition is filed against the order dated 4.4.2012 in unnumbered OS.No./2012 in Cr.19 No. 4630 by the learned Subordinate Judge, Devakottai, Sivagangai District, rejecting the plaint at the threshold. The Petitioner/Plaintiff has filed the above suit for specific performance of the sale agreement dated 25.12.2009. In the plaint, it has been averred that the 1st Defendant has given a loan of Rs. 5,00,000/- to the 2nd Defendant and her husband Bakir Mohammed in the year 1989, but they were not able to repay the said loan with interest and thereafter, they orally agreed that the loan should be repaid with interest after selling the properties belonging to the 2nd Defendant and based on that said oral agreement, the 2nd Defendant executed a General Power of Attorney on 2.4.1990 in favour of the 1st Defendant. Though the 1st Defendant tried to sell the property of the 2nd Defendant in order to realise the loan, since there was no better offer, they decided to wait till the property of the 2nd Defendant gets best offer. Thereafter, some parts of the properties of the 2nd Defendant were sold and amounts realised from the same were paid to the 1st Defendant towards the principal and interest and thus, a sum of Rs. 2,12,000/- was paid till the year 2005. Thereafter, the Plaintiff and the 1st Defendant fixed a sum of Rs. 3,00,000/- as total sale consideration for

the remaining properties in the panchayat. Based on that, a sum of Rs. 2,96,000/- as advance was paid by the Plaintiff to the 2nd Defendant, pursuant to which, the Plaintiff was in put in possession of the suit property. After adjusting the said amount, a sum of Rs. 4,00,000/- was agreed to be the balance principal amount with interest to be paid by the 2nd Defendant. For the said sum of Rs. 4,00,000/-, the 2nd Defendant and her husband also executed a promissory note. Though several demands made by the Plaintiff, neither the Defendants have come forward to repay the said amount nor to execute the sale deed and hence, the suit has been filed for specific performance of the said sale agreement.

2. The Trial Court has rejected the plaint on the following grounds:-

3. The learned counsel for the Petitioner would submit that the Trial Court has gone into merits of the case and erroneously rejected the plaint without even numbering the same on the ground that the averments stated in the plaint have not been substantiated by any documentary evidence and the reasons assigned by the Trial Court for rejecting the plaint can be gone into at the time of trial only and hence, the impugned order is illegal and liable to be set aside.

4. On a perusal of the plaint averments, it is seen that the Petitioner has sought for the relief of specific performance of the sale agreement on the basis of the oral agreement entered into between the Plaintiff and the Defendants. The Trial Court can reject a plaint, only when it is found that any of the conditions under Rule 11 of Order 7 of CPC exists. The Trial Court has gone into the merits of the case and rejected the plaint on the ground that the averments stated in the plaint have not been substantiated by documentary evidence, which is clearly a matter of trial. The Trial Court can ascertain as to whether the plaint discloses cause of action or not, but cannot ascertain as to whether the plaintiff would be entitled to get the relief prayed for in the facts and circumstances disclosed in the plaint.

5. At this juncture, it is relevant to point out to the decision of this court reported in Hindustan Petroleum Corporation Limited Vs. C.M. Hariraj, C.V. Raman and Dharmarajan, wherein it has been held that the plaint cannot be rejected by the Trial Court going into the merits of the contentions raised by the plaintiff in the plaint.

6. The merits of the allegations made in the plaint cannot be gone into at the threshold or at the stage of numbering, as it is a matter to be tried in a suit and decided on the basis of the materials on record. In the present case, the Trial Court, without even numbering the case and without considering the relevant facts stated in the plaint, has gone into the merits of the allegations made in the plaint and thereafter, has rejected the plaint which is not sustainable in law. Therefore, the impugned order rejecting the plaint under Order 7 Rule 11 of CPC suffers from illegality and improper exercise of jurisdiction and it is liable to be set aside. In the result, this Civil Revision Petition is allowed and the impugned

order is set aside. The Trial Court is directed to number of the plaint if it is otherwise in order and dispose of the same, on merits and in accordance with law. No costs.