

(2008) 10 MAD CK 0020

In the Madras High Court

Case No : C.R.P. (PD) No. 654 of 2008 and M.P. No. 1 of 2008

Menimegalai Ramu and M. Palani

APPELLANT

Vs

K. Rashid Khan and S. Jayam

RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 2, Order 2 Rule 2, Order 39 Rule 1, Order 39 Rule 2, 148(A)
Constitution of India, 1950 — Article 227

Citation : (2009) 2 CTC 395

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : S. Srinivasan and K. Premkumar, for the Appellant; A.R.L. Sundaresan, for M/s. A.L. Gandhimathi, for the Respondent

Judgement

S. Rajeswaran, J.—The defendants in O.S. No. 6 of 2008 are the revision petitioners before this Court. O.S. No. 6 of 2008 was filed by

the respondents herein/plaintiffs against the revision petitioners for a permanent injunction restraining the revision petitioners/defendants from

alienating or encumbering the suit schedule properties.

2. Along with the suit, the respondents/plaintiffs filed two applications, one in I.A. No. 9 of 2008 under Order II Rule 2 C.P.C. seeking permission

of the court to reserve their right to institute a separate suit for the specific performance of contract on the cause of action and another in I.A. No.

10 of 2008 under Order 39 Rule 1 & 2 of C.P.C., seeking an order of interim injunction.

3. The trial court by order dt. 9.1.2008 allowed I.A. No. 9 of 2008 granting permission to the respondents/plaintiffs to reserve their right to

institute a separate suit for specific performance of contract on the same cause

of action and aggrieved by the same, the defendants in the suit filed the above revision petition under Article 227 of the Constitution of India.

4. I have heard the Learned Counsel for the revision petitioners and Mr. A.R.L. Sudaresan, the learned Senior counsel for the respondents. I have also gone through the documents and judgment filed in support of their submissions.

5. The respondents/plaintiffs filed O.S. No. 6 of 2008 against the revision petitioner for a permanent injunction restraining them from alienating or encumbering the suit schedule properties. The case of the respondents/plaintiffs in O.S. No. 6 of 2008 is that they entered into an agreement of sale on 2.9.2007 with the revision petitioners/defendants to purchase the suit schedule properties for a total sale consideration of Rs.

6,11,14,500/- (Rupees six crores eleven lakhs fourteen thousand and five hundred only). They paid a part of the sale consideration of Rs. 2.0

crores to the revision petitioners and the same was acknowledged by them in the sale agreement dated 2.9.2007 itself. As per the sale agreement

dated 2.9.2007, the respondents/plaintiffs should pay the balance sale consideration of Rs. 4,11,14,500/- (Rupees four crores eleven lakhs

fourteen thousand and five hundred only) to the revision petitioners/defendants and complete the sale within 31.12.2007, i.e., 120 days from the

date of agreement of sale. It was also agreed that the revision petitioners should obtain a consent deed from one Thiru K. Gajendran who filed a

suit in O.S. No. 15 of 2007 against his father Thiru Kali Krishnappa alias Kristappa Naidu and his sisters before the court of District Munsif at

Poonamallee for partition in respect of a portion of an extent of 3.73 acres in the suit properties. It is claimed by the respondents/plaintiffs that they

formed a 40" wide and about 1 km long gravel road from the main road to the suit properties to reach the lay-out to be formed by them by

spending a sum of Rs. 25 lakhs. When the respondents/plaintiffs have been ready and willing to perform their part of the contract, the revision

petitioners/defendants failed to perform their part of the contract, which resulted in exchange of correspondence between the parties. On

1.1.2008, the respondents/plaintiffs came to know that the revision petitioners are trying to alienate the suit properties to a third party for a higher

price and therefore, they have filed O.S. No. 6 of 2008 for the aforesaid relief. In

the plaint filed in support of O.S. No. 6 of 2008, the respondents/plaintiffs stated that they reserved their right to file a separate suit for specific performance of contract against the revision petitioners/defendants, for which, they have filed a separate application under Order II Rule 2 C.P.C. seeking permission of the trial court in this regard. Accordingly, they filed I.A. No. 9 of 2008 under Order 11 Rule 2 C.P.C. seeking permission to reserve their right to institute a separate suit for specific performance of contract on the same cause of action. That was allowed by the trial court and aggrieved by the same, the above revision petition has been filed.

6. The main contention of the revision petitioners/defendants is that, no reason whatsoever, much less legally acceptable reasons have been given by the respondents/plaintiffs for not filing the suit for specific performance and therefore, the leave granted by the trial court under order II Rule 2 C.P.C. is to be set aside. Their further contention is that they have lodged a Caveat and during the period when the Caveat was in force, the orders have been obtained by the respondents/plaintiffs without giving notice to the revision petitioners and therefore, on that ground also, the order of the trial court dated 9.1.2008 granting leave given in favour of the respondents/plaintiffs is to be set aside. The Learned Counsel for the revision petitioners relied on a judgment of this Court, reported in 2005(1) C.T.C. 285 (E.V. Ananthara, S/o K. Venugopal, No. 23, Kamakshiamman Koil street, Tindivanam 604001 and another Vs Rajas Educational Trust rep. by its Life Chairman cum Trustee, Professor K.V. Natarajan, M-97/B, 30th Cross street, Besant Nagar, Chennai 90 and others) to contend that when the respondents/plaintiffs are seeking leave under Order II Rule 2 C.P.C., they should give notice to the Caveators and serve a copy of the application for leave and the other documents relied on by them on Caveators.

7. Per contra, the learned Senior counsel appearing for the respondents/plaintiffs submits that granting leave under Order II Rule 2 C.P.C. is a matter between the court and the plaintiffs and therefore, the revision petitioners have no say in such matters. That is why, notice was not given to them even though they have entered Caveat and hence, the order passed by the trial court cannot be interfered with by this Court under Article

227 of the Constitution of India.

8. I am unable to accept the submissions made by the learned Senior counsel for the respondents/plaintiffs.

9. First, let me deal with the first contention of the revision petitioners that the trial court has mechanically granted the leave in I.A. No. 9 of 2008

filed under Order II Rule 2 C.P.C. when no reasons were given by the respondents/plaintiffs for not filing the specific performance suit to enforce

the sale agreement dated 2.9.2007.

10. It is not in dispute that a sale agreement dated 2.9.2007 has been entered into between the parties for a total sale consideration of Rs.

6,11,14,500/- (Rupees six crores eleven lakhs fourteen thousand five hundred only). The suit schedule properties are Nanja and punja agricultural

lands situated at Kosavanpalayam village, No. 2, Thiruninravur "B" Madura, Poonamallee Taluk, Thiruvallur District, measuring an extent of 15.09

acres in various survey numbers. A perusal of a copy of the sale agreement dated 2.9.2007 filed in the type-set of papers will show that a sum of

Rs. 2.0 crores was already given to the revision petitioners. The case of the respondents/plaintiffs is that the revision petitioners are unnecessarily

delaying things because they want to sell the very same properties to a third party for a higher price. If that being so, instead of filing a specific

performance suit to specifically enforce the sale agreement dated 2.9.2007, they have filed only a bare injunction suit in O.S. No. 6 of 2008 for a

permanent injunction restraining the revision petitioners from alienating the suit schedule properties. As rightly pointed out by the Learned Counsel

for the revision petitioners, no reasons whatsoever were given by the respondents/plaintiffs either in the plaint or in the affidavit filed in support of

I.A. No. 9 of 2008 for not filing a specific performance suit to specifically enforce the sale agreement.

11. A perusal of the affidavit filed in support of the I.A. No. 9 of 2008 will only show that the respondents/plaintiffs were made to file the suit for a

permanent injunction to prevent the revision petitioners from alienating the suit schedule properties as the revision petitioners are taking illegal steps

to alienate the properties. Excepting this, no other reason was given by the respondents/plaintiffs for not filing a suit for specific performance.

12. Therefore, I am of the considered view that the trial court has not gone into

this question properly and mechanically allowed I.A. No. 9 of

2008 filed under Order II Rule 2 C.P.C. When admittedly the sale consideration as per sale agreement dated 2.9.2007 is a sum of Rs.

6,11,14,500/- (Rupees six Crores eleven lakhs fourteen thousand and five hundred only), the respondents/plaintiffs have filed O.S. No. 6 of 2008

for a bare injunction, valuing the suit at Rs. 5,05,000/- so that it could be filed before the District and Sessions Judge, Tiuvallore. This conduct of

the respondents/plaintiffs will only mean that they do not want to enforce the sale agreement dated 2.9.2007 at the present and they are only

interested in stopping the alleged alienation to be made by the revision petitioners. In such circumstances, the trial court has not adverted to this

aspect and allowed I.A. No. 9 of 2008, as prayed for, without discussing the matter in detail and that too, when a Caveat has already been filed

by the revision petitioners and the same was in force. Therefore, I am inclined to set aside the order of the trial court dated 9.1.2008 allowing I.A.

No. 9 of 2008 filed under Order II Rule 2 C.P.C.

13. Now, let me consider the second contention of the revision petitioners that as Caveators, they are entitled to notice even in an application filed

under Order II Rule 2 C.P.C. and by not issuing notice to them in I.A. No. 9 of 2008, when the caveat filed by them was in force, the trial court

has committed an irregularity and the same is to be interfered with by this Court under Article 227 of the Constitution of India.

14. I find considerable force in the above submissions made on behalf of the revision petitioners.

15. In E.V. Ananthara and Another Vs. Rajas Educational Trust and Others, a learned Judge of this Court considered the question whether a

Caveator is entitled to a notice in an application filed by the plaintiffs under clause 12 of the Letters Patent Act seeking leave of the court to institute

a suit before this Court, the learned Judge after considering the facts of that case and after going through the provisions contained in Sec. 148(A)

of C.P.C. held that if an application is moved during the currency of lodging of a Caveat, the applicant is expected to serve a copy of the

application with copies of all the papers and documents filed in support of the application on the Caveator as per sec. 148(A)(4) C.P.C.

16. Following the above decision of this Court, I am to necessarily hold that if an

application is moved by the applicant seeking a relief under

Order II Rule 2 C.P.C., it is the duty of the applicant to serve the copies of application along with documents on the Caveators and it cannot be

said that the application filed under Order II Rule 2 C.P.C. is a matter between the court and the applicant alone.

17. Admittedly, in this case, a caveat has been filed by the revision petitioners and the same was very much in force at the time of filing I.A. No. 9

of 2008. That is why, after I.A. No. 9 of 2008 was allowed by the trial court, notice has been ordered to the revision petitioners in I.A. No. 10 of

2008 filed for an order of interim injunction.

18. I am of the considered view that a Caveator is entitled to a notice in an application filed under Order II Rule 2 C.P.C. and therefore, failure to

give notice to the revision petitioners when the caveat filed by them was in force would also vitiate the order passed by the trial court on 9.1.2008

allowing I.A. No. 9 of 2008. In the result, the above Civil Revision petition is allowed as prayed for. No costs. Consequently, M.P. No. 1 of 2008

is also closed.