

M.V.Jayavelu vs E.Umapathy on 29 October, 2010

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Bench: R.S.Ramanathan

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2010

C O R A M:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CRP PD No.2089 of 2008

M.V.Jayavelu ... Petitioner/1st Defendant

Vs

E.Umapathy ... Respondent / Plaintiff

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India

For Petitioner : Mr.K.V.Subramaniam,
Senior Counsel for
M/s.M.A.Abdul Wahab

For Respondent : Ms.A.Sumathy

O R D E R

This petition has been filed against the order and decree dated 06.02.2008 made in I.A.No.234 of 2006 in O.S.No.1 of 2006 on the file of Sub Court, Ranipet, Vellore District.

2. The first defendant in O.S.No.1 of 2006 on the file of Sub Court, Ranipet is the revision petitioner. The respondent herein filed the suit for specific performance of an agreement of sale dated 19.04.2000 directing the first defendant, the revision petitioner herein to execute and register the sale deed in favour of the plaintiff or in the alternative to refund the sum of Rs.2 lakhs with interest by way of damages from the date of suit and for permanent injunction. The first defendant entered

appearance, filed the statement and also filed application under Order 7 Rule 11 stating that the Document No.1 on which the suit is filed cannot be received in evidence and it is only a rental deed and not duly stamped and the plaintiff has no cause of action for filing the suit. That application was dismissed and against the same, this revision is filed.

3. Mr.K.V.Subramaniam, learned Senior Counsel appearing for the revision petitioner submitted that the plaint is a clear abuse of process of law and is a vexatious suit and the documents filed in support of the plaint and the allegations made in the plaint did not disclose any cause of action for filing a suit for specific performance and the document No.1 is only a rental deed and not duly stamped and document No.2 cannot be construed as an agreement of sale and the plaint is filed on the basis of document No.1 namely rental deed dated 19.04.2000 and hence the suit for specific performance is not maintainable and without appreciating these facts, the lower court dismissed the application.

4. The learned Senior counsel also relied upon the judgment reported in 1998 3 CTC 165 [Nesammal and another vs. Edward and another] wherein this Court has held that the provisions of Order 7 Rule 11 are not exhaustive and the lower court should reject the plaint when the allegations reveal abuse of process of law and also relied upon the judgment reported in 2005 (5) CTC 748 [A.Sreedevi v. Vicharapu Ramakrishna Gowd] wherein this Court has held that clever drafting should not confuse the mind of the Court and the Court has to find out whether any case has been made out in the plaint and therefore submitted that lower court erred in dismissing the application in the rejection of plaint.

5. On the other hand, Mrs.A.Sumathy, learned counsel for the plaintiff/respondent submitted that before the lower court, the only point raised by the revision petitioner herein is that the rental agreement namely document No.1 is insufficiently stamped and that has been properly considered by the lower court and a suit cannot be rejected on the ground that the document is not duly stamped and in support of her contention, she relied upon a judgment reported in 2007 (1) CTC 501 [Mariasusai V. A. Francis and another]. She further submitted that the plaintiff has filed the suit for specific performance and also prayed for recovery of Rs.2 Lakhs as damages as an alternative claim and as per the judgment of this Court reported in 2006 (4) CTC 326 [Balaraman, K. Vs. Pattammal] , in a suit for specific performance, the limitation starts only when there is refusal by the other side when no period has been prescribed in the sale deed and in this case, it has been stated that in June 2005, notice has been issued calling upon the revision petitioner to execute the document and within three years, the suit is filed and therefore it cannot be contended that the suit is also barred by limitation.

6. The learned counsel further submitted that a combined reading of document No.1 and 2 would prove that in part performance of agreement of sale, the plaintiff was put in possession of the property by the defendants after receiving Rs.2 Lakhs and hence the plaint contains all the necessary allegations for maintaining the relief for specific performance and hence the plaint cannot be rejected.

7. In the plaint, in Para 4, it has been stated that the first defendant offered to sale the house for Rs.2 Lakhs and that was also agreed by the plaintiff. No details of the oral agreement has been given. In Para No.5 and 6, mention in made about the document No.1 dated 19.04.2000 and also the payment of balance for consideration on 17.06.2000. In the cause of action, it has been stated that on 19.04.2000 advance was made towards sale consideration and letter of tenancy was executed and on 19.04.2000, payment of balance amount was made and in the prayer, the plaintiff prayed for specific performance of an agreement of sale dated 19.04.2000. Therefore, a reading of the plaint would disclose that the plaintiff has relied upon the document dated 19.04.2000 as if it is an agreement of sale and document No.2 dated 17.06.2000 to prove that balance consideration was paid.

8. It is not the case of the the plaintiff as seen from the plaint that there was an oral agreement of sale and under that oral agreement of sale, amount was paid. As stated supra, the specific case is under document No.1 dated 19.04.2000, agreement was entered into between the parties and the plaintiff was put in possession of the property on payment of Rs.30,000/-. A perusal of document No.1 would make it clear that it is only a letter evidencing receipt of Rs.30,000/- by the first defendant and also the rent agreed between the parties @ Rs.600/- per month. The document No.2 contains a receipt alleged to have been signed by the 2nd defendant for having received Rs.1,70,000/- from the plaintiff and below the same, it has been written by the plaintiff that the property was agreed to be sold for Rs.2,00,000/- and Rs.30,000/- was paid as advance and balance Rs.1,70,000/- was paid to 2nd defendant as per the direction by one Kalaivanan. Therefore a perusal of document No.1 and 2 would make it clear that those two documents will not make it appear that there was an agreement of sale between the parties on 19.04.2000, as alleged by the plaintiff. As stated supra, when the plaintiff filed the suit for specific performance of an agreement of sale dated 19.04.2000, it is for the plaintiff to prove that there was an agreement of sale on 19.04.2000. Unfortunately, no such document regarding the agreement of sale dated 19.04.2000 has been filed and the document relied upon by the plaintiff cannot be construed as agreement of sale for the reason stated above. Though the lower court has held that the plaintiff has stated that there was an oral agreement of sale, there is no basis for the same as no pleading to that effect is stated in the plaint. Therefore, when the plaint proceeded on the basis that there was an agreement of sale dated 19.04.2000 and the plaintiff is entitled to specific performance of the contract, in the absence of proof of any such agreement of sale dated 19.04.2000, it can be held that the plaint has not disclosed any cause of action.

9. As regards the period of limitation is concerned, no doubt, as per the judgment of the Hon'ble Supreme Court rendered in AIR 2006 SCW 1377 in the matter of Gunwantbhai Mulchand Shah & Ors. V. Anton Ellis Farel & Ors. unless there is a refusal on the part of the other side, the limitation will not start in a suit for specific performance. In this case, the said judgment cannot be applied as the plaintiff has not produced any document to prove that there was an agreement of sale between the parties. Further, the alternative prayer is also clearly barred by limitation as admittedly the amount was paid in the year 2000 and in the year 2008, the same cannot be recovered. It may be that the plaintiff is entitled to be in possession of the property till the defendants refund the amount but that is not a ground to maintain the present suit filed by the plaintiff. Therefore, according to me, the plaint does not disclose any cause of action for filing a suit for specific performance and the

claim for refund of Rs.2,00,000/- is also barred by limitation. Hence, the plaint is liable to be rejected as held by this Court in the judgment reported in 1998 (3) CTC 165 [Palanisami, N. V. A.Palaniswamy] that the provisions of Order 7, Rule 11 is not exhaustive and the suit can be rejected when it is a clear case of abuse of process of law. Further, in the judgment of Palanisami, N. V. A.Palaniswamy, cited supra, it has been held as follows,

8..... The trial Court is also bound to see that the valuable time is not taken away by proceeding the trial in the vexatious litigation, which is clearly abuse of process of law. In fact, in the decision reported in T.Arivandandam v. T.V.Satyapal and another, 1977 (4) SCC 467, the Honourable Supreme Court held that it is also duty bound not to take such cases. In para 7 of the Judgment, Their Lordships held that, "We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party more than regret the circumstances that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India. We hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worth while disputes and avoiding the distraction of sham litigation such as the one we are disposing of Another moral of this unrighteous chain litigation is the gullible grant of ex-parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy.

9. In Azhar Hussain v. Rajiv Gandhi, 1986 (Supp) SCC 315, in Para 12, Their Lordships held that, "Learned Counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substances, the argument is that the Court must proceed with the trial record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise the mind of the respondent. The word of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law."

10. The same principle was followed in the very recent decision of Supreme Court reported in I.T.C. Limited v. Debts Recovery Appellate Tribunal, 1998 (2) SCC 70. In that case, Their Lordships followed the decision in Ashar Hussain v. Rajiv Gandhi, 1986 Supp. SCC 315.

11. In the event of all these decisions the argument of the counsel for the petitioners that unless the conditions are satisfied under Order 7 Rule 11 of Code of Civil Procedure, the plaint cannot be rejected is without any basis. The provisions of Order 7 Rule 11 are not exhaustive and the Court has got inherent powers to see that the vexatious litigations are not allowed to take or consume the time of the Court. In appropriate cases, directions can be given by this Court as well as the Court in which the suit is filed not to entertain the suit, if on reading the allegations in the plaint it reveals that the same is abuse of process of law.

10. In view of the above, the lower court has not properly appreciated the principles laid down by the Court and erred in dismissing the application. As the plaint is a clear abuse of process of law, for reason stated above, the Civil Revision Petition is allowed and the Plaint in O.S.No.1 of 2006 on the file of the Sub Court, Ranipet is rejected. The order of the lower court is set aside. No cost.

rgr To The Sub Judge, Ranipet, Vellore District