

Madras High Court

Indrakumar Mahendran vs G.R.Pathmaraj on 3 November, 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.11.2010
CORAM
THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
CRP.(PD) No. 4210 of 2001

Indrakumar Mahendran

... Petitioner

Vs.

1.G.R.Pathmaraj

2.Mohammad Meeran

3.G.M.Pens Ltd,

Rep. by its Director,

76, Janakpuri, Kamarajpuram,

Velachery Road, Guindy,

Madras - 600032

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure a

For Petitioner : Mr.Arvind P. Datar Senior counsel for
Mr.S.Rajasekar

For Respondents : Mr.K.Manoj Menon for
Mr.B.Giridhara Rao for R1
M/s.Muizz Ali and Mr.Feroz Ali for R2
M/s.Chitra Narayanan for R3

ORDER

This revision petition has been filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 07.11.2001 in I.A.No.13713 of 2000 in O.S.No.9141 of 1995 on the file of the XI Assistant Judge, City Civil Court, Madras.

2. Parties:-

The petitioner herein is the third defendant, the first respondent is the plaintiff and the respondents 2 and 3 are the defendants 2 and 1 in the suit. The suit was initially filed before the original side of this Court and numbered as C.S.No.270 of 1995 and subsequently was transferred to the file of the XII Assistant Judge, City Civil Court, Madras and renumbered as O.S.No.914 of 1995.

3. Plaint Prayer:-

The first respondent/plaintiff filed the suit seeking the following relief:-

a. For a permanent injunction restraining the Defendants, their agents, servants, men, representatives, assigns from in any manner alienating, transferring, encumbering or dealing with the shareholding of 60% of the Equity in the first defendant company or such percentage of the shareholding standing in the name of the third defendant in the Registrar of Members of the First Defendant Company or acting on such shareholding through the conferring of any benefit, dividend, allotment of further shares or transfer of further shares to the third defendant, his agents, servants men, representatives and assigns.

b. For a mandatory injunction directing the defendants to make any further allotment of shares or confer any benefit, dividend etc., based on or arising out of the third defendant's shareholding or 60% in the Equity of the first defendant company or such percentage of the shareholding standing in the name of the third defendant in the Register of Members of the first defendant company only to the plaintiff herein after duly complying with, applying for and obtaining approvals from appropriate governmental authorities.

4. Relief sought for in I.A.No.1371 of 2000:-

This Interlocutory application was initially filed before the original side of this Court and numbered as application No.1457 of 1995, filed under Order 7 Rule 11 CPC to reject the plaint filed in C.S.No.270 of 1995 on the suit being transferred to the file of the City Civil Court, the application was renumbered as I.A.No.1371 of 2000.

5. Case of the first respondent/plaintiff:-

(i) The first respondent/plaintiff is the brother-in-law of the petitioner/third defendant (Sister's husband). The first respondent's father Sri.K.Gunaratnam was a Srilankan national and died at Colombo on 09.08.1989. The said Gunaratnam had executed a Will dated 06.05.1977 and in terms of the Will, the first respondent was entitled to all his shares in the companies registered outside Sirlanka. The third respondent company was incorporated in India, in 1985 and the petitioner held shares in the third respondent company. After the demise of Sri.Gunaratnam, the first respondent filed a case before the District Court at Colombo in case No.4209/SPL for a declaration that the shareholding of the petitioner in the third respondent company was purchased by Sri.Gunaratnam from his personal funds to be held in trust by the petitioner for and behalf of Sri.Gunaratnam. That the first respondent also filed an application before the Srilankan Court for limited probate in respect of his shares held by Sri.Gunaratnam in companies registered outside Srilanka, which have been bequeathed to him, which covers the shares held by the petitioner in the third respondent company. According to the first respondent during 1982, Sri.Gunaratnam started manufacture of ball pens in Srilanka in collaboration with M/s.Reynolds Limited, France, and was the franchise holder for Reynolds pens in India and Pakistan. On 04.07.1985, the third respondent company was incorporated, 40% of the shares was allotted to the second respondent, Mr.Mohammad Meeran, who is presently the Managing Director of the third respondent company and 60% shares were allotted to the petitioner, who is the son-in-law of the Sri.Gunaratnam. The letters G.M. in the

name of the company M/s.G.M Pens Pvt. Ltd denotes Gunaratnam and Meeran , the petitioner is a non-resident Srilankan and resides in Dubai and is a Chartered Accountant. Sri.Gunaratnam was assassinated in Colombo on 09.08.1989. On 16.12.1989, the petitioner wrote a letter to Mrs.Gunaratnam about the business carried on by the third respondent company started by Sri.Gunaratnam and majority of shares held by him were funded by Mr.Gunaratnam. On 05.10.1990, the petitioner wrote another letter to Mrs.Gunaratnam stating that the second respondent and himself held shares with the third respondent company in the ratio of 40% : 60% - 15% taken by the petitioner in his own right and the balance 45% shareholding was in trust on behalf of Sri.Gunaratnam. On 30.03.1990, the petitioner transferred 31,500/- shares and on 05.10.1994, one Mr.Afzal Hussain, the secretary of the petitioner sought permission from the Reserve Bank of India to acquire 27,00,000/- shares from the petitioner. On 14.10.1994, the petitioner transferred 27,00,000/- shares namely, 54% of the shareholding in the third respondent company in favour of Mr.Afzal Hussain and transfer was approved by the Board of third respondent company on 04.11.1994. On 12.12.1994, the first respondent filed case No.4209/SPL before the District Court, Colombo for a declaration that the property and assets held by the petitioner in the third respondent company are held in trust by the petitioner for and on behalf of Sri.Gunaratnam. On the same day, an order for injunction was passed by the District Court, Colombo restraining the petitioner from alienating, converting, disposing the shares in the third respondent company. The first respondent also filed an application before the Srilankan Court for limited probate in respect of shares held by Sri.K.Gunaratnam in companies registered outside Srilanka, which had been bequeathed to the first respondent in his Will.

5(ii). Thereafter, the present suit was filed before the original side of this Court in C.S.No.270 of 1995 and the first respondent moved three original applications in O.A.Nos.170 to 172 of 1995 for order of interim injunction from transferring the shares, for a mandatory injunction to restrain the defendants from making further allotment of shares and for appointment of receiver. The respondents in the applications were heard and this Court by order dated 17.02.1995 taking note of the representation made on behalf of the petitioner herein that the shares have been already transferred in October 1994 held that there is no need of interim injunction at that stage and the matter can be dealt with after filing counter. It is only on 23.02.1995, the Reserve Bank of India granted permission to Mr.Afzal Hussain to acquire the shares of the third respondent company from the petitioner, which was transferred to him in October 1994. The District Court, Colombo vacated the order of interim injunction by its order dated 26.04.1996. Thereafter on 17.08.1996, the third respondent/first defendant (company) filed its written statement. On 30.05.1997, the appeal filed by the first respondent in the Court of Appeal of Srilanka against the order vacating the injunction was dismissed and the Supreme Court of Srilanka by order dated 18.06.1998, refused leave to appeal, but observed that the parties will not be bound by the Judgments of the District Court and Court of Appeal in case No.4209/SPL pending in the Special Court in Colombo. On 25.01.2000, an order of limited probate was issued to the first respondent. By then the suit, which was transferred to the file of the City Civil Court was posted in the special list of trail. At that stage of the matter, the petitioner moved the application for rejection of the plaint. Thus, the sum and substance of the case of the first respondent/plaintiff is that the third respondent company was incorporated by Sri.Gunaratnam and the shares held by the petitioner in the third respondent company is being held by him in trust for and on behalf of late Sri.Gunaratnam and therefore, the petitioner cannot alienate or encumber the

shares and therefore prayed for a decree of injunction.

6. Case of the petitioner/third defendant:-

That the third respondent company was promoted by the second respondent and Mr.S.Abdul Kadar in 1985 and the plaintiff had been closely associated with the company ever since its incorporation and Sri.Gunaratnam, who was the petitioner's father-in-law provided advice on business matters and that he was not instrumental in establishing the company and all the averments made by the first respondent/plaintiff is contrary to truth. That late Sri.Gunaratnam bequeathed the shares held by him in companies registered outside Srilanka to the first respondent, however, the shares, which constitute the subject matter of the suit were held by the petitioner in his individual capacity and therefore, the claim raised by the first respondent is untenable. Therefore, the contention that the shares held by him or held in trust for and on behalf of Sri.Gunaratnam is false that Sri.Gunaratnam has not provided any funds for the purpose of investing in the company and that the petitioner invested his monies through proper banking channels after obtaining necessary approval from the concerned Governmental authorities and certificates of foreign inward remittance issued by the bank indicates the remittances made by the petitioner and therefore, there is no substance in the allegation made in the plaint. That the petitioner had explained the position accurately in his letter dated 02.02.1990 addressed to Mrs.Gunaratnam and this fact has been suppressed by the plaintiff. That the petitioner has transferred 90% of the shareholding on 14.10.1994 and the same was approved in the Board meeting held on 04.11.1994. The first respondent having not sought for any declaratory relief, the relief of injunction is not maintainable. That no document has been produced to prove the existence of the trust and there is no trust deed produced by the first respondent/plaintiff. The first respondent's title to the share is to be determined by the District Court at Colombo and the limited probate in respect of the shares is also pending adjudication in Srilanka and while so, the plaint does not disclose a cause of action in respect of relief of permanent injunction and mandatory injunction, in the said circumstances, the plaint is liable to be rejected. It appears that the third respondent company also filed a separate application for rejection of plaint in I.A.No.13714/2000, which was also disposed of by a common order dated 07.11.2001, however no revision has been preferred against the said order.

7. Grounds raised in the application for rejection of plaint in I.A.Nos.13713 & 13714 of 2000:-

(i) The right of the first respondent to the shares in the respondent company has not been recognised in the probate granted on the Will and there is no cause of action for the suit and the plaint is liable to be rejected. According to the first respondent, the shares were allotted to the petitioner during 1995 and even assuming without admitting that the shares were held by the petitioner in trust for and on behalf of late Sri.Gunaratnam. The right to claim the shares devolved on the first respondent on the death of Sri.Gunaratnam during August 1989, and the present suit was filed during 1995 is therefore barred by limitation. The Will executed by Sri.Gunaratnam dated 06.05.1977 in respect of properties outside Srilanka is unenforceable, in view of the bar contained in Wills Ordinance in Srilanka of 1911. In terms of Section 187C of the Companies Act, 1956, a person, who holds beneficial interest in shares must inform the company within 30 days, on which, he becomes beneficial interest in the shares comprised in the trust and in terms of Section 153 of the

Companies Act, the company is not bound to recognise the existence of the trust of which, it has no notice. Hence, without compliance of Section 187C of the Companies Act, by late Sri.Gunaratnam, the first respondent cannot seek any relief. Further, in terms of Section 4 of the Benami Transaction (Prohibition) Act, 1988, action to recover the property held in benami is prohibited and no suit is maintainable. It is further contended that for a valid trust in terms of Sections 5 and 6 of the Trust Act, certain conditions have to be fulfilled, which are essential and all these have not been fulfilled in the case on hand. Further, in the absence of any record to show that Sri.Gunaratnam transferred money from Srilanka through known banking channel, such transaction would be illegal in terms of Section 29 of the Foreign Exchange Act.

7(ii). On the above grounds, the petitioner sought for rejection of the plaint. It is submitted by the learned counsel for the petitioner that though the above referred legal submissions were not specifically raised in the affidavit filed by the petitioner, in the support of the interlocutory applications by quoting the relevant provisions of the various enactments, the points have been substantially raised in the affidavit filed by the petitioner. That apart, the company which filed the another application to reject the plaint, has raised all the above referred points and both the interlocutory applications were heard together and dismissed by a common order and though no revision has been filed by the company, the petitioner is entitled to canvass all grounds.

8. Counter filed by the first respondent/plaintiff to the application for rejection of plaint:-

That the Reserve Bank of India by order dated 23.02.1995 permitted the transfer of shares under Section 29(1)(b) of the Foreign Exchange Regulation Act, 1973, and therefore, there could have been no valid transfer before the said date and the submission of the petitioner before this Court, when the applications for injunction were heard is a wrong statement. Further, Mr.Abzal Hussain of Dubai is none other than the Secretary of the petitioner and the transfer of shares is a sham transaction. That Mrs.Gunaratnam has written various letters to the petitioner that he held the shares for and behalf of Sri.Gunaratnam and these could be substantiated before the Court by evidence. That the first respondent has succeeded in proceedings before the District Court of Colombo and the Will of late Sri.Gunaratnam has been probated and the shares held by the third respondent are in trust for and on behalf of late Sri.Gunaratnam and it is false to state that 90% of the shares held that the petitioner were transferred prior to the filing of the suit. The shares held by the petitioner were acquired from the money given by late Sri.Gunaratnam, which has been admitted by the petitioner in his letter dated 06.12.1985 and the suit is well within the jurisdiction of this Court and there is sufficient cause of action to maintain the suit. On the above grounds, the first respondent prayed for dismissal of the application.

9. The Trial Court heard the parties on the above pleadings and by a common order dated 07.11.2001, dismissed the applications for rejection of plaint. The petitioner, who was the petitioner in I.A.No.13713/2007 has filed the above revision petition.

10. Heard the learned Senior counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

11. Elaborate submissions were made by the learned Senior counsel for the petitioner both by setting out the facts as well as raising various legal contentions.

12. Factual and legal submissions of learned Senior counsel for the petitioner:-

The learned Senior counsel appearing for the petitioner reiterated the contention raised in the affidavit, which have to be referred to above and submitted that in terms of Article 113 of the Limitation Act, the period of limitation is three years and three year period lapsed as on 1994 and the suit filed in 2004 is hit by the law of limitation. Further, by relying upon the paragraph No.15 of the plaint, it is submitted that the writing of a letter by the first respondent will not be a cause of action and such letters cannot form basis for cause of action and as the plaint does not disclose cause of action, the same is liable to be rejected. Further, it is contended that the claim of the plaintiff itself is based on a Will executed by late Sri.Gunaratnam and in view of the bar contained in the Wills Ordinance in Srilanka, such bequeath of asset outside Srilanka are in executable, and in view of the statutory bar, the plaintiff cannot maintain the suit in India. Further, the learned Senior counsel for the petitioner referred to Section 187C of the Companies Act and submitted that it is mandatory for the plaintiff to have filed the declaration under Section 187C (2) of the Act, since non-filing of such declaration is punishable and there is a further duty under Section 187C(4) for the company to make note of such declaration. Therefore, it is submitted that failure to make a declaration is fatal to the case of the plaintiff. The learned counsel relied on the decision of the Hon'ble Supreme Court in Mannalal Khetan vs. Kedar Nath Khetan and others, AIR 1977 SC 536 for the proposition that if punishment is contemplated in a statute then its compliance is mandatory. Further, the learned Senior counsel relied on the provisions of the Benami Transaction Act and stated that in terms of Section 4(1) of the Act such suit is not maintainable. Further, it is contended that without approval of the competent authority, the funds cannot be brought from foreign countries and if such funds were brought by late Sri.Gunaratnam for the purpose of investment in the company the same is a contravention of the provisions of the Foreign Regulation Act and any contract, which is forbidden by law is not permitted under law in terms of Section 23 of the Contract Act. Further, it is submitted that the funds brought in by the petitioner where from known channels and with proper approval and the question of the petitioner holding the shares in trust for and behalf of Sri.Gunaratnam does not arise. Further, it is contended that the Trial Court ought to have considered whether the suit is maintainable under Section 38 of the Specific Relief Act, 1963, when the plaintiff is yet to establish his right to the property, which is the subject matter of the suit in Colombo. Therefore, it is contended that the Courts below ought to have rejected the plaint, accepting the submissions made by the petitioner.

13. Factual and legal submissions of learned counsel for the first respondent/plaintiff:-

The learned counsel appearing for the first respondent/plaintiff reiterated the stand taken in the counter affidavit filed in the Interlocutory Application. The learned counsel further raised a preliminary objection by stating that two Interlocutory Applications were filed in I.A.No.13713 of 2000 and 13714 of 2000 for rejection of the plaint and the petitioner herein is the applicant in I.A.No.13713 of 2000, both the Interlocutory Applications were dismissed by a common order dated 07.11.2001 and no revision has been preferred against the order in I.A.No.13714 of 2000. It is

submitted that the grounds raised by the learned Senior counsel appearing for the petitioner, were not raised by the petitioner before the trial Court and the petitioner cannot be allowed to raise these grounds before this Court for the first time. Further, it is contended by the learned counsel that all the allegations made by the petitioner are all disputed questions of fact and these issues have to be agitated only in a regular trial and the same cannot be a basis for rejection of the plaint. Further, the cause of action is a bundle of facts and the plaintiff has pleaded in his plaint all relevant facts and during the course of trial, the plaintiff would be in a position to prove the same and therefore, this Court should not interfere in the order passed by the trial Court. The learned counsel relied on the decision of the Hon'ble Supreme Court in Ram Prakash Gupta vs. Rajiv Kumar Gupta and Ors. Mano/SC/3911/2007 and Liverpool & London S.P. & I Association Ltd Vs. M.V. Sea Success I and another, 2004 9 SCC 512 in support of his contention.

14. Discussion:-

Though elaborate submissions were made on fact and various legal contentions have been raised, the issue which has to be decided in the present revision petition lies in a very narrow campus. The application filed by the petitioner herein, who is the third defendant in the suit is for rejection of the plaint, primarily on the ground that the plaint does not disclose a cause of action. Though the learned counsel for the first respondent raised a technical objection to the various contentions raised by the learned Senior counsel for the petitioner, it is seen that in both Interlocutory Applications in I.A.No.13713 of 2000 and I.A.No.13714 of 2000, the first respondent filed a common counter and the applications were heard together and dismissed by a common order and in the absence of any conflict of interest, in these Interlocutory Applications between the petitioner and the third respondent company, ends of justice would be met only, if the petitioner is allowed to canvass all the points. Therefore, I propose to examine the contentions raised by the learned Senior counsel for the petitioner and as opposed by the learned counsel for the first respondent.

14(i). Before the proceedings into the facts, it would be necessary to examine the power under Order 7 Rule 11 of Civil Procedure Code and for better appreciation, the provision is extracted hereunder:-

"11. Rejection of plaint:- The plaint shall be rejected in the following cases:-

- (a) Where it does not disclose a cause of action;
- (b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) Where the suit appears from the statement in the plaint to be barred by any law;
- (e) Where it is not filed in duplicate;

(f) Where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

High Court Amendment (Madras): For Clause (c) substitute the following:

'(c) Where the relief claimed is property valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any, granted by the Court", 14(ii). The Hon'ble Supreme Court while examining the object of Order 7 Rule 11 (a) CPC held that the idea underlying the said provision is that when no cause of action is disclosed in plaint, the Court will not unnecessarily protract the hearing of the suit and that a party should not be unnecessarily harassed in a suit. Further, for the purpose of invoking the said power, the Court has to read the plaint, to find out whether it discloses a cause of action and if it does, then, the plaint cannot be rejected by the Court by exercising its power conferred under Order 7 Rule 11 (a) CPC. It is a trite law that cause of action is a bundle of facts and whether a plaint discloses a cause of action is a question of fact, which has to be gathered based on the averments made in the plaint in its entirety by taking those averments to be correct. The Hon'ble Supreme Court in *Mayar (H.K) Ltd. and others vs. Owners Parties, Vessel M.V.Fortune Express and Others*, AIR 2006 SC 1828 held that so long as the plaint discloses some cause of action which requires determination by the Court, mere fact that in the opinion of the Judge, the plaintiff may not succeed, cannot be a ground for rejection of the plaint. The Hon'ble Supreme Court in the case of *Liverpool & London S.P.*, referred supra, elaborately dealt with the issue and held as follows:-

139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

Cause of action

140. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence.

146. It may be true that Order 7 Rule 11(a) although authorises the court to reject a plaint on failure on the part of the plaintiff to disclose a cause of action but the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the suit. The approach

adopted by the High Court, in this behalf, in our opinion, is not correct.

149. In *D. Ramachandran v. R.V. Janakiraman*⁶⁴ it has been held that the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action.

151. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. In *Vijai Pratap Singh v. Dukh Haran Nath Singh*⁶⁷ this Court held: (AIR pp. 943-44, para 9)

By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, *prima facie*, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.

152. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars. (See *Mohan Rawale*⁶³.)

155. The reason for the aforementioned conclusion is that if a legal question is raised by the defendant in the written statement, it does not mean that the same has to be decided only by way of an application under Order 7 Rule 11 of the Code of Civil Procedure which may amount to prejudging the matter.

14(iii). Thus, in terms of law laid down by the Hon'ble Supreme Court, the cause of action is a bundle of facts, which is required to be pleaded and proved for the purposes of obtaining the relief sought for and the Court would be empowered to reject the plaint on the failure of the plaintiff to disclose a cause of action, but the same would not mean that the averments made in the plaint or the document, which have to be relied on, although discloses a cause of action, plaint could be rejected on the ground that it is not sufficient to prove the fact. Further, the Hon'ble Supreme Court also cautioned that the Court cannot dissect the pleadings into several parts and the Court should not embark upon an elaborate enquiry into doubtful or complicated questions of law or facts. Thus the test would be as long as the claim discloses, some cause of action or if it raises some questions, which is fit to be decided, even if the facts of the case reveals that the plaintiff may not succeed, is not a ground to strike down the plaint.

14(iv). Bearing the above legal principles in mind, I propose to examine the contention raised by the petitioner. The sheet anchor of the argument of the learned Senior counsel for the petitioner is that the first respondent has right over the shares is yet to be recognised and in the absence of any such recognition, there is no cause of action for the suit to be instituted and therefore, the plaint has to be rejected. A complete reading of the plaint discloses that it is the case of the plaintiff that his father late Sri.Gunaratnam had been instrumentally in incorporating the third respondent company, funds were infused by him and the name of the company contains, the name of his father and the petitioner, who is none-other than his brother-in-law, was managing or holding the shares of the company for and on behalf of his father. Pursuant to the Will executed by his father late Sri.Gunaratnam, the shares held by Sri.Gunaratnam in respect of the companies registered outside Srilanka have been bequeathed in favour of the plaintiff and therefore pending appropriate orders from the probate Court in Srilanka, the petitioner should not alienate or encumber the shares. Therefore, the case of the plaintiff appears to be that the shares were held in the name of the petitioner, but essentially, they were held for and on behalf of late Sri.Gunaratnam. Heavy reliance has been placed on the letters, stated to have been written by the petitioner to Mrs.Gunaratnam dated 16.12.1989 and 15.01.1990, wherein, the petitioner is stated to have admitted that he is holding the shares for and on behalf of Sri.Gunaratnam. It is seen that these two letters have been filed as plaint document Nos.4 & 6 along with the plaint. Therefore, to decide as to whether the case of the plaintiff is correct, it is necessary that the parties should face trial. Unless the parties lead evidence this fact cannot be proved or disproved. Hence, I am unable to accept the contention raised by the learned Senior counsel for the petitioner that the plaint does not disclose a cause of action. The other issues as regards limitation or as to whether the suit was barred by Wills Ordinance in Srilanka are triable issues and limitation cannot be decided without appreciation of evidence, as the present suit is not a suit for money. Having held so, I do not propose to examine the other contentions raised by the learned Senior counsel for the petitioner namely, the effect of Section 187C of the Companies Act r/w Section 153, whether the suit is barred under the provision of Section 4 of the Benami Transaction (Prohibition) Act, and whether there has been any violation of the provisions of the Foreign Exchange Regulation Act, and in the absence of a valid trust deed whether the claim made by the plaintiff by stating that the petitioner is holding the shares in trust for and on behalf of Sri.Gunaratnam also could be decided only, if the parties are permitted to lead evidence. Therefore, at this stage, if any finding is rendered by this Court on these issues, it may affect the rights of parties and therefore, the contentions are left open.

15. As rightly pointed out by the learned counsel for the first respondent, that the issue involved in the suit is as to whether the shares held by the petitioner herein are held by him in trust for and on behalf of late Sri.Gunaratnam or as to whether it is his individual holding and whether there could be a decree of permanent injunction to restrain the petitioner from dealing with those shares. Prima facie, it appears that the plaintiff has not pleaded a case of a declaration of trust or a trust deed, but his case appears to be that the petitioner, who is the son-in-law of late Sri.Gunaratnam was holding the shares on his behalf, since the monies were that of Sri.Gunaratnam and that he had been instrumental in establishing the company in India. At this stage, it is useful to refer to the decision of the Karnataka High Court in Khajamiya Miransaheb Mujahid vs. Peerapasha Miransaheb Mujahid, Volume 61 Company cases 106, which was also a case arising under Section 187C of Companies Act and the Karnataka High Court, while examining the effect of Section 187C in a civil

proceedings held thus:-

Thus viewed, in a civil suit between brothers as to who the true owner is, section 187C of the Act has no role to play. The failure of the defendant to report cannot be said to be penal because he was genuinely under the impression that he was holding it as a joint owner in his own right as a gift. Therefore, if action had been taken under the provisions of section 187C of the Act for failure to report the implied trust nature as claimed by the brother, it is highly improbable that the action would have resulted in penalty on the facts of this case."

16. In view of the foregoing discussions and on going through the entire plaint averments, this Court is of the view that this is not a fit case in which the plaint in O.S.No.9141 of 1995 has to be rejected at the threshold by invoking Order 7 Rule 11 CPC on the grounds stated by the petitioner and the learned trail Judge rightly dismissed the application filed by the petitioner for rejection of plaint and the order passed by the learned Trail Judge in I.A.No.13713 of 2000 calls for no interference and accordingly, the Civil Revision Petition stands dismissed.

17. It is made clear that this Court has considered the contentions raised by the parties to the proceedings only for the purposes of examining as to whether the plaint is liable to be rejected under Order 7 Rule 11 CPC and the learned trail Judge shall proceed with the trail without being in any manner influenced by the observations made in the order and the parties shall be entitled to raise all grounds, which are available to them under law. No costs.

03.11.2010 Index : Yes Internet:Yes pbn To XII Assistant Judge, City Civil Court, Madras T.S.SIVAGNANAM, J.

pbn Pre-Delivery Order in CRP.(PD) No. 4210 of 2001 03.11.2010