

Mr.S.Thiagarajan vs M/S.Supreme Pipe Syndicate on 5 July, 2017

Author: G.Jayachandran

Bench: G.Jayachandran

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2017

(Reserved on: 27.06.2017)

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD)(MD)No.789 of 2017

and

CMP(MD)No.3576 of 2017

Mr.S.Thiagarajan

... Petitioner

vs.

M/s.Supreme Pipe Syndicate
through its Partners,
Smt.Sajarath Thaiyaba and
Mr.S.Rahmathullah
Door No.51, West Masi Street,
Madurai.

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, to call for the records relating to plaint in O.S.No.690 of 2016 on the file of the District Munsif Madurai Town, Madurai and to strike off the same.

For Petitioner : Mr.N.Satheesh Kumar

For Respondent : Mr.Ajmal Khan, Senior counsel
for M/s.Ajmal Associates

: ORDER

This revision petition is filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.690 of 2016 on the file of the District Munsif, Madurai Town, Madurai.

2. The contention of the revision petitioner, who is shown as defendant in the above suit, is as under:-

The premises bearing Door No.51, West Masi Street, Madurai, is owned by him. He entered into a rental agreement with one Mohamed Yaliah and his wife Sajarath Thaiyaba on 10.10.2012. They were running a shop in the name and style of "M/s.Supreme Pipe Syndicate". Mohamed Yaliah passed away somewhere in the year 2014. After the demise of Mohamed Yaliah, the revision petitioner sought for the vacant possession of the building from Sajarath Thaiyaba. She failed to vacate the premises instead, filed RCOP.No.215/2015 on the file of Additional District Munsif, Madurai, for deposit of rent. While so, the suit which is sought to be strike off filed (O.S.No.690/2016) in the name of M/s.Supreme Pipe Syndicate represented by Rahmathullah and Sajarath Thaiyaba as partners. There is no averment in the plaint that the said M/s Supreme Pipe Syndicate is a registered firm. According to the revision petitioner, the unregistered firm is not entitled to file a suit. There is a specific bar under Section 69(2) of the Indian Partnership Act. While so, the Trial Court has not only taken the suit on file, but also granted an ad-interim order of injunction in favour of the unregistered firm represented by Sajarath Thaiyaba and Rahmathullah.

3. It is contended by the revision petitioner that there is no privity of contract with Rahmathullah or with the so-called firm by name M/s.Supreme Pipe Syndicate. The relationship of landlord-tenant was only with Mohamed Yaliah and his wife Sajarath Thaiyaba. The suit is ex facie an abuse of legal process and the Trial Court without application of mind regarding the maintainability of the suit has not only admitted the suit on file, but also passed an ad-interim injunction prejudicing the right in interest of the revision petitioner.

4. On receipt of notice, the respondent entered appearance through his counsel and submitted that this suit has a chequered history wherein, the respondent/plaintiff who was inducted as a partner in M/s.Supreme Pipe Syndicate was carrying on business vide unregistered partnership deed dated 02.03.2015 along with Sajarath Thaiyaba in the name and style of "M/s.Supreme Pipe Syndicate". Since there was an attempt to evict him forcibly pending RCOP.No.215/2015 for depositing the rent, he has filed the suit for injunction restraining the defendant/revision petitioner, his men, agent and any other person from interfering with his peaceful possession and enjoyment of the suit property as a statutory tenant except under due process of law.

5. It is further contended that the Trial Court on considering his interlocutory application has granted ad-interim injunction not to evict him except due process of law. While so, the landlord with political influence, illegally dispossessed him and put the premises under lock. So, he has filed W.P(MD)No.24398/2016 seeking Writ of Mandamus, to remove the lock and seal illegally put up by the revision petitioner herein. The High Court on 05.04.2017 after getting a report from the Additional Deputy Commissioner of Police, PEW, Madurai City, held that there is an illegal dispossession of the writ petitioner (Rahamathullah) by Thiagarajan (revision petitioner herein) with the help of certain members of the political party. The said shop has been kept under lock and

key of the Police. Case in Crime No.41/2017 has also been registered by the Central Crime Branch, Madurai, against Thiagarajan and the members of the political party for illegal trespass and forcible eviction of the writ petitioner. Therefore, Mandamus was issued to the Police to hand over possession of the property to the writ petitioner and also put necessary pickets for the said purpose.

6. Against this order, the revision petitioner herein has preferred W.A(MD)No.331/2017 wherein, the Division Bench of this Court has passed the following order:-

"7.We have carefully considered the submissions on either side and have taken note of the factual matrix with regard to the maintainability of the appeal. Prima facie we are of the view that the appeal would be maintainable as the impugned order appears to have finally decided the issue that the appellant has forcibly dispossessed the writ petitioner using force. However, this Court will hear the learned counsel for the respondent on the maintainability of the appeal as well. Therefore, the Court has to consider as to what has to be done during the interregnum period that is till the matter is heard and decided finally. As noticed above, the suit has been filed in the name of a firm (which according to the learned counsel for the appellant is not a registered firm and the suit is not maintainable), represented by two partners. One of the partners is the writ petitioner and the other is the fifth respondent in the present appeal. It is not disputed by the writ petitioner that the fifth respondent was the tenant under the appellant. There may have been some arrangements between the fifth respondent's husband and the writ petitioner. However, this aspect cannot be adjudicated in the present proceedings. The case of the appellant as well as the fifth respondent, Smt. Sajarath Thaiyaba is that the fifth respondent has handed over the vacant possession to the appellant and the keys were given him and she has also obtained some money from the appellant by way of goodwill. In such circumstances, the larger question would be as to whether the injunction would continue to operate against the appellant, especially in the light of the conduct of the fifth respondent, who was a co-plaintiff in the suit. This issue has to be decided by the civil Court. We find that the fifth respondent has been consistent in her stand by filing a memo before the civil Court, before the Rent Controller and an affidavit before the Writ Court. Therefore there appears to be a serious disputed question of fact as to who was in possession of the property, whether the writ petitioner or the fifth respondent's husband and this issue is further complicated by the fact that both the writ petitioner and the fifth respondent were co-plaintiffs in the suit in O.S.No.690 of 2016.

8. In the light of all the above facts, we are of the prima facie view that the police authorities should have left the parties to work out their remedy before the civil Court and not intervene in the matter. However, based on a report submitted by the Additional Deputy Commissioner of Police, Madurai City, the Commissioner of Police, Madurai City, directed the Central Crime Branch (CCB) Police officials to register a case, and accordingly a case has been registered against the appellant on 01.04.2017 in Crime No.41 of 2017, for the offences punishable under Sections 143, 341, 457, 395, 427 r/w 109 IPC.

9. Thus we are of the view that till the matter is heard and decided, the premises should be kept under lock and key, so that the parties can first contest the matter before this Court. Therefore, we direct the respondents 2 and 3, namely the Commissioner of Police, Madurai City Police, Madurai and the Inspector of Police, Thilagar Thidal Police Station, Madurai, Madurai District, to immediately seal the premises and take photographs while the sealing process is going on and the sealing shall be done in the presence of two independent witnesses and along with a report, shall hand over the keys of the premises to the Registrar (Administration), of this Bench, to be retained till this Court decides this appeal."

7. Under these circumstances, the learned Senior counsel for the respondent submitted that the matter is now to be decided by the Civil Court regarding the dispute between the revision petitioner and the respondent whether he is a tenant under the revision petitioner in view of the arrangement between the respondent and Sajarath Thaiyaba and this fact is a matter for trial and has to be adjudicated before the Civil Court.

8. The learned Senior counsel for the respondent also submitted that even an unregistered firm is entitled to file a suit seeking perpetual injunction, if the right sought is not through the terms of the contract and the relief sought as common law remedy based on equity. In support of his submission, he has relied upon the judgments of the Hon'ble Supreme Court in M/s.Raptakos Brett & Co.Ltd., vs. Ganesh Property reported in AIR 1998 SC 3085 and M/s.Haldiram Bhujawala and another vs. Anand Kumar Deepak Kumar and another reported in AIR 2000 SC 1287.

9. Per contra, the learned counsel for the revision petitioner submitted that the suit as laid is per se not maintainable in view of Section 69(2) of the Indian Partnership Act. Further, a fraud on Court has been committed by the respondent suppressing the truth and suggesting falsehood. When there is no privity of contract between the respondent and the revision petitioner, the plaintiff claiming himself as a statutory tenant and seeking protection from eviction without due process of law is unsustainable. Since there is a fraud on the face of the Court and the revision petitioner who is 71 year old senior citizen cannot be forced to undergo the ordeal of trial before the Civil Court to defend the suit which basically contains falsehood. Hence, this revision petition under Article 227 of the Constitution to strike off the plaint without resorting to Order 7, Rule 11 of CPC is sustainable.

10. In support of his submission, the learned counsel for the revision petitioner referred the judgment of this Court in [A.Sreedevi vs. Vicharapu Ramakrishna Gowd reported in 2005 (5) CTC 748], where this Court has held that "Article 227 of the Constitution of India can be invoked to prevent abuse of process of law and such a plea can be raised in revision petition, without approaching the trial Court".

11. He has also cited the another judgment rendered in M/s Southern and Rajamani Transport Private Limited rep.by its Director V.R.Venkataswamy, dated 30.03.2010, wherein this Court has repelled the argument of efficacious alternate remedy under Order 7, Rule 11 of the Code of Civil Procedure and held that the power of superintendence conferred in the High Court can be invoked, on the following grounds:

a. To prevent abuse of process of law b. To prevent miscarriage of justice c. To prevent grave injustice d.To establish both administrative as well as judicial power of the High Court.

12. The specific averment in the plaint is that, on 10.10.2012 tenancy agreement was entered between the then parties of the plaintiff firm and the defendant/landlord. Conspicuously, the said agreement does not find place in the list of documents filed along with the plaint.

13. In the plaint, there is no averments that the plaintiff partnership firm is a registered firm. In the absence of firm registration certificate and in the absence of tenancy agreement, without ascertaining the existence of privity of contract, the trial Court has taken the plaint on file giving a go by to Section 69(2) of the Partnership Act, which bars the suit by unregistered partnership firm against the third party. The trial Court has failed to exercise even a minimum required scrutiny of pleading, relief sought and maintainability of the suit before taking the plaint on file.

14. The non-disclosure of material fact relevant for cause of action is singularly suffice to reject the plaint under Order 7, Rule 11 of the Code of Civil Procedure, however the ancillary proceedings and abuse of court process, force this Court to interfere under Article 227 of the Constitution of India to allow the revision petition, without resorting to the alternate remedy. Since it will be unjust to ask, a senior citizen aged about 71 years to defend a suit, which is per se barred in law and filed with material suppression of fact.

15. The said S. Rahmathullah claims himself as a partner in M/s Supreme Pipe Syndicate. In the plaint, he has not whispers about the date of his induction into the partnership firm. Now, before this Court, an unregistered partnership deed dated 02.03.2015 between S. Rahmathullah and Smt.Sajarath Thaiyaba has been produced. This partnership deed is after issuance of legal notice by the landlord to Smt.Sajarath Thaiyaba. The RCOP proceedings is filed on 20.04.2015 in the name of Smt.Sajarath Thaiyaba. In that petition, there is no mentioning about S.Rahmathullah as its partner. Smt.Sajarath Thaiyaba has filed memo dated 02.01.2017 informing the Tribunal that she has vacated the premises, after receiving the advance amount and sought for dismissal of R.C.O.P.No.215 of 2015 as not pressed. She has also filed a memo in O.S.No.690 of 2016, which is the subject matter of the revision petition stating that S. Rahmathullah is no way connected with the suit property. She has vacated the property and handed over the vacant possession to the landlord. She has filed a detailed affidavit and petition to implead herself in W.P.(MD)No.24398/2016 filed by Rahmathullah, wherein she has categorically stated that Rahmathullah is not a partner of Supreme Pipe Syndicate. She has alleged that taking advantage of the husband's demise, Rahmathullah is trying to grab the business.

16. From the pleadings and documents, it is clear that, Rahmathullah has no privity of contract with the revision petitioner/ landlord. He has not placed any document to show, the landlord let out the premise to Supreme Pipe Syndicate, a partnership firm and in which, he is a partner. Contrarily, the person with whom the landlord has entered into agreement has filed memo and affidavit denying the claim of Rahmathullah.

17. The factual matrix of this case is entirely different to the case of M/s Raptakos Brett & Co. Ltd., cited by the learned Senior Counsel for the respondent. In the case cited, the plaintiff was admittedly an unregistered partnership firm, which entered into a lease agreement with the defendant for a period of 5 years. After expiry of lease period, when recovery of possession was sought, based on the term of the lease, the Hon'ble Apex Court has held in para 24, which reads as follows;

?24..... On the facts of the present case it has to be held that there is no further locus poenitentiae given to the tenant to continue to remain in possession after the determination of lease by efflux of time on the basis of any such contrary express term in the lease. Consequently, it is the legal obligation flowing from Section 108(q) of the Act which would get squarely attracted on the facts of the present case and once the suit is also for enforcement of such a legal right under the law of the land available to the landlord it cannot be said that enforcement of such right arises out of any of the express terms of the contract which would in turn get visited by the bar of Section 69, Sub Section (2) of the Partnership Act. Consequently, it has to be held that when paragraph 2 of the plaint in addition made a reference to right of the plaintiff to get possession under the law of the land, the plaintiff was seeking enforcement of its legal right to possession against the erstwhile lessee flowing from the provisions of Section 108(q) read with Section 111(a) of the Property Act which in turn also sought to enforce the corresponding statutory obligation of the defendant under the very same statutory provisions. So far as this part of the cause of Action is concerned, it stands completely outside the sweep of Section 69, sub-section (2) of the Partnership Act. The net result of this discussion is that the present suit can be said to be partly barred by Section 69, sub-section (2) so far as it sought to enforce the obligation of the defendant under Clauses 14 and 17 of the contract of lease read with the relevant recitals in this connection as found in paragraph 2 of the plaint. But it was partly not barred by Section 69, sub-section (2) in so far as the plaintiff based a part of its cause of Action also on the law of the land, namely, Transfer of Property Act, whereunder the plaintiff had sought to enforce its statutory right under Section 108(q) read with Section 111(a) of the Property Act. Enforcement of that right had nothing to do with the earlier contract which had stood determined by efflux of time. The first point for determination therefore, has accordingly, to be held partly in favour of the plaintiff and partly in favour of the defendant. As the decree for possession is passed on the basis of both parts of causes of action, even if it is not supportable on the first part, it will remain well sustained on the second part of the very same cause of Action."

18. As far as the case under revision, Rahmathullah or Supreme Pipe Syndicate was not a party to the lease agreement. It was Mohamed Yahiah and Sajarath Thaiyuba, who have entered into rental agreement with S.Thiagarajan/landlord on 10.10.2012, on expiry of the earlier rental agreement.

19. A total stranger, without any document to show his possession, has filed the suit not to disturb his possession without due process of law. The trial Court has taken the plaint on file, despite statutory bar and had granted interim injunction, after referring the documents 1,3,4, to 7 in the list of documents, which are notices exchanged between the landlord and Sajarath Thaiyuba and rental receipts issued to her and nothing related to Rahmathullah.

20. The facts and documents, which were brought to light by the parties in the connected proceedings like R.C.O.P.No.215 of 2015 filed in the name of Supreme Pipe Syndicate through its

partner Sajarath Thaiyaba and W.P.(MD)No.24398 of 2016 filed by Rahmathullah, the memo filed by Sajarath Thaiyaba disowning the R.C.O.P.No.215 of 2015 filed in her name, the implead affidavit filed by her in W.P.(MD).No.24398 of 2016 alleging misuse and breach of trust by Rahmathullah for creating record as if he was a partner in the business, makes this Court to arrive at an irresistible conclusion that had the trial Court was vigilant enough while taking the suit on file, several events and abuse of process of law could have been averted.

21. The Hon'ble Supreme Court in M/s Raptakos Brett & Co.Ltd., case has an unequivocal term has held that so far as the applicability of the bar of Section 69, Sub-Section (2) of the Partnership Act, is concerned, it is true that it is a penal provision which deprives the plaintiff of its right to get its case examined on merits by the Court and simultaneously deprives the Court of its jurisdiction to adjudicate on the merits of the controversy between the parties. It will, therefore, have to be strictly construed. It is also true that once on such construction of this provision the bar under Section 69(2) of the Act gets attracted, then the logical corollary will be that the said provision being mandatory in nature would make the suit incompetent on the very threshold.?

22. The other judgment cited by the learned Senior counsel for the respondent is M/s Haldiram Bhujawala and another vs. M/s Anand Kumar Deepak Kumar and another reported in [AIR 2000 Supreme Court 1287], wherein, unlike the case in hand, the relief sought by the plaintiff an unregistered firm is in respect of infringement of Trade Mark, which does not relate to enforcement of any rights arising out of contract. Whereas the case in hand, the cause of action rests upon the lease agreement dated 10.10.2012 between the landlord Thiagarajan on one hand and Mohamed Yahiah and Sajarath Thaiyuba in the other hand, who is co-plaintiff in this suit. Thus, both judgments cited by the learned Senior counsel for the respondent have no relevance to the facts of the case in hand.

23. This case being filed by a person claiming himself as a partner of the plaintiff firm without an iota of document to show his right or interest in the said firm. Coupled with the legal bar in entertaining a suit by unregistered firm, the plaint is bound to be struck off. The conduct of the respondent by perpetual abuse of law creating records by fact twisting, warrants interference of this Court to invoke the supervisory jurisdiction under Article 227 of the Constitution of India.

24. Accordingly, the plaint in O.S.No.690 of 2016 filed by M/s Supreme Pipe Syndicate before the District Munsif Court, Madurai Town, Madurai, is struck off for the reason that the suit filed by the unregistered partnership firm against the third party is barred under Section 69(2) of the Partnership Act.

25. In the result, the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

To The District Munsif, Madurai Town, Madurai.

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