

**IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM**

**PRESENT:** Tmt. V. Devapriya, B.Sc.,M.L.,  
District Munsif, Madurantakam

Tuesday, the 8<sup>th</sup> day of November, 2022

I.A.No. 16/2022

in

O.S.No. 86/2020

1. S.V. Duraisamy
2. D. Suresh
3. D. Sumathi
4. Sudhasri
5. D.Surender
6. M. Sivakami
7. R.Sangeetha
8. Raji

...Petitioners/ Defendants

**-vs-**

S.Hakeem Raja

...Respondent/ Plaintiff

This petition coming up before me on 17.10.2022 for final hearing in the presence of, Thiruvallargal.G.Mageshkumar, and K.S.Raju, counsel for the Petitioners/ Defendants and Thiru.V.Agoram, counsel for the Respondent/ Plaintiff and after hearing the arguments of both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

**ORDER**

This petition has been filed by the Petitioners/Defendants under Order VII Rule 11 of Code of Civil Procedure, to reject the plaint in the above suit.

**2.The averments stated in the petition in brief:**

The Respondent/Plaintiff had filed the above suit for permanent injunction restraining the Petitioners/Defendants from interfering with his peaceful possession and enjoyment over the suit property and restraining the Petitioners/Defendants from alienating the suit property and also for declaration of certain registered deeds as null and void. The Sale Agreement entered between the Respondent/Plaintiff and the Petitioners/Defendants was during the year 2015 and 2017 and without filing suit for specific performance, the Respondent/ Plaintiff had filed the suit for permanent injunction only to drag on the litigations. The Respondent/ Plaintiff had not filed any document to prove his possession in the suit property, while admitting the Petitioners/ Defendants title in suit property. The other prayer is not maintainable since the Petitioners/Defendants has no locus standi to question of validity of the said deeds and he could not prevent the owner of the properties to deal with the same as he likes. There is no cause of action in the above suit and therefore the same should be rejected without trial. Even the relief of specific performance is also barred by limitation. Hence this petition.

**3. The averments stated in the Counter filed by the Respondent/ Plaintiff in brief:**

This petition is vexatious and unsustainable both in law and facts. The Petitioners

Defendants had admitted the sale agreement between the Petitioners/Defendants and Respondent/ Plaintiff. As per the agreement the possession of the suit property has been handed over to the Respondent/Plaintiff and the Respondent/Plaintiff had got DTCP approval on 24.02.2018, and made certain improvements in the suit property. As per the agreement, the Respondent/Plaintiff also paid Rs. 50,00,000/- as advance and written agreement was executed on 26.02.2015 and thereafter the fresh agreement was executed on 17.07.2017. The Respondent/Plaintiff had divided the suit properties into plots and sold to the 3<sup>rd</sup> parties, identified by the Petitioners/Defendants. The amount received at the time of sale was adjusted to the Sale agreement amount. The Respondent/Plaintiff is always ready and he performed his part of contract. In the year 2019, taking advantage of the Covid -19 pandemic the Petitioners/ Defendants had created several sale deeds in order to cause loss to the Respondent/Plaintiff. Hence the Respondent/Plaintiff had filed the above suit for permanent injunction and for declaration of those documents as null and void. The Respondent/Plaintiff is continuously carrying out the sale agreement conditions and it is continuous process and there is no time limit in the contract as agreed between the parties. Therefore the question of limitation will not arise. The Respondent/ Plaintiff had filed the petition under Order II Rule 2 of Code of Civil Procedure and the same was allowed and the right to file the suit for specific performance was reserved by the Respondent/Plaintiff.

The Interim injunction petition in the above suit was also allowed. The Petitioners/ Defendants has filed the Civil Revision Petition before the Hon'ble High Court of Madras in CRP No.1816/2022 seeking to struck off the plaint to the above suit and it is pending. Hence the Petitioners/ Defendants has no locus standi to file this petition. There is cause of action in the above suit. Hence this petition is liable to be dismissed with costs.

4. The point for determination is whether this petition is to be allowed or not?

5. On the side of the Petitioners/Defendants, no Exhibits were marked and on the side of the Respondent/Plaintiff Exhibits R-1 to R-25 were marked and no witnesses were examined on both sides.

6. Heard both sides and perused the records.

7. The Petitioners/Defendants had filed this petition to reject the plaint on the ground that, there is no cause of action in the above suit. The Petitioners/Defendants had not specifically stated any averment to reject the plaint on the ground that there is no cause of action. The Respondent/Plaintiff had resisted the petition stating that, there is a threat and attempt to interfere the Respondent/Plaintiff's possession in the suit property and there is cause of action.

8. The learned counsel for the Petitioners/Defendants had filed the judgment of the Hon'ble High court in the case of T.S.Govindarajan and another vs M.Govindarajan and

another [CDJ 2020 MHC 427] and the judgment of the Hon'ble Supreme Court in the case of *Balram Singh vs Kelo Devi* [Civil Appeal No.6733 of 2022 dated 23.09.2022] and another judgment of the Hon'ble Supreme Court in the case of *Ammer Minhaj vs Dierdre Elizabeth (Wright) Issar and others* [CDJ 2018 SC 706], to contend that the suit cannot be filed based on the unregistered Sale Agreement. But the Petitioners/Defendants had not filed this petition on this ground. Perusal of the above judgments shows that, the Hon'ble Supreme Court and the Hon'ble High Court of Madras had discussed with regard to the validity of the unregistered Sale Agreement. Admittedly the above suit is not filed for specific performance and further the admissibility of the document could not be discussed in this petition to reject the plaint. Therefore the above judgments are not applicable to this present petition.

9. The learned counsel for the Petitioners/Defendants had filed the judgment of the Hon'ble High Court of Allahabad in the case of *Rajendra Kumar vs Mahendra Kumar Mittal* [CDJ 1991 All HC 352] and the judgment of the Hon'ble Supreme Court in the case of *Premeji Ratansey Shah vs Union of India* [CDJ 1994 SC 376] and the judgment of the Hon'ble High Court of Madras in the case of *K.S.Balasubramniam vs S.Munuswamy* [CDJ 1999 MHC 573], wherein it was held that, permanent injunction cannot be granted when there is a efficacious remedy. Whether the permanent injunction can be granted or not, can be decided only after trial by recording the evidences.

The above judgments will be of assistance to the Petitioners/ Defendants while deciding the merits of the case and therefore they are not applicable to the present petition.

10. In another judgment of the Hon'ble High court of Madras in the case of *K.Duraisamy vs K.Kumarasamy and another* [CDJ 2021 MHC 2742] filed by the learned counsel for Petitioners/Defendants, the Hon'ble High Court has rejected the plaint on the ground that, it was barred by limitation. The Petitioners/Defendants had not stated any specific averments with regard to the limitations period of the suit and had simply stated that the suit barred by limitation. The Sale Agreement was entered between the Petitioners/ Defendants and the Respondent/Plaintiff on 17.07.2017, and the above suit has been filed on 19.08.2020, within the period of 3 years from the date of agreement. Therefore the above judgment is not applicable to the present petition.

11. The Judgment in Hon'ble High court of Madras in the case of *Palaniammal and others vs K.R.C. Anbalagan & others* [CDJ 2012 MHC 6375] also had discussed with regard to the merits of the case and therefore the above judgment cannot be relied upon at the stage of deciding the petition for rejection of Plaint.

12. The another judgment filed by the learned counsel for the Petitioners/ Defendants in the case of *Madanuri sri Rama Chandra Murthy vs Syed Jalal* [CDJ 2017 SC 467] had discussed with regard to the suit barred by law. The Petitioners/Defendants had not

filed this petition on the ground that, the suit is barred by any law and there is no averment in the petition with regard to the law which bars the above suit . Hence the above judgments is not applicable to the present petition.

13. It is well settled the law that, in order to decide the petition under Order VII Rule 11 of Code of Civil Procedure, the averments in the plaint and also the documents filed along with the plaint alone has to be looked into and not even the averments in the written statement. The case of the Respondent/Plaintiff is that the Petitioners/Defendants had entered into Sale agreement to divide the suit property into plots and sell the same to the 3<sup>rd</sup> parties shown by the Petitioners/Defendants. The Respondent/Plaintiff had filed the Sale Agreement as Exhibit R-1 and the Exhibit R-2 shows that the suit property has been divided into plots and DTCP has approved the same. Exhibit R-3 to R-16 shows that the 1<sup>st</sup> Defendant had received certain amount towards the sale of the properties in DTCP No. 53 of 2017. Exhibit R-18 and 19 and R-24 shows that the plots in suit property has been sold to 3<sup>rd</sup> party and Exhibit R-20 to R-23 shows that the 1<sup>st</sup> Defendant has executed a Settlement in favour of D2 to D-4. The Respondent/Plaintiff has filed the above suit not only for permanent injunction, but also for declaring the Exhibit R-20 to R-23 as null and void. Therefore this court is of the opinion there is cause of action in the above suit.

14. The learned counsel for the Respondent/Plaintiff had filed the judgment of the

Hon'ble Madurai Bench of Madras High Court in the case of *R. Vijayalakshmi vs Abdul Rahman [C.R.P (PD) (MD) No. 955 of 2019 and CMP (MD) Nos. 5412 and 11037 of 2019 dated 11.03.2020]* wherein it was held that, since the possession has been handed over to the plaintiff therein, the question of possession can be decided only at time of trial. As already discussed the above suit was not only filed for permanent injunction but also for declaration of certain Settlement deeds as null and void. Hence as per the above judgment the question of possession and also the validity of the aelleged Settlement Deeds can be decided after trial.

15. The learned counsel for the Petitioners/Defendants has filed the judgment of the Hon'ble High court of Madras in the case of *Pugazhendhi vs Subramanian [CDJ 2020 MHC 2277]* wherein the Hon'ble High Court has upheld the dismissal of the petition under Order VII Rule 11 of Code of Civil Procedure. The facts of the above judgment is similar to the facts in the above suit. In para 29 of the above judgment, the Hon'ble High Court of Madras had held as follows:

*“29. Further, argument has been advanced by the learned counsel appearing for the petitioner that, the suit has been filed based on an unregistered sale agreement and the possession has been handed over to him pursuant to the sale agreement, and hence he is seeking protection under Section 53 (A) of the Transfer of Property Act. Hence, the plaintiff cannot rely upon the sale agreement and seek to protect his possession. Even though that submission is*



*attractive, the prayer in the suit is not only seeking injunction restraining the defendant from interfering with his possession and also permanent injunction restraining the defendant from alienating the suit schedule property and create third party interest pending sale agreement. Even assuming that the suit for injunction is not maintainable based on an unregistered sale agreement, since yet another relief is also sought for in the suit, the suit cannot be partly rejected under Order VII rule 11 of C.P.C.”*

The above judgment is squarely applicable to the present petition. Hence for the foregoing reasons, and as per the above judgment of the Hon'ble High Court, this court is not inclined to allow this petition.

**16.** In the result, this petition is dismissed. No costs.

Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 8<sup>th</sup> day of November, 2022

District Munsif  
Madurantakam

**Petitioners/Defendants side witnesses and documents:**

-Nil-

**Respondent/Plaintiff side witnesses:**

Nil

**Respondent/Plaintiff side documents:**

Ex. R-1- The agreement executed between the Petitioner and the Respondent  
dated 17.07.2017

Ex. R-2- The copy of DTCP approval dated 24.07.2018

- Ex. R-3- Cash Receipt dated : 29.08.2017
- Ex. R-4- Cash Receipt dated : 31.08.2017
- Ex. R-5- Cash Receipt dated : 20.09.2017
- Ex. R-6- Cash Receipt dated : 05.10.2017
- Ex. R-7- Cash Receipt dated : 30.10.2017
- Ex. R-8- Cash Receipt dated : 08.12.2017
- Ex. R-9- Cash Receipt dated : 18.01.2018
- Ex. R-10- Cash Receipt dated : 19.01.2018
- Ex. R-11- Cash Receipt dated : 01.03.2018
- Ex. R-12- Cash Receipt dated : 06.03.2018
- Ex. R-13- Cash receipt dated 16.03.2018
- Ex. R-14- Cash Receipt dated : 18.06.2018
- Ex. R-15- Cash Receipt dated : 19.07.2018
- Ex. R-16- Cash Receipt dated : 23.11.2018
- Ex. R-17- The Encumbrance certificate
- Ex. R-18- The certified copy of Sale deed dated 20.03.2020
- Ex. R-19- The certified copy of Sale deed dated 08.04.2019
- Ex. R-20- The certified copy of Settlement deed dated 16.12.2019
- Ex. R-21- The certified copy of Settlement deed dated 16.12.2019
- Ex. R-22- The certified copy of Settlement deed dated 16.12.2019
- Ex. R-23- The certified copy of Settlement deed dated 16.12.2019
- Ex. R-24- The certified copy of Sale deed dated 07.02.2020
- Ex. R-25- The Legal notice issued by Respondent to Petitioners 1 to 5 dated 22.07.2020

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