

In the Court of the District and Sessions Judge,
District and Sessions Court No.II, Kancheepuram.

PRESENT: **J. CHANDRAN**,
District and Sessions Judge,
District and Sessions Court No.2,
Kanchipuram.

This Thursday the 21st day of April 2022

I.A.No. 215/2019 in O.S. No. 114/2018

V.Jacob Nixon --- Petitioner/Defendant

//Vs//

Vijayakumari --- Respondent/Plaintiff.

This petition is coming on 23-02-2022 for final hearing before me in the presence of M/s D,Murthy, V.Elangovan, S.Ramamoorthy, counsels appearing for the petitioner/defendant and M/s L.Sowmiya Narayanan, M.Priya counsels appearing for the respondentplaintiff, upon hearing the arguments from both sides, upon perusal of records and having stood over for my consideration till this day, this court passed the following

ORDER

This petition has been filed by the petitioner / defendant to reject the plaint filed in this case under Order 7 Rule 11 (a) and (d) of CPC.

2) The averments found in the petition are as follows:-

One Mr.Selvanayagam representing himself along with the vendors of the plaintiff as the owners of the plaint schedule property in pursuance of joint purchase vide registered sale deed dated 25-10-1989 and made all improvements in the suit property by constructing superstructure. The said vendors of the plaintiff vice Nirmala and Varadarajan had executed a general power of attorney deed dated 04.10.1995 in the name of Selvanayagam to deal with the plaint schedule property including the sale and accordingly the said Selvanayagam entered in to an agreement of sale dated 15-04-2005 to sell the suit property to the petitioner for the total sale consideration of Rs.1,50,000/- and he received a sum of Rs.1,00,000/- by cash on the same day as an advance. He had also received a token advance amount of Rs.5,000/- by cheque No. 371991 dated 05.03.2005 and as per the sale agreement the balance sale consideration of Rs.45,000/- shall be paid at the time of execution of the sale deed in the name of the petitioner. On the date of execution of a sale agreement the suit property was handed over to the petitioner along with the original title deeds and subsequently, the petitioner had made certain improvements in the property and he is in possession and enjoyment of the same. Subsequently, the said Selvanayagam died and on enquiry it reveals that the said Selvanayagam is not survived by any Class I legal heirs and the vendors of the plaintiff are the son and daughter of the deceased Selvanayagam's sister and the said sale agreement is enforceable against them on account of their refusal to execute the sale deed. The petitioner has deposited the balance

sale consideration of Rs.45,000/- in to the court on 15.12.2005. This petitioner has filed a suit in O.S.No. 170/2005 against the said Nirmala and Varadarajan for specific performance and an ex parte decree was passed on 11-08-2006 and later it was transferred to the Sub Court, Kanchipuram.

3) The said Nirmala and Varadarajan had entered their appearance in E.P.No. 2/2009 and resorted to the proceedings contemplated under Order 21 Rule 106 of CPC and Order 9 Rule 13 of CPC and it was carried up to the Hon'ble Supreme Court and finally the Hon'ble Supreme Court has passed an order and dispose the SLP preferred by the petitioner against the order passed by the Hon'ble High Court in C.M.S.A.No. 9/2012 on 21-11-2012 by making a categorical observation vide order dated 11.03.2016, that both the execution and original proceedings are directed to be tried by the trial courts independently on its own merits. The pendente lite purchaser had allowed the present suit against the petitioner by deliberately suppressing all the material facts of the case. The respondent is in no way related to the possession of the suit property and hence, the suit has got no legs to stand.

4) The plaintiff conceded the defendant as not in lawful possession rather a trespasser and the present suit for possession of the defendant under the provisions of Transfer of Property Act is totally barred by law. the plaint does not disclose any cause of action. The right to sue will not accrue to the plaintiff to maintain the plaint and its title is in dispute and under challenge in O.S.No. 170/2005. The present suit is barred not only

under the provisions of Transfer of Property Act but also having no cause of action to sue the defendant.

5) **The averments found in the counter statement are as follows:-**

All the allegations about the pendente lite purchaser was rejected by the Hon'ble High Court and confirmed by the Hon'ble Supreme Court. There is no power of attorney between the said Selvanayagam and the vendors of the respondent. The truth and genuineness of the agreement was specifically raised in the written statement filed by the vendors as well as the purchaser. Whether the pendente lite purchaser is a bonafide purchaser or not, the competency of purchaser to question the genuineness of the agreement are all the matters can be elucidated in full fledged trial and the same cannot be decided in this petition and on that ground this petition is liable to be rejected. The petitioner is a trespasser who claimed as an agreement holder. Filing of the suit for specific performance is not a bar for transferring the suit. Under which law the plaintiff was debarred from filing the suit is not at all mentioned in the affidavit. There is no suppression of fact or the suit is not barred by any law. Sec. 53(a) of Transfer of Property Act is not a bar for filing the suit. The agreement should have been registered as per the Transfer of Property Act 2001 amendment and hence, he prays for dismissal of the petition.

5) **The point for consideration:**

Whether the petition filed to reject the suit is to be allowed or not is the question to be decided in this petition?

6) No oral evidence was adduced and documentary evidence was marked on both side.

7) **The Point:-**

This petition has been filed to reject the plaint under Order 7 Rule 11(a) and (d) of CPC.

The provision of Order 7 Rule 11 reads as follows:-

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;**

This petition has been filed under the category of Clause 'a' and 'd' of Order 7 Rule 11 of CPC. As per the above said provisions the suit can be rejected if the plaint does not disclose a cause of action or if the suit appears from the statement made in the plaint to be barred by any law. These are the two grounds raised by the petitioner in this petition to reject the plaint. When this court perused the plaint, several aspects were being raised by the plaintiff to show that there was cause of action arose right from 25.10.1989 up to filing of the suit in O.S.No. 1709/2005 which were heavily relied on by the petitioner for filing the suit. It is the definite case of the respondent / plaintiff that the suit property was originally belonged to Varadarajan, Nirmala and Selvanayagam, that the said Selvanayagam is the maternal uncle of the said Varadarajan and Nirmala, who died in the year 2005 without leaving any legal heirs as he was died unmarried, that after the death of Selvanayagam and as the said Varadarajan and Nirmala being the only Class II legal heirs available for the said Selvanayagam this respondent had purchased the suit property from the said Varadarajan and Nirmala through a registered sale deed dated 20-12-2006 for a valuable consideration.

8) As such, the respondent had filed the suit on the ground that she is the purchaser of the suit property for recovery of possession from the petitioner / defendant herein. It is the case of the petitioner that he is an agreement holder who obtain the unregistered agreement of sale from the said Selvanayagam to purchase the suit property and for which he had paid a sum of Rs.1,05,000/- towards the sale consideration to the said Selvanayagam and the remaining balance sale consideration was

deposited by him before the court when a suit in O.S.No. 170/2005 was filed by him. As such, the respondent is the purchaser of the suit property according to her and the petitioner is the agreement holder to purchase the suit property according to him. It is not the case of the petitioner himself that he had purchased the suit property from the said Selvanayagam. The petitioner is merely an agreement holder and the said agreement cannot create a title in favour of the petitioner herein. The petitioner himself has filed the suit only as against the said Varadarajan and Nirmala in O.S.No. 170/2005 on the ground that they are alone comes under the Class-II legal heirs of the said Selvanayagam. On the other hand, this respondent had purchased the property from the said Varadarajan and Nirmala through a registered sale deed. Whether the said Varadarajan and Nirmala had executed any power of attorney deed in favour of the said Selvarayagam and whether the said Selvanayagam had executed any unregistered sale agreement in favour of the petitioner herein on his behalf and on behalf of the said Varadarajan and Nirmala and whether the respondent had perfected her title to the suit property are all the triable issues in existing in this suit.

9) On bare perusal of the entire pleadings made in the plaint it can be easily concluded that the plaint has sufficient cause of action to file the suit and there are triable issues between the parties. Mere cause of action para found in the plaint alone need not be taken in to account by the court to come to a conclusion as to whether the plaint has cause of action or not and the entire pleadings should be taken in to account to ascertain the said fact. The plaint has been sufficiently expressed its cause of action

for filing the suit and hence, it cannot be said that the plaint has no cause of action.

10) The learned counsel for the petitioner has vehemently submitted that the suit is barred by Sec.53(a) of Transfer of Property Act. The petitioner has made several pleas extensively in his petition and the learned counsel for the petitioner has vehemently argued that the plea made by the defendant are to be taken in to account to allow this petition. But it is the settled position of law that the averments made in the plaint alone can be looked in to by the court to decide the application filed under Order 7 Rule 11 of CPC and the trial court need not taken in to account the averments found in the written statement filed by the defendant or the pleas made in the petition filed under Order 7 Rule 11 of CPC.

11) The provision of Order 7 Rule 11(d) would applicable if the suit appears from the statement made in the plaint by the plaintiff appears to be barred by any law. On careful perusal of the plaint it can be found that the suit has not been barred any law based on the averments found in the plaint. It is the defence taken by the learned counsel for the petitioner that the suit is barred by Transfer of Property Act. The defence proposed to be taken by the petitioner can be taken in to account and decided by the court only at the time of trial and not at this stage. As such, when the averments found in the plaint does not appears that the suit is barred by any law, it can be safely concluded that the suit has to be proceeded with.

12) The learned counsel for the respondent has submitted a case law in "Bhau Ram //Vs// Janak Singh and others reported in CDJ 2012 SC 480" in which our Hon'ble Supreme Court has held as follows:

" The law has been settled by this court in various decisions that while considering an application under Order VII Rule 11 CPC, the court has to examine the averments in the plaint and the pleas taken by the defendant in its written statement would be irrelevant".

Further, it was also held as follows:-

" The above view has been once again reiterated in the recent decision of this court in The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman //Vs// M/s Ponniamman Educational Trust represented by its Chair person / Managing Trustee, 2012 (6) JT 149".

13) The learned counsel for the petitioner has submitted several authorities in support of his claim. In CDJ 2000 SC 057, he has highlighted the points held by the Hon'ble Supreme Court which reads as follows:

" In a suit for specific performance the averment of readiness and willingness on the plaintiffs part, up to the date of the decree, was necessary. It also noted

that this Court in Gomathinayagam Pillai /vs/ Palaniswamy Nadar, 1967(1) SCR 227 had held that it was for the plaintiff in a suit for specific performance "to establish that he was, since the date of the contract, continuously ready and willing to perform his part of the contract. If he fails to do so, his claim for specific performance must fail" .

14) In another case law in, "Colonel Shrawan Kumar Jaipuriyar @ Sarwan Kumar Jaipuriyar //vs// Krishna Nandan Singh and another reported in Civil Appeal No. 6760/2019 in which our Hon'ble Supreme Court has held as follows:-

" If the plaint is manifestly vexatious, meritless and groundless, in the sense that it does not disclose a clear right to sue, it would be right and proper to exercise power under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('Code', for short). A mere contemplation or possibility that a right may be infringed without any legitimate basis for that right, would not be sufficient to hold that the plaint discloses a cause of action".

15) Whether the petitioner was ready to enforce the agreement within the prescribed time limit or not is the point to be decided in the suit filed for specific performance and not at this stage. Except the averments found in the plaint, the other averments found in the written

statement are need not be considered by this court while deciding the petition filed under Order 7 Rule 11 of CPC. The petitioner has not established that on a bare reading of the plaint it can be seen that the plaint averment is manifestly vexatious and merit less. Considering the above stated circumstances and in the interest of justice this court finds that this petition is liable to be dismissed and the point is decided accordingly.

In the result, this petition is dismissed. The parties are directed to bear their own costs.

//This order has been dictated by me to the Stenographer, taken down, transcribed and typed by her in the computer, corrected and pronounced by me in the open Court on this Thursday the 21st day of April 2022//

Sd/- J.Chandran
District and Sessions Judge,
District and Sessions Court – II,
Kanchipuram.

**Both side Exhibits and
Witnesses:**

-- NIL --

Sd/ J.Chandran
District and Sessions Judge,
District and Sessions Court – II,
Kanchipuram.

Draft/Fair Order
I.A.Nos.215/2019
in OS No. 114/2018
Dt.21.04.2022
District & Sessions Court No.II,
Kanchipuram.

