

IN THE COURT OF PRINCIPAL DISTRICT JUDGE AT TIRUVALLUR
PRESENT: Tmt. J. JULIET PUSHPA, B.Sc., M.L.,
Principal District Judge, Tiruvallur

Monday, the 8th day of September, 2025

I.A.6/2022 in O.S.NO.214/2020
(CNR No. TNTR01-003751-2020)

M/s Orient Marine Products Private Limited

represented by its Directors

1. Javid Pasha (Authorized signatory)
2. Samalinga Mothi Sridhar
3. Abdul Salam Abdul Salam Pasha

....Petitioners/defendants

/Vs/

M/s Shree Bhuwal Promoters

Partnership

Represented by its Partners

1. Ramesh Kumar
2. Santhbosh Devi
3. Kanta Devi
4. Santhosh Kumar
5. Rekha Devi
6. Sangeetha Devi Jain

....Respondent/plaintiffs

This petition was coming on 14.08.2025 before me for final hearing in the presence of M/s Zaffarullah Khan, S. Hussain Afroze, T. Magendiran, learned counsel for the Petitioner /defendants and M/s R. Thiagarajan, Vasudha Thiagarajan, Josephine, learned Counsel for the respondent/plaintiff, and upon hearing both side,

perusing the records and having stood over for consideration till this date, this Court delivered the following:-

ORDER

This Petition is filed by the petitioner / defendant under Order VII Rule 11 of C.P.C. to reject the plaint in O.S.No.214/2020 as not maintainable.

2. The averments in the petition in brief :

According to petitioner/defendant , the suit is misconceived and untenable in law and liable to be dismissed in limine and the plaintiffs are not entitled to any relief. The plaintiff filed a suit for bare injunction On 12.10.2020 before filing this suit restraining the defendants from dealing with the entire extent of 13.66 acres of land situated in various survey numbers in Puzhal Village which is 'A' Schedule property in this suit. The said suit is yet to be numbered The defendants are still in possession of the suit 'A' schedule property and are in enjoyment. It is agreed by the plaintiff / purchaser to effect payment in accordance with clause II of the Agreement and any failure to comply would be considered as breach of the agreement. On perusal of the clauses of agreement and averments made in the plaint, it is clear that the claims made by the plaintiffs are completely in contravention to terms of agreement agreed upon and that in view of the specific recital, the plaintiffs are not entitled to partial specific performance. The plaint is liable to be rejected on the following grounds

(ii) No cause of action on reading the plaint as it has been framed. The suit which is being for specific performance is guided by the terms of contract. It does not specifically demarcate or identify any parcel of land to the extent of 3.5 Acres

(ii) A suit for partial specific performance of an agreement for sale when the adversarial party has denied performance of the entire agreement is not maintainable

(iii) Earlier plaintiff filed suit for permanent injunction and an application seeking leave under Order II Rule 2 CPC was filed and such leave has not been granted till date. Without leave being granted in the earlier suit, the subsequent suit for specific performance on the same cause of action is not maintainable

(iv) The time for performance of agreement ended on 31.03.2011 and the suit is barred by limitation as per the admitted statement in the plaint

(v) The plaintiff firm is an unregistered one and therefore, cannot account of bar be contained under Partnership Act.

The time for specific performance was fixed on 31.03.2011 and more than one clauses in agreements reiterates the time for performance. In any event, as per the admission of the plaintiff, from 2017 there has been no record. Even as on date, the plaintiff does not seek for specific performance of the entire agreement. Therefore, the limitation starts on the day fixed for performance which is 31.03.2011. The suit was filed in the year 2020, hence, it is barred by limitation. The plaintiff filed suit for permanent injunction before Munsif Court,

Madhavaram on same cause of action. In the earlier suit, plaintiff filed application under Order II Rule 2 CPC seeking leave to file larger relief, but the court has not granted relief in the said application. Even before leave application could be considered, the suit for partial specific performance was filed. The abuse nature of suit is evident. When leave was not granted in the first suit, the second suit on the very same cause of action in OS No.214/2000 is not maintainable. Even assuming the pleading of plaintiff that payments were made till 07.06.2017, the present suit having file don 10.11.2020 is barred by limitation. Hence prayed to reject the plaint.

3. The averments in the Counter filed on behalf of the respondent/plaintiff in brief :

The respondent resists the petition stating that the plaintiffs approached the defendants for purchase of property for an extent of 13.66 acres for total sale consideration of Rs.36,88,20,000/- and Rs.3 crore was paid in advance on 25.10.2010. Sale agreement was entered on 05.01.2011. The plaintiff has also sought for alternative remedy for the refund of advance of sale consideration. Hence, in view of the alternative remedy , the petition for rejection of plaint is not maintainable and the suit cannot be rejected at the threshold. The petitioners/defendant committed breach of trust, hence, the claim of the petitioner/defendant without proper reason to claim that the suit is misconceived. The earlier suit was filed only for bare injunction and in view of filing the present suit, the

respondent /defendant are ready and willing to withdraw the said suit. There is a clear admission on the part of the petitioner/defendant on the request, the plaintiff continued to make payment from 09.04.2011 to 07.07.2017, which would prove that time was not essence of contract. The petitioner received Rs.8 lakhs for their family expenses from the respondent/plaintiff to fulfill the specific performance. All the clauses of the agreement for sale specifically provides execution of schedule A property after receipt of Rs.11 lakhs. They were extending the period of agreement of sale with full knowledge and consent with consensus of mind. There is no provision of law or specific ground for rejecting the relief of alternative prayer claimed by the respondent. The averments that cause of action starts from 2017 and the suit is barred by limitation are nothing but suppression of material facts and conveniently not disclosing the tripartite agreement which was attempted by petitioner./defendant on 13.11.2019. The same was disclosed in the plaint. Therefore, the earlier suit is also advised to the plaintiff to withdraw the same as not pressed. The plaintiff firm is a partnership firm and absolutely there is no legal bar to maintain the suit. Hence, prayed to dismiss the petition.

4. Now, the points for consideration is

- 1 Whether petitioners have made out grounds to reject the plaint under Order VII Rule 11 of Civil Procedure Code ?**
- 2 Whether the petitioner is entitled for the relief as prayed for ?**

5. POINT:

Heard both sides.

6. This suit is filed by the plaintiff for specific performance of the agreement of sale dated 05.01.2011 for the suit B Schedule property and put the plaintiff in possession and permanent injunction, When the suit is posted for filing written statement of defendants, the 1st defendant has filed this petition for rejecting the plaint under Order VII Rule 11 of C.P.C. The respondent/plaintiff vehemently opposed the same.

7. The petitioners have filed this petition to reject the plaint on the grounds that the suit is barred by limitation, there is no cause of action and the suit is hit by Order II Rule 2 of CPC in view of the earlier suit.

On perusal of the above provision, it is clearly expressed that the plaint can be rejected on the following grounds under Order VII Rule 11 of Civil Procedure Code, which is reproduced hereunder :

8. 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 returned 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

9. Now, the petitioners have come forward on the grounds that the suit is barred by limitation , cause of action not disclosed and also hit by Order II Rule 2 CPC.

10. As far as the averments in the plaint is concerned, the respondents/plaintiffs challenged the agreement of sale which is dated 05.01.2011. But, as far as the point of limitation is concerned, it is a mixed question of law and facts. Though the petitioner contends that Clause VIII of the agreement provides the agreement for payment in accordance with Clause II of the agreement and any failure to comply would be considered as breach of the agreement, it is not denied by the defendant that plaintiff was not ready and willing to perform their part of contract. Even the plaint discloses that as early as on 23.08.2013 itself, the plaintiff sent email to the defendant willing to perform their part of contract.

11. Further, it is seen from the averments in the plaint that the defendant have received the payment from the plaint from 26.10.2010 to 11.06.2017 to the total tune of Rs.11,01,77,000/- . Further, the plaitniffs also sent email on 23.08.2018 to the authorized Director of the defendant's company that in physical verification that there is no 10 meter road available and only 29 feet width of the road is available.

Further, the bar of jurisdiction under Article 54 of the Limitation Act barred by the Law of Limitation is a mixed question of facts and law , which has to be adjudicated upon tendering of evidence and at this stage, the Court cannot reach a conclusion as to whether the suit as framed by the plaintiff is barred by Law of Limitation. Even petitioner has the opportunity to put forth the ground of limitation as Preliminary issue to be decided leading evidence. So, at this stage, it cannot be decided. In this connection, the contention of the petitioners, is not acceptable.

12. As far as the second point , i.e. non-disclosure of cause of action is concerned, on perusal of plaint , not only in the last paragraph in cause of action , but also entire averments of the plaint have given the cause of action, which is nothing but the bundle of facts, which constitutes the party to file the suit. Cause of action has been defined as meaning simply a factual situation existence of which entitles one person to obtain from the court , a remedy against another person. The Phrase has been held from the earliest time to include every fact, which is material to be proved to entitle the plaintiff to succeed , and every fact which a defendant would have a right to travers. Cause of action has also been taken to mean that particular action on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action. This suit devolves upon the sale agreement between the plaintiff and the defendant on 05.01.2011 and the subsequent events between them till the year 2019. So, on entire reading of all these averments in the plaint, it is

mentioned about the cause of action. Even it is the contention of the petitioners that the cause of action for this suit and the earlier suit filed by the respondent are one and the same. So, this contention of the petitioners, is also not acceptable.

13. In respect of the question that the suit is barred by Order II Rule 2 of CPC is concerned, the defendant has stated that the plaintiff has filed earlier suit for permanent injunction, leave of the court to sue on the same cause of action was not obtained.

14. The learned counsel for the respondent/plaintiff argued that the earlier suit which was filed before District Munsif , Madhavaram was only for bare injunction , that too at the stage of numbering itself was dismissed as withdrawn on 02.08.2022. hence, the bar under Order II Rule 2 of CPC is not applicable.

15. It is settled law that bar under Order II Rule 2 does not apply if the subsequent suit is based on a different and distinct cause of action from the first suit. This suit is filed for specific performance dated 05.01.2011. Therefore, it appears that causes of action in the two suits are separate and distinct, for which the leave of the Court to sue the defendant in this suit is not necessary.

16. The Hon'ble Supreme Court in its authority **2018(2) RCR (Civil) 782** (*Sucha Singh Sondhi(D) Thr. Lrs v. Baldev Raj Walia,*) held that since the cause of action for a suit for permanent injunction filed by the plaintiff restraining the defendants from interfering in his possession is different from claiming specific performance, thus the bar of Order 2 Rule 2 is not attracted. Similar view was taken again

in the matter of *Rathnavathi and Another v. Kavita Ganashamdas*, **2015(2) SCC 736**.

Here is a situation arising out of a contract/ agreement for a sale of a property with a stipulation, the defendant in this case though is bound to sell the property to the plaintiff within a fixed date, but in order to avoid his contractual obligations, started negotiating about the same with some third party for any reason. In such a situation, the plaintiff may file a suit for permanent injunction thinking that their claim for specific performance of a contract is premature. In such a situation though both the suits arise out of the same legal contract yet both are based on a claim of different reliefs. The stage at which the first suit is, would not be a material consideration in deciding the applicability of the bar under Order II Rule 2. What needs to be looked into is whether the cause of action in both suits is one and the same in substance, and whether the plaintiff is agitating the second suit for claiming a relief that was very well available to him at the time of filing the first suit.

17. Order II Rule 2 of the CPC stipulates the inclusion of the whole claim arising in respect of the same cause of action, in one suit, however, this must not be misunderstood to mean that every suit shall include every claim or every cause of action that the plaintiff may have against the defendant. The words “the cause of action” used in Order II Rule 2(1) must be read to mean “the particular cause of action”. This infers that where there are different causes of action, Order II Rule 2 will not apply; and where the causes of action are the same, the bar imposed by Order II Rule 2 may apply. The mandate of Order II Rule 2 is the inclusion of the

whole claim arising in respect of one and the same cause of action, in one suit. It must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit. Therefore, where the causes of action are different in the two suits, Order II Rule 2 would have no application .

18. Admittedly, the petitioner alleges that the previous suit was filed for bare injunction, whereas the present suit is for larger relief of specific performance. Further, it is seen that the previous suit for bare injunction was dismissed as withdrawn on 02.08.2022. The entire issue between the parties as regards their legal rights having been left open, the principle under Order II Rule II of CPC could not have any application whatsoever, particularly in view of the fact the issues pleaded in both the suits were totally different. Admittedly, the earlier suit filed by the respondent/plaintiff for bare injunction was on different cause of action, and also it was later withdrawn. So, it does not appear, this suit is barred under Order II Rule 2 of CPC. Hence, there is no substance for rejection.

19. It is settled provision of law that if the plaint averments and documents filed along with plaint are apparently barred by law, then it can be decided by the trial court as the suit is barred by particular law , then the plaint can be rejected. As per Order VII Rule 11 of Civil Procedure Code, the plaint can be rejected, but nothing more than that plaint averments and documents filed by the plaintiff, this court is not necessarily to travel for deciding the application under this provision.

20. On cumulative reading of the entire records, this court considers that adjudication in the suit is necessary, only at the time of trial by adducing oral and documentary evidence, above contentions and grounds put forth by the petitioner can be decided. Hence this petition deserves to be dismissed.

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

Dictated to Steno-typist, transcribed and typed by her, corrected and pronounced by me in Open Court, this the 8th day of September, 2025 .

**PRINCIPAL DISTRICT JUDGE,
TIRUVALLUR**

Witness & Documents on both side : NIL

**PRINCIPAL DISTRICT JUDGE,
TIRUVALLUR**