SUPREME COURT OF INDIA

The Church of Christ Charitable Trust Educational Charitable Society

Chairman

Vs.

Ponniamman Educational Trust represented

C.A.No.4841 of 2012

(P.Sathasivam and J.Chelameswar,JJ.)

03.07.2012

JUDGMENT

P.Sathasivam,J.

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 16.08.2011 passed by the High Court of judicature at Madras in O.S.A. Nos.100-102 of 2006 whereby the Division Bench of the High Court while rejecting OSA Nos. 101 and 102 of 2006 allowed the appeal being OSA No. 100 of 2006 filed by the respondent herein in respect of the rejection of the plaint against the appellant herein (1st defendant in the suit) by the learned single Judge of the High Court.

3. Brief facts:

> "(a) On 07.01.1990, the appellant-Society (first defendant), the owner of the property situated at Door No. 35, Lock Street, Kottur, Chennai entered into an Agreement for Sale of the property in favor of one S. Velayutham - 2nd defendant in the suit on the condition that the transaction should be completed within 6 months after obtaining clearance from Income Tax and other departments and also received an amount of Rs. 5 lakhs as an advance. On 19.10.1990, the 1st defendant-Society executed a registered power of attorney in favor of the 2nd defendant limited for the purpose of empowering him to represent the Society before the statutory authorities. On 15.10.1991, the 1st defendant-Society revoked the registered power of attorney executed in favor of the 2nd defendant by a registered document alleging various reasons. On 19.11.1991, as the 2nd defendant failed to comply with the commitments made, the 1st defendant-Society cancelled the agreement for sale dated 07.01.1990.

(b) Questioning the said cancellation, the 2nd defendant instituted C.S. No. 1576 of 1991 against the 1st defendant-Society before the High Court of Madras for specific performance of the agreement dated 07.01.1990. In the said suit, an injunction was granted restraining the 1st defendant-Society from alienating the property. In the year 2006, the said suit was withdrawn by the 2nd defendant.

(c) M/s Karthik Granites Pvt. Ltd., a sister concern of the respondent herein filed C.S. No. 915 of 1994 on the file of the High Court for specific performance of the agreement to sell the larger extent of 56 grounds based on an alleged agreement entered into with the 2nd defendant which was dismissed as settled on the basis of the Memorandum of Understanding (MoU) dated 13.02.1997.

(d) Again on 04.08.2001, a Memorandum of Understanding (MoU) was entered into between the respondent herein and 2nd defendant in which 2nd defendant agreed to sell the remaining portion of the property, viz., 28 grounds and 1952 sq. ft. to the respondent, sister concern of M/s Karthik Granites Pvt. Ltd. as the agreement holder and power of attorney agent of the appellant. On 24.11.2004, the plaintiff-respondent herein filed C.S. No. 115 of 2005 for specific performance of the agreement dated 04.08.2001. The plaintiff- respondent also filed O.A. No. 132 of 2005 in the said suit praying for an interim injunction restraining the defendants from, in any way, dealing with or alienating the suit property pending disposal of the suit. The 1st defendant therein-the Society also filed Application No. 3560 of 2005 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short "the Code") praying for rejection of the plaint. On 18.01.2006, the plaintiff-respondent filed Application No.179 of 2006 for amendment of the plaint.

(e) The learned single Judge of the High Court rejected the plaint insofar as 1st defendant is concerned and directed that the suit can be preceded against the 2nd defendant. The applications bearing Nos. O.A.No.132 of 2005 and 179 of 2006 filed by the plaintiff-respondent for interim injunction and amendment of the plaint were also rejected by the learned single Judge.

(f) Challenging the said orders, the plaintiff-respondent filed appeals before the Division Bench of the High Court. By impugned order dated 16.08.2011, the Division Bench while dismissing the appeals against the order rejecting the applications for amendment and for interim injunction, allowed the appeal against the rejection of the plaint.

(g) Aggrieved by the said judgment insofar as it allowed the appeal against the rejection of the plaint, the appellant-Society (1st defendant) has filed this appeal by way of special leave petition before this Court."

4. Heard Mr. K. Parasaran and Mr. Ranjit Kumar, learned senior counsel for the appellant and Mr. Mukul Rohatgi, learned senior counsel for the respondent.

Points for consideration:

5. The points for consideration in this appeal are:

a) whether the learned single Judge of the High Court was justified in ordering rejection of the plaint insofar as the first defendant (appellant herein) is concerned; and

b) Whether the Division Bench of the High Court was right in reversing the said decision?"

6. Since the appellant herein, as the first defendant before the trial Judge, filed application under Order VII Rule 11 of the Code for rejection of the plaint on the ground that it does not show any cause of action against him, at the foremost, it is useful to refer the relevant provision: Order VII Rule 11 of the Code:

"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 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 provision of Rule 9: Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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 for correcting the valuation or supplying the requisite stamp-paper, 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. It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order VII Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial. This position was explained by this Court in Saleem *Bhai Ors. vs. State of Maharashtra and Others*[1]in which, while considering Order VII Rule 11 of the Code, it was held as under:

"9. A perusal of Order VII Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court "

It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in *Raptakos Brett Co. Ltd. vs. Ganesh Property*[2]*and Mayar (H.K.) Ltd. and Others vs. Owners Parties, Vessel M.V. Fortune Express and Others*[3].

7. It is also useful to refer the judgment in *T. Arivandandam vs. T.V. Satyapal Anr*[4]wherein while considering the very same provision, i.e. Order VII Rule 11 and the duty of the trial

Court in considering such application, this Court has reminded the trial Judges with the following observation:

> "5The learned Munsif must remember that if on a meaningful-for formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them "
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> It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code.
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> Cause of Action:

8. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

9. In *A.B.C. Laminart Pvt. Ltd. Anr. vs. A.P. Agencies, Salem*[5]this Court explained the meaning of "cause of action" as follows: "12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must

be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

10. It is useful to refer the judgment in *Bloom Dekor Ltd. vs. Subhash Himatlal Desai Ors.*[6]wherein a three Judge Bench of this Court held as under:

"28. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (Cooke v. Gill, 1873 LR 8 CP 107). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit. It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit. Forms 47 and 48 of Appendix A of the Code."

11. Mr. K. Parasaran, learned senior counsel by taking us through Form Nos. 47 and 48 of Appendix A of the Code which relate to suit for specific performance submitted that inasmuch as those forms are statutory in nature with regard to the claim filed for the relief for specific performance, the Court has to be satisfied that the plaint discloses a cause of action. In view of Order VII Rule 11(a) and 11(d), the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. The statutory forms require the date of agreement to be mentioned to reflect that it does not appear to be barred by limitation. In addition to the same, in a suit for specific performance, there should be an agreement by the defendant or by a person duly authorized by a power of attorney executed in his favour by the owner.

12. In the case on hand, the plaintiff-respondent to get a decree for specific performance has to prove that there is a subsisting agreement in his favour and the second defendant has the necessary authority under the power of attorney. Order VII Rule 14 mandates that the plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the power of attorney when the plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is. In the case on hand, only the agreement between the plaintiff and the second defendant has been filed along with the plaint under Order VII Rule 14(1). As rightly pointed out by the learned senior counsel for the appellant, if he is not in possession of the power of attorney, it being a registered document, he should have filed a registration copy of the same. There is no such explanation even for not filing the registration copy of the power of attorney. Under Order VII Rule 14(2) instead of explaining in whose custody the power of attorney is, the plaintiff has simply stated 'Nil'. It clearly shows noncompliance of Order VII Rule 14(2).

13. In the light of the controversy, we have gone through all the averments in the plaint. In paragraph 4 of the plaint, it is alleged that the 2nd defendant as agreement holder of the 1st defendant and also as the registered power of attorney holder of the 1st defendant executed the agreement of sale. In spite of our best efforts, we could not find any particulars showing as to the documents which are referred to as "agreement holder". We are satisfied that neither the documents were filed along with the plaint nor the terms thereof have been set out in the plaint. The abovementioned two documents were to be treated as part of the plaint as being the part of the cause of action. It is settled law that where a document is sued upon and its terms are not set out in the plaint but referred to in the plaint, the said document gets incorporated by reference in the plaint. This position has been reiterated in *U.S. Sasidharan vs. K. Karunakaran and Another*[7]*and Manohar Joshi vs. Nitin Bhaurao Patil and Another*[8].

14. Power of Attorney:

> "Next, we have to consider the power of attorney. It is settled that a power of attorney has to be strictly construed. In order to agree to sell or effect a sale by a power of attorney, the power should also expressly authorize the power to agent to execute the sale agreement/sale deed i.e., (a) to present the document before the Registrar; and (b) to admit execution of the document before the Registrar. A perusal of the power of attorney, in the present case, only authorizes certain specified acts but not any act authorizing entering into an agreement of sale or to execute sale deed or admit execution before the Registrar. In a recent decision of this Court in *Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and Another*[9]the scope of power of attorney has been explained in the following words:
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> "20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.
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> 21.In *State of Rajasthan v. Basant Nahata*[10]*this Court held: (SCC pp. 90 101, paras 13 52)*
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> "13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed

of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience. * * *

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee. An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor."

15. It is clear that from the date the power of attorney is executed by the principal in favour of the agent and by virtue of the terms the agent derives a right to use his name and all acts, deeds and things done by him are subject to the limitations contained in the said deed. It is further clear that the power of attorney holder executed a deed of conveyance in exercise of the power granted under it and conveys title on behalf of the grantor. In the case on hand, though the plaint avers that the 2nd defendant is the agreement holder of the 1st defendant, the said agreement is not produced. It was also pointed out that the date of agreement is also not given in the plaint. We have already mentioned Form Nos. 47 and 48 of Appendix A and failure to mention date violates the statutory requirement and if the date is one which attracts the bar of limitation, the plaint has to conform to Order VII Rule 6 and specifically plead the ground upon which exemption from limitation is claimed. It was rightly pointed out on the side of the appellant that in order to get over the bar of limitation all the required details have been omitted. Relief of Specific Performance is discretionary:

16. Under Section 20 of the Specific Relief Act, 1963, it is settled that the jurisdiction to grant specific performance is discretionary. The above position has been reiterated by the Division Bench of the Madras High Court even in 1937 vide Sirigineedi Subbarayadu vs. Kopanathi Tatayya, 1937 Madras Weekly Notes 1158, 1159. The same view has been reiterated once again by the Madras High Court in Ramaswamy Gounder vs. K.M. Venkatachalam 1976(1) Madras Law Journal 243, 248, 249 paras 11-13. The similar view has been reiterated by this Court in *Mohammadia Cooperative Building Society Ltd. vs.*

Lakshmi Srinivasa Cooperative Building Society Ltd. and Others[11]Non-joinder of Defendant No. 2 in the application filed under Order VII Rule 11.

17. In view of the conduct of the plaintiff, bereft of required materials as mandated by the statutory provisions, the plaint is liable to be rejected at this stage itself as the cause of action pleaded in the plaint is vitiated. Learned senior counsel for the respondent vehemently contended that inasmuch as in the application for rejection of plaint, the 1st defendant has not impleaded the 2nd defendant, the said application is liable to be dismissed on the ground of non-joinder of the 2nd defendant, who is a necessary party. On the other hand, learned senior counsel for the appellant submitted that 2nd defendant is not a necessary party to the application for rejection of plaint and according to him non-joinder of the 2nd defendant does not affect the merit of the application as the plaintiff alone is a necessary party to the application for rejection of plaint. The stand taken by the appellant, who has filed the application for rejection of the plaint, is sustainable and acceptable. We have already adverted to the averments in the plaint and we have held that the plaint has not shown a complete cause of action of privity of contract between the plaintiff and the first defendant or on behalf of the 1st defendant. To reject the plaint even before registration of the plaint on one or more grounds mentioned in Order VII Rule 11 of the Code, the other defendants need not necessarily be heard at all as it does not affect their rights. As a matter of fact, this Court in Saleem Bhai (supra) held that the plaint can be rejected even before the issuance of summons. This Court has taken a view that the trial Court can exercise its power under Order VII Rule 11 of the Code at any stage of the suit i.e. before registering the plaint or after issuance of summons to the defendants or at any time before the conclusion of the trial. We respectfully agree with the said view and reiterate the same. On the other hand, when the plaintiff itself persists in not impeding a necessary party in spite of objection, the consequences of non¬joinder may follow. However, the said objection should be taken in the trial Court itself so that the plaintiff may have an opportunity to rectify the defect. The said plea cannot be raised in this Court for the first time. This position has been reiterated in State of U.P. vs. Ram Swarup Saroj (2000) 3 SCC 699. We hold that a plea as to the non-joinder of the party cannot be raised for the first time before this Court if the same was not raised before the trial Court and has not resulted in failure of justice. In the case of non-joinder, if the objection is raised for the first time before this Court, the Court can always impaled the party on the application wherever necessary. However, in the case on hand, for the disposal of application filed for rejection of the plaint under Order VII Rule 11, 2nd defendant is not a necessary party, hence he need not be impeded. Accordingly, we reject the said objection of the respondent herein.

18. Apart from the above aspect, in the case on hand, the application for rejection of the plaint of the appellant-1st defendant seeks no relief against the respondent herein-2nd

defendant. It is settled legal position that a party against whom no relief is claimed in the application is not a necessary party at all.

19. Mr. Mukul Rohatgi, learned senior counsel for the respondent pointed out that the learned single Judge while accepting the case of the appellant- 1st defendant in allowing the application for rejection of plaint has taken into consideration extraneous material, i.e., the suit filed by M/s Karthik Granites (P) Ltd. (C.S.No. 915 of 1994) and the Memorandum of Understanding (MoU) dated 13.02.1997. It is brought to our notice that it is the counsel for the plaintiff who relied on these two extraneous materials beyond the plaint for sustaining the plaint though that material was sought to be incorporated by amendment of the plaint. Apart from these, in addition to the application for rejection of the plaint, two other applications, namely, for injunction and for amendment of plaint were also taken up together which led to the situation considering materials other than the plaint averments for the purpose of considering the application for rejection of the plaint. Accordingly, the contention of the learned senior counsel for the respondent is liable to be rejected.

20. Finally, learned senior counsel for the respondent submitted that in view of a decision of this Court in *Roop Lal Sathi vs. Nachhattar Singh Gill*[12]rejection of the plaint in respect of one of the defendants is not sustainable. We have gone through the facts in that decision and the materials placed for rejection of plaint in the case on hand. We are satisfied that the principles of the said decision does not apply to the facts of the present case where the appellant-1st defendant is not seeking rejection of the plaint in part. On the other hand, the 1st defendant has prayed for rejection of the plaint as a whole for the reason that it does not disclose a cause of action and not fulfilling the statutory provisions. In addition to the same, it is brought to our notice that this contention was not raised before the High Court and particularly in view of the factual details, the said decision is not applicable to the case on hand.

21. In the light of the above discussion, in view of the shortfall in the plaint averments, statutory provisions, namely, Order VII Rule 11, Rule 14(1) and Rule 14(2), Form Nos. 47 and 48 in Appendix A of the Code which are statutory in nature, we hold that the learned single Judge of the High Court has correctly concluded that in the absence of any cause of action shown as against the 1st defendant, the suit cannot be proceeded either for specific performance or for the recovery of money advanced which according to the plaintiff was given to the 2nd defendant in the suit and rightly rejected the plaint as against the 1st defendant. Unfortunately, the Division bench failed to consider all those relevant aspects and erroneously reversed the decision of the learned single Judge. We are unable to agree with the reasoning of the Division Bench of the High Court.

22. In the light of the above discussion, the judgment and order dated 16.08.2011 passed by the Division Bench of the High Court in OSA No. 100 of 2006 is set aside and the order dated 25.01.2006 passed by the learned single Judge in Application No. 3560 of 2005 is restored. The civil appeal is allowed with costs.

Judgment Referred

[1](2003) 1 SCC 0557
[2](1998) 7 SCC 0184
[3](2006) 3 SCC 0100
[4] (1977) 4 SCC 0467
[5](1989) 2 SCC 0163
[6](1994) 6 SCC 0322
[7](1989) 4 SCC 0482
[8](1996) 1 SCC 0169
[9]2012) 1 SCC 0656
[10] (2005) 12 SCC 0077
[11](2008) 7 SCC 0310
[12](1982) 3 SCC 0487