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Court : Chennai

Decided On : Apr-01-2016

Judge : P.R. Shivakumar

Appeal No. : C.R.P.[PD] No. 1040 of 2016

Appellant : S. Sivasami

Respondent : S. Balachandran and Others

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the plaint in O.S.No.42 of 2013 on the file of the Court of District Munsif, Tirupur.)

1. The first defendant in the original suit O.S.No.42 of 2013 is the petitioner in the present Civil Revision Petition filed under Article 227 of the Constitution of India invoking the power of superintendence of this Court over the Subordinate Courts to strike off the plaint in the said suit on the ground that the said suit is not maintainable.

2. The above said suit came to be filed by the first respondent herein against the revision petitioner and respondents 2 to 4 for a bare injunction on the premise that he had got an agreement for sale from the petitioner and the second respondent; that though he was ready and willing to perform his part of the contract, the vendors under the agreement were making efforts to sell the suit property to

others and that hence, he was constrained to file the suit for the following reliefs:

1. a declaration that a Deed of Cancellation of sale dated 01.06.2011 registered as Document No.2236 of 2011 which is against the sale agreement dated 07.03.2011 between the plaintiff and defendants 1 and 2 is not valid;

2. a permanent injunction against the first defendant (revision petitioner) not to execute any conveyance or create any encumbrance in favour of any third party without cancelling the sale agreement dated 07.03.2011;

3. an injunction against the fourth respondent not to register in case any sale deed or other document is prepared and produced by the first defendant (revision petitioner) in respect of the suit property; and

4. costs.

3. After entering appearance in the said suit, the revision petitioner (first defendant), without filing a written statement and without even filing any application for rejection of plaint if the plaint is bound to be rejected under Order VII Rule 11 CPC, has straightaway approached this Court with the present petition for quashing the said proceedings instituted by presenting the plaint in the suit, by seeking a prayer for striking off the plaint in the above said suit O.S.No.42 of 2013.

4. The matter stands listed today for admission. The arguments advanced by Mr.S.Thangavel, learned counsel for the petitioner are heard. The documents produced in the form of typed-set of papers, including a copy of the plaint, are perused.

5. It is the contention of the petitioner that once the vendor under an agreement for sale repudiates the contract and refuses to perform, the remedy open to the purchaser under the agreement is to file a suit for specific performance and if he choses to file a suit for any other relief than the relief of specific performance or omits to include a prayer of specific performance, such suit will not be maintainable and that the same was the reason why the petitioner is before this Court with the present revision under Article 227 of the Constitution of India.

6. In support of his contention, learned counsel for the petitioner relies on a judgment of the Hon'ble Supreme Court in Vergo Industries (Eng.) Private Limited Vs.Venturetech Solutions Private Limited reported in (2013) 1 SCC 625. This Court perused the said judgment in Vergo Industries's case. On such perusal, this Court is of the view that the ratio decided therein is not applicable to the case on hand and the learned counsel for the petitioner relies on the said judgment on a misconception. Two sets of suits, the first set for injunction and the second set of suits for specific performance, came to be filed and the plaints in the second set of suits were struck off and the proceedings initiated thereby were quashed in the above said judgment of the Supreme Court. When the first set of suits came to be filed merely for injunction omitting to sue for specific performance and the cause of action for the said suits for injunction was also the cause of action suing for specific performance and since no leave in the previous set of suits for injunction was granted to file a separate suit for the other relief, namely a suit for specific performance, referring to Order II Rule 2, Sub-Clause (2) and (3) CPC, the Hon'ble Supreme Court held that the subsequent set of suits for specific performance were hit by the bar provided under the above said provisions. On that premise, the Hon'ble Supreme Court chose to strike down the plaint in the subsequent suits alone, which were filed for specific performance.

7. In the case on hand, there is only one suit and that the present suit was filed for injunction. There will be no question of attraction of the bar provided under Order II Rule 2 CPC, because the present suit is the only suit filed by the first respondent. The said bar may apply to a subsequent suit and not the present suit.

8. When a person is entitled to sue for more than one relief on a single cause of action, the law itself permits him to sue for all the reliefs or any one of the reliefs alone, with the rider that in case he omits to sue for any of the reliefs based on the very same cause of action without the leave of the Court dealing with the first suit, subsequent suit for the omitted reliefs cannot be filed. That is what exactly stated in Order II Rule 2, Sub-Clause (3). For the purpose of elucidation, entire Rule 2 Subclauses (1) to (3) under Order II is reproduced:

2. Suit to include the whole claim.

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

9. Sub-clause (3) makes it clear that if a plaintiff omits, without theleave of the Court, to sue for all such reliefs, based on the same cause of action, he shall not afterwards sue for any reliefs so omitted. The cause of action for the first respondent herein for filing the suit for injunction and for specific performance may be one and the same. However, as permitted by Order II Rule 2 Sub-clause (3), the first respondent herein has omitted to sue for specific performance. Such omission will not make the present suit not maintainable or barred by such a provision. It may bar a further suit for specific performance. The petitioner in the present revision, invoking the power of superintendence under Article 227 of the Constitution of India for striking off the plaint in this case has made such an attempt on a misconception and misinterpretation of law. Hence, the Civil Revision Petition does not deserve even admission and the same deserves to be dismissed at the threshold.

Accordingly, the Civil Revision Petition is dismissed. No costs.

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