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Court : Chennai

Decided On : Oct-30-2012

Judge : R.S. Ramanathan

Appeal No. : C.R.P.(PD)No.2201 of 2012 & M.P.No.1 of 2012

Appellant : Anisha Bhandary and Others

Respondent : Gyan Developers and Builders Ltd, Chennai and Others

Advocate for Pet/Ap. : For the Petitioners: J. Sivandaraj, Advocate. For the Respondents: R1 to R4, B. Manivannan, Advocate.

Judgement :

(Prayer: Civil Revision Petition against the order dated 30.11.2011 in I.A.No.182 of 2010 in O.S.No.747 of 2009 on the file of the District Munsif, Alandur.)

1. Defendants 1 to 3 are the revision petitioners. They filed an application to reject the plaint and that application was dismissed. Aggrieved by the same, this revision is filed.

2. Learned counsel for the revision petitioners submitted that a reading of the plaint makes it clear that no cause of action arises for the plaintiffs to file a suit and even according to the allegations made in the plaint, the plaintiffs are not in lawful

possession of the property and they were not put in possession of the property by the lawful owners and no document was filed to prove that the owners viz., the revision petitioners agreed to develop their land by the plaintiffs and entrusted the property with the plaintiffs and even according to the plaint allegations, the fourth defendant, acting as agent of the defendants viz., the revision petitioners, entrusted the property to the plaintiffs and no power document was produced by the plaintiffs to prove that the fourth defendant acted as agent of defendants 1 to 3 and when defendants 1 to 3 are the lawful owners, the plaintiffs cannot maintain a suit for injunction against the lawful owners when the possession of the plaintiffs is not legal and that was not properly appreciated by the court below and the court below erred in dismissing the petition filed by the revision petitioners to reject the plaint. The learned counsel relied upon the judgments in SOPAN SUKHDEO SABLE v. ASSISTANT CHARITY COMMISSIONER ((2004) 3 SCC 137), MARIA MARGARIDA SEQUEIRA FERNANDES v. ERASMO JACK DE SEQUEIRA ((2012) 5 SCC 370), A.SHANMUGAM v. A.K.R.V.M.N. PARIPALANAI SANGAM ((2012) 5 MLJ 618 (SC)), THE CHURCH OF CHRIST CHARITABLE TRUST & EDUCATIONAL CHARITABLE SOCIETY v. PONNIAMMAN EDUCATIONAL TRUST (2012 (4) CTC 308), PREMJI RATANSEY SHAH v. UNION OF INDIA ((1994) 5 SCC 547) and MAHADEO SAVLARAM SHELKE v. PUNE MUNICIPAL CORPORATION ((1995) 3 SCC 33) in support of his contention.

3. On the other hand, the learned counsel for respondents 1 to 4/plaintiffs submitted that the first plaintiff is a registered Company owning 69 cents of land and the suit property is the adjacent property owned by defendants 1 to 3 and the first defendant is the wife of the fourth defendant and the second defendant is the mother of defendants 1 and 3 and the fourth defendant represented as agent of defendants 1 to 3 and he was also managing the property on behalf of defendants 1 to 3 and as per the instructions given by defendants 1 to 3, a memorandum of understanding was entered into between the fourth defendant representing defendants 1 to 3 and the plaintiffs and in that document, the fourth defendant signed on behalf of all the four defendants and as per that document, the property was given to the plaintiffs for developing and thereafter, difference of opinion arose between the parties and they attempted to interfere with the possession of the plaintiffs and therefore, the suit was filed for injunction and necessary applications

were also filed and therefore, the court below has rightly dismissed the application filed by the revision petitioners for rejection of the plaint.

4. It is settled law that while rejecting a plaint on the application filed by defendants under Order VII, Rule 11 the court has to look into the allegations made in the plaint to find out whether the plaint makes out a cause of action against the defendants. At the time of scrutinising the allegations made in the plaint, the court cannot go into the merits of the allegations and the court has to accept the allegations as such and thereafter, find out whether those allegations make out a case for the relief prayed for.

5. In this case, it is stated by the plaintiffs that in the year 1996, the fourth defendant approached the plaintiffs and suggested to combine the plaintiffs' property and the defendants' property and both the properties can be developed and believing the words of the fourth defendant, the plaintiffs also agreed to develop both the properties. It is further contended that the plaintiffs' property viz., A schedule property and the revision petitioners' property viz., B schedule property are adjacent properties and B schedule property is situated in a lower level and the fourth defendant was acting as the agent of defendants 1 to 3 and the profit ratio was also agreed as 60% to the plaintiffs and 40% to defendants 1 to 3 and with that understanding in principle, defendants 1 to 3 alongwith the fourth defendant entrusted the possession of B schedule property to the plaintiffs for doing the acts as stated in the plaint.

6. It is further stated that the agreement dated 30.10.1996 was prepared and the plaintiffs signed it on 30.10.1996 and the second defendant was out of country and the first defendant was in Bangalore and the fourth defendant was managing the B schedule property and was also contacting defendants 1 to 3 over phone and he also spoke to defendants 1 to 3 and got concurrence and as defendants 1 to 3 were not available at Chennai, the fourth defendant signed the agreement dated 30.10.1996 and possession was also handed over to the plaintiffs. It is further stated that the fourth defendant also entrusted the original documents relating to B schedule property to the plaintiffs and the plaintiffs have also acted as per the development agreement dated 30.10.1996 and defendants 1 to 4 promised the

plaintiffs that they would look at the accounts and pay the expenses incurred by the plaintiffs and thereafter, the properties were not sold and the fourth defendant gave a cheque for Rs.5,25,000/= and that was not honoured and the plaintiffs were under the impression that defendants 1 to 3 would pay the developmental cost and as they failed to pay the same and started to interfere with the plaintiffs' possession, they filed the suit for injunction.

7. Therefore, a reading of the plaint, in my opinion, makes out a prima facie case that possession of the plaintiffs is lawful and the questions as to whether the fourth defendant acted as agent of defendants 1 to 3, or whether the document dated 30.10.1996 was entered into by the fourth defendant on behalf of defendants 1 to 3, whether defendants 1 to 3 permitted the fourth defendant to act on their behalf can be gone into only during trial. Considering the relationship between the parties viz., the fourth defendant is the husband of the fourth defendant and the second defendant is the mother of defendants 1 and 3 and the third defendant is the sister of the first defendant, the plaintiffs may be right in accepting the fourth defendant as the agent of defendants 1 to 3 and they also filed 41 documents alongwith the plaint including the sale deeds in the names of defendants 1 to 3, the agreement dated 30.10.1996 and the application made by the plaintiffs before the CMDA for development of the land. Therefore, the plaint allegations make out a prima facie case that the plaintiffs are put in lawful possession of their property and it is for the plaintiffs to prove that their possession is lawful by adducing convincing evidence before the court below and the defendants can also adduce evidence to prove that the fourth defendant was not acting as their agent and at this stage, the court cannot appreciate the veracity of the pleadings in the plaint. Therefore, it cannot be stated that the plaintiffs' possession is not lawful or legal and as per the allegations made in the plaint, the possession of the plaintiffs appears to be lawful and it is for the plaintiffs to substantiate the same during trial.

8. In the judgment reported in (2012) 5 SCC 370, it is held as follows:-

"74. If the pleadings do not give sufficient details, they will not raise an issue, and the court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an

issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

75. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence."

9. In the judgment reported in 2012 (4) CTC 308, the plaint was rejected on the ground that the plaintiff alleged that he is the power agent of the first defendant and in that capacity he entered into the agreement and the power of attorney document being a registered one was not produced and no explanation was stated in the plaint regarding the person in whose custody the power of attorney is available and in that context, the Honourable Supreme Court rejected the plaint stating that the plaint does not contain material particulars to make out a cause of action.

10. In this case, as stated supra, the parties are closely related and the fourth defendant, who claims to be the agent of defendants 1 to 3 is the husband of the first defendant and the marriage between the first defendant and the fourth defendant was subsisting at the time of entering into the agreement and he handed over the documents in the names of defendants 1 to 3 and he entered into a contract as the agent of defendants 1 to 3 and therefore, the facts of that case cannot be applied to the facts of this case.

11. In the judgment reported in (2012) 5 MLJ 618 (SC), it is held that the Watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his length of possession and such person cannot acquire any right or interest in the property and the facts of the present case are entirely different.

12. In the judgment reported in (2004) 3 SCC 137, the Honourable Supreme Court reiterated the principle that judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the court and no injunction could be granted against a true owner at the instance of persons in unlawful possession.

13. As stated supra, it is the specific case of the plaintiffs that they were put in possession by the fourth defendant, who was acting as agent of defendants 1 to 3 and therefore, the possession of the plaintiffs cannot be said to be unlawful. Until the defendants are able to prove that they never allowed the fourth defendant to act as their agent and the plaintiffs were also aware of the same and the fourth defendant has no authority to act on behalf of defendants 1 to 3, it cannot be stated that the possession of the plaintiffs is unlawful.

14. In the judgment reported in (1994) 5 SCC 547, the same principle has been reiterated that no injunction can be granted against a true owner when the person in possession of the property is only a trespasser. The same principle is also reiterated in the judgment reported in (1995) 3 SCC 33.

15. Therefore, when the allegations in the plaint, prima facie, make out a case and the plaintiffs also filed the documents relied upon by them, along with the plaint, the court cannot go into the veracity of those documents and at this stage, the court has to only find out whether the allegations, if uncontroverted, will result in a decree and if the court feels that such allegations, if uncontroverted, will result in a decree, such plaint cannot be rejected. Hence, the court below has rightly dismissed the application of the revision petitioners to reject the plaint and I do not find any reason to interfere with the order of the court below.

In the result, the civil revision petition is dismissed. No costs. The connected miscellaneous petition is also dismissed. However, the court below is directed to consider the merits of the case without being, in any way, influenced by any of the observations made in this order as those observations were made only to dispose of the revision.