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CRP(MD)No.1172

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order reserved on	Order pronounced on
25.10.2024	11.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.1172 of 2024

and

C.M.P.(MD).Nos.6643 and 15918 of 2024

Rajalakshmi

... Petitioner

Vs.

1.Indira Nadanam

2.Chokkalingam

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the Judgment and Decree dated 21.03.2024 made in E.A.No.54 of 2023 in E.A.No.72 of 2022 in E.A.No.129 of 2021 in E.P.No.132 of 2010 on the file of the Principal Sub Court, Pudukkottai.

For Petitioner : Mr.A.Xavier Antony Samy
For R1 : Mr.P.Ganapathi Subramanian
For R2 : No Appearance

ORDER

The present civil revision petition is filed by the third party against the Judgment and Decree dated 21.03.2024 made in E.A.No.54 of 2023 in E.A.No.72 of 2022 in E.A.No.129 of 2021 in E.P.No.132 of 2010 on the file of the Principal Sub Court, Pudukkottai.



2. The plaintiff in the suit namely Indira Nadanam is the 1st respondent herein who had filed the suit in O.S.No.89 of 2005 for specific performance and to register the sale deed, failing which the Court may direct to execute the sale deed. The defendant in the suit namely Chokkalingm is the 2nd respondent herein, who is the father of the revision petitioner Rajalakshmi.

3. The plaintiff in the suit had stated that they had executed an unregistered sale deed dated 16.09.2002 by fixing the sale consideration as Rs.4,00,000/- and the plaintiff had paid advance of Rs.3,45,000/- and the balance of Rs.25,000/- payable on vacating the house by the said Chokkalingam and thereafter, the sale deed shall be executed. Based on the sale agreement, the plaintiff was ready and willing to pay the balance amount of Rs.25,000/- and insisted the defendant thereunder to register the sale deed but failed to execute the same. Thereafter, the plaintiff had issued lawyer notice dated 25.05.2005 calling the defendant to come forward and execute the sale deed. But the defendant for the reasons best known to them, did not come forward to execute the sale deed. Further the defendant had received the lawyer notice but had not replied. Hence, the suit was filed.

4. In the suit Sub Registrar, Pudukottai was arrayed as 2nd defendant. The 1st defendant remained exparte, the 2nd defendant Sub Registrar has filed a written statement stating that he is an unnecessary party and he is not having any objection



in allowing the suit. The Trial Court had framed the issues which are as follows:

- (i) Whether the Plaintiff is entitled to the relief of specific performance against the 1st Defendant?
- (ii) Whether the 2nd Defendant is the necessary party?
- (iii) To what other reliefs, the parties are entitled to?

5. While considering the 1st issue, the Trial Court has held that in order to prove the genuineness of the sale agreement, the 1st defendant is an appropriate party, but the 1st defendant failed to appear, hence held the plaintiff is entitled to the relief.

The relevant portion of the judgment is extracted hereunder:

“இந்நீதிமன்றத்தில் தாக்கல் செய்யப்பட்டிருக்கும் வா.சா.ஆ.1-னை பார்க்கும்போது, 1-ம் பிரதிவாதிக்கும், வாதிக்கும் கிரய ஒப்பந்தம் ஏற்பட்டுள்ளதென்பது தெரிய வருகிறது. ஆந்த கிரய ஒப்பந்தம் உண்மையானதல்ல என்றும், ஏற்றுக்கொள்வதற்கில்லை என்று சொல்வதற்கு 1-ம் பிரதிவாதி இந்நீதிமன்றத்தில் ஆஜராகி அவருடைய கட்சியை முன் வைத்துக்கொள்ளவில்லை. இந்த நிலையில் இந்த கிரய ஒப்பந்தமானது உண்மையானதா? என்றும், ஏற்றுக்கொள்ளக்கூடியதா? என்றும் முடிவு செய்யவேண்டியதாக உள்ளது. கிரைய ஒப்பந்தத்தின் அடிப்படையில் 1-ம் பிரதிவாதி நடந்து கொள்ளவில்லையென்பது வா.சா.ஆ.2-இன் மூலம் தெரிய வருகிறது. அறிவிப்பை பெற்ற பிறகும் கூட இந்த 1-ம் பிரதிவாதி, தாவா சொத்தை, வாதிக்கு கிரயம் செய்து கொடுக்கவில்லையென்பது வா.சா.ஆ.2-இன் மூலம் தெரிய வருகிறது. வா.சா.ஆ.1 கிரய ஒப்பந்தம் ஏற்றுக்கொள்வதற்கில்லையென்று சொல்வதற்கோ, நிராகரிக்க வேண்டுமென்று சொல்வதற்கோ எந்தவிதமான காரணங்களும் இல்லை. 1-ம் பிரதிவாதி நீதிமன்றத்தில் ஆஜராகி அவருடைய கட்சியை எடுத்து நீதிமன்றத்திற்கு வைக்க முன் வரவில்லை. எனவே கிரய ஒப்பந்தத்தின் அடிப்படையில் தாவா சொத்தை 1-ம் பிரதிவாதி, வாதிக்கு கிரயம் செய்து கொடுக்க கடமைப்பட்டவர்



என்ற முடிவுக்கு தான் வரவேண்டியுள்ளது. 2-ம் பிரதிவாதியும், 1-ம் பிரதிவாதிக்கு எதிராக கேட்கப்பட்டுள்ள பரிகாரம் வாதிக்கு கிடைக்கக்கூடிய பட்சத்தில் சார்பதிவாளருக்கு எந்தவிதமான ஆட்சேபணையும் இல்லையென்றும், சார்பதிவாளருக்கு எதிராக எந்தவிதமான பரிகாரமும் கேட்க வேண்டிய அவசியம் இல்லையென்று சொல்லி உள்ளதிலிருந்தே 2-ம் பிரதிவாதி இந்த வழக்கில் தேவையற்றவர் என்றும், 1-ம் பிரதிவாதிக்கு எதிராக தான் ஏற்றதை ஆற்றுதல் பரிகாரத்தை கேட்ட வேண்டுமென்பது தெரிய வருகிறது. அதன் அடிப்படையில்தான் 1-ஆம் பிரதிவாதிக்கு எதிராக வாதியும் சாட்சியம் சொல்லி பரிகாரம் கேட்கிறார். வா.சா.1-இன் சாட்சியம், வா.சா.ஆ.1-4 நிராகரிக்கவேண்டுமென்று சொல்வதற்கு எந்தவிதமான முகாந்திரமும் இல்லாத நிலையில் கிரய ஒப்பந்தத்தின் அடிப்படையில் தாவா சொத்தை 1-ம் பிரதிவாதி, வாதிக்கு கிரயம் செய்து கொடுக்க கடைப்பிடித்தவர் என்ற நிலையில் இந்த வாதி கோரும் ஏற்றுதல் ஆற்றுதல் பரிகாரம் கிடைக்கக் கூடியது தான் என்று இந்த எழுவினாவிற்கு விடையளிக்கப்படுகிறது.”

6. Thereafter, the suit was allowed on 20.04.2007. The plaintiff had filed E.P.No.132 of 2010. Then the defendant Chokkalingam had filed E.A.No.1 of 2015 praying to set aside the order dated 20.11.2015, which was dismissed for default.

7. The primary contention of the revision petitioner is that the property was settled by the father through the settlement deed vide Document No.2663/2004 dated 14.09.2004, at that point of time the revision petitioner is minor hence the same was executed by impleading the mother as the guardian. When the property is settled in her name, the father is not having any power to execute the alleged sale agreement. It is seen the sale agreement was executed on 16.09.2002 but the settlement deed was



executed on 14.09.2004 which is obviously subsequent to the sale agreement. But whether the property is ancestral or self-acquired property, whether the revision petitioner is entitled to a share in the property, all these aspects ought to be considered.

8. The next contention of the revision petitioner, after the demise of the father, all these years based on the said settlement the revision petitioner along with the mother was in possession and enjoyment of the suit property. When the revision petitioner and her mother was in possession which is known to the plaintiff ought to have impleaded them as a party in the suit. When the suit was filed in the year 2005, the alleged settlement deed was already executed. In such circumstances, the plaintiff ought to have impleaded the revision petitioner along with her mother. If the plaintiff had taken earnest effort to search the encumbrance, then the said settlement deed would have come to his knowledge.

9. On perusing the documents marked by the plaintiff it is seen the alleged original copy of the sale agreement and the xerox copy of the sale agreement was marked as Ex.A1 and Ex.A2, then Ex.A3 is the lawyer notice, Ex.A4 is the parent document. Which indicates, the plaintiff has not verified the subsequent encumbrances after execution of the sale agreement. Had the plaintiff verified the encumbrances, then the settlement deed 14.09.2004 would have come to the



knowledge of the plaintiff and he would have impleaded the mother and the revision petitioner. Further the suit is filed on 30.06.2005 which is after the said settlement.

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10. The next issue that was raised by the revision petitioner, even though the 1st defendant remained exparte, the Trial Court ought to have formulated the appropriate issues for the suit for specific performance. Of late the Courts are not formulating the appropriate issue for the suit of specific performance. The plaintiff praying specific performance ought to prove the genuineness of the sale agreement, the payment was received, further he was always ready and willing and he has means to pay the balance amount. Whether time is essence for the contract, whether any other condition imposed in the sale agreement, whether that has been complied by the parties. Whether the unregistered sale agreement is valid, when the registration is made compulsory in the Central Act. Whether the sale agreement was entered under the guise of loan transaction, since most of the loan transaction are under the guise of sale agreements. No such issue was formulated by the Trial Court. As stated supra, the Trial Court has framed whether the plaintiff is entitled to the relief of specific performance, was the sole issue framed for the prayer of specific performance.

11. Interestingly, the Trial Court has held that the 1st defendant ought to have contested the genuineness of the transaction but he remained exparte and he failed to contest the same. Whenever the defendant remained exparte, it is the bounded duty of the Trial Court to protect the interest of the defendant who remained exparte.



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12. In other words, the duty/burden is heavy on the Courts. The specific performance relief is an equity relief. The plaintiff cannot claim the same as a right. Therefore, this Court is of the considered opinion that the revision petitioner ought to be granted an opportunity to contest the suit based on the sale agreement dated 14.09.2004.

13. Therefore the orders passed in E.A.No.54 of 2023, then in E.A.No.72 of 2022 and then in E.A.No.129 of 2021 are set aside. The Executing Court shall restore the E.A.No.129 of 2021 and hear the same under Section 47 of CPC and pass orders.

14. With the above said observations, the civil revision petition is allowed. No costs. C.M.P.(MD)No.15918 of 2024 is allowed and C.M.P.(MD)No.6643 of 2024 is closed.

11.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

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To

1. Principal Sub Court, Pudukkottai.
2. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

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