



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 25.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.DEVADASS

C.R.P (MD) No.1706 of 2015

and

M.P (MD) No.1 of 2015

Noor Jahan .. Petitioner/Appellant/Petitioner/Plaintiff

-vs-

G.R.Ramasamy .. Respondent/Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 29.10.2014 passed in C.M.A.No.19 of 2013 on the file of the II-Additional District and Sessions Court, Thanjavur, confirming the fair and decreetal order dated 26.07.2013 passed in I.A.No.134 of 2013 in O.S.No.80 of 2013 on the file of the Additional Sub Court, Kumbakonam.

For Petitioner : Mr.H.Lakshmi Shankar

ORDER

As only a short point is involved, we shall dispose it of today at the admission stage itself. This revision petition arises out of C.M.A.No.19 of 2013 on the file of II-Additional District Judge, Thanjavur, confirming the order of the learned Additional Subordinate Judge, Kumbakonam passed in I.A.No.134 of 2013 in O.S.No.80 of 2013.

2. The revision petitioner/plaintiff instituted the said suit for specific performance alleging that she has been ready and willing to perform her part of contract, however, the respondent/defendant failed to perform his part of the contract. In the circumstances, the plaintiff sought for specific performance of the sale agreement dated 04.06.2004.

3. Pending the suit, in I.A.No.134 of 2013 she sought for injunction restraining the defendant from any way selling the suit property. The learned Additional Subordinate Judge, Kumbakonam, dismissed the said I.A. and that was upheld by the first Appellate Court in C.M.A.No.19 of 2013.

4. Now, it is the contention of the learned counsel for the revision petitioner that both the trial Court as well the first Appellate Court fell into error and they have travelled much



behind the scope of Order 39 Rule 1(2) of the Code of Civil Procedure, 1908. Actually the Court has to see a *prima facie* case, balance of convenience and if no injunction is granted irreparable loss to whom.

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5. I have anxiously considered the submissions of the learned counsel for the petitioner, the materials on record and the impugned order.

6. The trial Court dealt at length the question of limitation as well as the very basis of the suit filed by the plaintiff seeking the relief of specific performance of contract. In effect, in I.A itself the trial Court had tried the suit. That is what done by the first Appellate Court also. Virtually, the plaintiff's case is over. Now in view of the decision of these two Courts, they made the plaint a mere straw. This is completely against the tenants of grant of injunction.

7. Plaintiff's case cannot be fore-closed like this. We wish not to conduct a trial within trial in an Interlocutory Application itself. The entire trial of the suit should not be conducted in an injunction application. Digging the past and measuring the depth of the grave will not serve any purpose. Now pleadings have been completed. Now triable issues arises. The apprehension of the revision petitioner/plaintiff that in view of the observations contained in the Judgments of both the Courts below is understandable.

8. In the facts and circumstances and stage of the case, we wish not to disturb the order of both the Courts. However, we direct the learned Additional Subordinate Judge, Kumbakonam to frame the triable issues based on the material position of facts and law contained in the pleadings of the parties, if not already framed. The trial Court shall proceed to try and dispose of the suit in O.S.No.80 of 2013 expeditiously, uninfluenced by its observations in its order in I.A.No.134 of 2013 and also the observations of the learned II Additional District Judge, Thanjavur made in C.M.A.No.19 of 2013. The suit shall be disposed of within three months from the date of receipt of a copy of this order.

9. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AE)



To

1.The Principal District Judge,
Thanjavur.

2.The II-Addl. District Judge,
Thanjavur.

3.The Addl. Sub Judge,
Kumbakonam.

+1cc to Mr.H.Lakshmi Shankar, Advocate Sr.No.48987

ps

AA/03.09.2015/3p-5c

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