

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.4143 of 2014
and M.P.No.1 of 2014

1. P.R.Roopashree
2. P.Krishna Bhat
3. P.R.Rajashree

.. Petitioners

vs.

1. S.Gurumoorthy
2. Kuppammal
3. T.Jayaraman
4. T.Thiruvengadam

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order passed in I.A.No.53 of 2013 in O.S.S.R.No.1339 of 2013(presently O.S.No.202 of 2013) on the file of the Principal District Judge at Thiruvallur presently pending before the I Additional District Judge, at Thiruvallur, dated 11.12.2013.

For Petitioners : Mr.M.L.Ramesh

For Respondents : Mr.K.Balaji (R4)

R1-3 NA

ORDER

This revision arises out of an order of the trial Court dated 11.12.2013 made in I.A.No.53 of 2013 in O.S.S.R.No.1339 of 2013(presently O.S.No.202 of 2013) on the file of the Principal District Judge at Thiruvallur, presently pending before the I Additional District Judge, at Thiruvallur

2. The plaintiffs in O.S.No.202 of 2013 on the file of the I Additional District Judge, Thiruvallur are the petitioners in the present Civil Revision Petition. While filing the said suit, they filed an application in I.A.No.53 of 2013 under Order II Rule 2 of Code of Civil Procedure seeking leave of the Court to file a separate suit for comprehensive relief including the prayer for specific performance of the agreement for sale dated 27.10.2010. The suit came to be filed for the relief of specific performance in respect of a portion only of property regarding which the agreement for sale came to be executed. As specific performance was sought for in respect of a portion of the property covered by the agreement for sale, the petitioners sought the leave under Order II Rule 2 CPC to file a separate suit for specific performance in respect of the remaining portion on the premise that the dispute regarding the said portion is pending in a Court of law.

3. The application was resisted by the respondents herein/defendants. After hearing both sides, the learned trial Judge held that the purchaser under the agreement cannot seek specific enforcement of the agreement in respect of a portion of the property alone keeping open his right of filing a separate suit in respect of the remaining portion. Accordingly, the learned trial Judge dismissed the said application by order dated 11.12.2013. It is as against the said order of the learned trial Judge dated 11.12.2013, the present Civil Revision Petition came to be filed.

4. Notice before admission was given. Respondents 1 to 3 have not chosen to enter appearance. Respondent No.4 alone has entered appearance through a counsel. The submissions made on both sides are heard.

5. The learned counsel for the petitioners argued for a while contending that the purchaser under an agreement for sale is entitled to seek specific performance in respect of a portion alone since agreement itself contains a clause that the sales can be made either under one sale deed or under several sale deeds in respect of different portions. No

doubt, the presence of such a clause under the agreement will enable the parties to go for execution of the sale deeds in respect of portions of properties so long as the relationship runs smoothly. Once problem arises driving the purchaser under agreement to approach the Court for a relief on the basis of vendor's refusal to perform, then the plaintiff shall have three alternatives viz.,

- 1) to accept repudiation and seek compensation;
- 2) to file a suit for the specific enforcement of the agreement in respect of the entire unperformed part of the contract and
- 3) he can file a suit for specific performance in respect of undisputed portion alone and also can claim compensation for the disputed portion, in which event, his success or failure will depend upon the justifiability of his omission to seek the relief of specific performance in respect of the other portions.

Apart from the above three alternatives, the purchaser under agreement cannot have the 4th alternative to seek enforcement of the agreement in respect of a portion alone, keeping alive the cause of action for the remedy in respect of the rest of the other portion. Hence, this Court does not find any defect or infirmity in the order passed by the trial Court dismissing the application filed by the revision petitioner herein under

Order II Rule 2 CPC seeking leave to file a separate suit for specific performance based on the same cause of action in respect of the portion of the property, which is omitted to be sued at present. There is no merit in the Civil Revision Petition and the same deserves dismissal.

6. Accordingly, the Civil Revision Petition is dismissed. No costs. Connected miscellaneous petition is also dismissed.

13.04.2016

Index: Yes/
Internet: yes/
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To

The I Additional District Judge, at Thiruvallur.

P.R.SHIVAKUMAR.J.,

rg

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