

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.123 of 2009
and M.P.No.1 of 2009

Sabira Begum

... Petitioner

vs.

M.Kuppusamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order in I.A.No.112 of 2008 in O.S.No.270 of 2004 on the file of II Additional Subordinate Judge, Erode and dated 27.11.2008.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.T.Murugamanikkam

ORDER

This revision has been filed against the order of the learned II Additional Subordinate Judge, Erode dated 27.11.2008 made in I.A.No.112 of 2008 in O.S.No.270 of 2004.

2. The plaintiff in the said suit is the respondent in the Civil Revision Petition. The sole defendant in the said suit is the petitioner in the Civil Revision Petition. The revision petitioner filed the above said interlocutory application for appointment of an Advocate Commissioner to assess the market value of the suit property. The suit has been filed for specific performance on the basis of an agreement for sale dated 13.09.2002 allegedly executed by the revision petitioner in favour of the respondent.

3. The petitioner contended that the said document was not intended to be an agreement for sale and it was executed only as a security for the repayment of loan. In an attempt to prove such a plea, the revision petitioner filed I.A.No.112 of 2008 for appointment of a Commissioner to assess the market value of the property in order to_ show that difference between the market value and the amount stated in the agreement for sale consideration will probablise the case of the revision petitioner.

4. The learned trial Judge, after hearing both sides, chose to dismiss the said application holding that an Advocate Commissioner for assessing the market value in the suit for Specific Performance cannot be appointed. It is as against the said order, the present Civil

Revision Petition has been filed.

5. This Court heard the submissions made by Mr.V.Raghavachari, learned counsel for the petitioner and Mr.T.Murugamanikkam, learned counsel for the respondent.

6. Citing conflicting orders by two Hon'ble Judges, this matter had been earlier referred to the Hon'ble Division Bench for deciding the question "Whether an Advocate Commissioner can be appointed to assess the market value of the property in a suit for specific performance of contract for the purpose of establishing the contention of the parties covered by the pleadings?."

7. The Hon'ble Division Bench, by order dated 06.01.2016, declined the reference by holding that the question did not require to be answered. However, the said observation is not un-qualified. The observation is said to have been made in view of the observations appearing in the previous paragraph of the order of the Hon'ble Division Bench. In the previous paragraph, the Hon'ble Division Bench has made the following observations:-

*6...."in a suit for Specific Performance of Contract,
the question of valuation would really not arise as the*

stated consideration is what is set out in the agreement for sale. There may be a pleading stating that the document was signed in a blank paper or it was under force and coercion. But in that situation, the question would be whether such plea is established through the evidence. If it is established, the document itself would become non-est. On the other hand, if the plea falls, then the consideration would be as reflected in the document. The principle of readiness, willingness and ability to perform the obligations by the plaintiff would be the requisite criteria. Not only that, the specific performance by itself is in the very nature of discretionary relief. In that view of the matter, appointment of Commissioner for the purpose of valuation would be a futile and meaningless exercise".

The same will make it clear that the Division Bench has expressed the opinion that in a suit for specific performance, appointment of Commissioner to assess the market value of the property will be meaningless.

8. In the light of the observations made by the Hon'ble Division Bench, this Court hereby holds that the challenge made to the order of the trial Court dismissing the application for appointment

of a Commissioner to assess the market value of the suit property must fail.

9. Accordingly, the Civil Revision Petition is dismissed. However, it is made clear that the revision petitioner shall not be precluded from leading evidence regarding the market value of the property, if it is otherwise relevant. No costs. Consequently, connected miscellaneous petition is closed.

07.04.2016

(1/2)

Index: Yes/No

Internet: yes/No

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To

The II Additional Subordinate Judge, Erode

P.R.SHIVAKUMAR.J

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