

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2016

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

Civil Revision Petition (PD) No.1051 of 2016 &
CMP.No.5844 of 2016

Vasanthamani

.. Petitioner

Versus

P.Muthupani

.. Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, against the Fair and Final order, dated 18.04.2015 in I.A.No.48 of 2015 in O.S.No.406 of 2014 on the file of First Additional District Judge, Coimbatore and to allow the Civil Revision Petition.

For Petitioner : Mr. R.Nandhakumar

ORDER

This Civil Revision Petition is directed against the order, dated 18.04.2015, in I.A.No.48 of 2015 in O.S.No.406 of 2014, whereby and where-under the learned First Additional District Judge, Coimbatore, has dismissed the petition filed by the petitioner under Order 7 Rule 11 of C.P.C.

2. The respondent filed a suit for specific performance against the petitioner, on the strength of an unregistered agreement. The petitioner, on appearance, filed an application in I.A.No.48 of 2015, to

reject the plaint, invoking Order 7 Rule 11 CPC. The said application was opposed by the respondent, by filing counter.

3. The learned Trial Judge dismissed the Application stating that the matter requires evidence. Feeling aggrieved, the petitioner has come up with this Civil Revision Petition.

4. The learned counsel for the petitioner, by placing reliance on Section 17 (1) (g) of the Registration Act, 1908, contended that the document, being an unregistered sale agreement, cannot be looked into by the Court for the purpose of giving relief. According to the learned counsel, the respondent made a claim that he was put in possession of the property, pursuant to the sale agreement. According to him, such a plea cannot be taken, invoking Section 53 (A) of the Transfer of Property Act, in view of the legislative mandate, as contained in Section 17 (1) (a) of the Registration Act, 1908.

5. The respondent laid the suit on the basis of the sale agreement. There is no dispute that the agreement was not registered before the Registration Department. However, that does not preclude the respondent from prosecuting the suit. It is always open to the plaintiff in a suit for specific performance to ask for an alternative prayer to refund the

money. The learned Trial Judge considered the issue in extenso and arrived at a view that the matter requires evidence. The materials produced by the petitioner are not sufficient to axe the suit at the threshold by invoking Order 7 Rule 11 CPC. The petitioner must face the trial. The learned Trial Judge was perfectly correct in dismissing the application.

6. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

07.09.2016

Index :Yes/No.
Internet:Yes/No.
pvs

To

1. III Additional District Judge, Coimbatore

K.K.SASIDHARAN, J.,

pvs

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