

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2117 of 2016 and
CMP.No.11058 of 2016

1.N.Saravanan

2.M.Karthikeyan

...Petitioners

versus

1.Balu @ Chinnasamy

2.Jayalakshmi

3.The Joint Sub-Registrar -I
Dharmapuri, Dharmapuri District

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 1006.2016 made in I.A.No.80 of 2016 in O.S.No.55 of 2013 on the file of the learned Principal District Court, Dharmapuri.

For Petitioners : Mr.C.Prabakaran

For Respondents : Mr.R.Prabakar for R1 and R2

ORDER

The petitioner filed a suit for declaration that they are the owners of the remaining 30 unsold plots and that the Mortgage Deeds dated 10.12.2010 and 04.03.2011 are null and void and a consequential

injunction restraining the respondents from alienating or encumbering the 30 unsold plots to third parties.

2. The petitioners long after the institution of the suit filed an application for amendment to incorporate certain details in the Plaint Schedule. The application was dismissed. The revision petition filed against the said order was dismissed as withdrawn by this Court. Thereafter, the matter was taken up for trial. The petitioners, without facing trial filed an application to withdraw the suit with liberty under Order 23 Rule 1(3) of the Code of Civil Procedure. The application was dismissed by the Trial Court by giving reasons. The said order is under challenge in this civil revision petition.

3. Heard the learned counsel for the petitioners and the learned counsel appearing on behalf of respondents 1 and 2.

4. The petitioners filed the suit in O.S.No.55 of 2013 before the learned Principal District Judge, Dharmapuri, praying for a decree of declaration with regard to the ownership of the remaining 30 unsold plots and to declare the Mortgage Deeds as null and void.

5. The petitioners in the plaint in O.S.No.55 of 2013 contended that pursuant to their request, the first respondent extended financial assistance. They have executed a Power of Attorney in favour of respondents 1 and 2 in respect of 4 acres of land. Subsequently, the petitioners have created collateral security in favour of the first respondent, by documents, dated 10.12.2010 and 04.03.2011. According to the petitioners, out of 204 plots, they have sold 174 plots and there were 30 plots remained unsold. The petitioners have repaid the entire loan amount to the respondents 1 and 2. Even though, the petitioners made a request to revoke the Power of Attorney, respondents 1 and 2 failed to comply with the said request. The petitioners have taken up a further contention that the Mortgage Deeds were executed only as collateral security and as such, those documents have to be declared as null and void.

6. The plaint schedule, as filed originally, does not contain the extent and boundaries of the so called 30 remaining unsold plots. The petitioners, therefore filed an application in I.A.No.16 of 2016 to permit them to amend the plaint. The application was dismissed by the Trial Court by order dated 09.03.2016. Since the civil revision petition

challenging the said order was withdrawn by the petitioners, the order has become final.

7. The petitioners filed an application under Order 23 Rule 1 (3) of C.P.C. during the course of trial. The petitioners wanted to withdraw the suit with liberty to file a fresh suit on the basis of the very same cause of action. In short, they wanted to incorporate the amendments, which was earlier rejected by the Trial Court in I.A.No.16 of 2016, and to file a fresh suit. The application was made with an ulterior motive to include the details made in I.A.No.16 of 2016, which was not permitted earlier by the Trial Court.

8. The petitioners have not demonstrated before the Trial Court that the suit was bound to fail on account of certain formal defects. The petitioners simply filed an application in I.A.No.80 of 2016 to withdraw the suit with liberty. The petitioners, in a matter of this nature, must plead and prove that the suit is bound to fail on account of a technical defect and as such, they are entitled to invoke the provisions of Order 23 Rule 1(3) of CPC.

9. The Trial Court has already dismissed the application filed by the petitioners for amendment of the plaint. The order has become final. It is only to overcome the difficulty faced on account of the dismissal of the interlocutory application, the plaintiff has come up with the application before the Trial Court in I.A.No.80 of 2016 to withdraw the civil suit with liberty.

10. The learned Trial Judge considered the issue in the light of the background facts and rightly dismissed the application. The learned Trial Judge has given cogent reasons in support of his ultimate finding that no liberty could be granted to the petitioners to file a fresh suit on the basis of the very same cause of action. The order does not warrant interference by exercising the jurisdiction conferred on this Court under Article 227 of the Constitution of India.

11. In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

06.09.2016

Index:Yes/No
svki

K.K.SASIDHARAN, J.

(svki)

To

The Principal District Judge,
Dharmapuri.

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