

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.243 of 2016

&

C.M.P.No.1189 of 2016

P.N.Palanisamy

... Petitioner

VS.

Prema Krishnasamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 13.07.2015 in I.A.No.687 of 2014 in O.S.No.659 of 2012 on the file of V Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.V.Vijayakumar

ORDER

The defendant in the original suit is the petitioner in the Civil Revision Petition. This Civil Revision Petition has been filed against the order of the trial Court dated 13.07.2015 dismissing I.A.No.687 of 2014

filed under Order VII Rule 11 CPC for the rejection of the plaint in O.S.No.659 of 2012 on the file of the trial Court.

2. The suit has been filed for the following reliefs:

1) *A declaration that the registered sale agreement dated 13.01.1998 bearing Document No.133 of 1998 registered on the file of Sub-Registrar, Mettupalayam in respect of the properties mentioned in the plaint schedule is an unenforceable document as it has become inoperative and the same was not acted upon;*

2) *Directing the defendant to deliver the original title deed dated 01.06.1983 bearing Document No.1046/83 to the respondent herein/plaintiff by the decree of mandatory injunction; and*

3) *For costs.*

3. The suit was valued and the Court fee was paid in the following manner:

1) <i>For the relief of “declaration”, the suit is valued at ...</i>	<i>Rs.10,00,000.00</i>
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<i>Court Fee Paid thereon u/s. 25(d) of the TNCF and SV Act is</i>	<i>Rs. 75,000.50</i>
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2) <i>For the relief of “mandatory injunction”, the suit is valued at Court fee paid thereon u/s.27 (c) of the TNCF and SV Act is</i>	<i>Rs. 1,000.00</i>
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<i>Total value of the suit</i>	<i>Rs.10,01,000.00</i>
<i>Total Court fee paid</i>	<i>Rs. 75,076.00</i>

4. The respondent herein/defendant, who entered appearance on service of summons, filed a petition as I.A.No.687 of 2014 under Order VII Rule 11(b) and 11 (d) of the Code of Civil Procedure for the rejection of the plaint. The learned trial Judge, after hearing both sides, passed the impugned order dated 13.07.2015 dismissing the said application holding that the prayer for rejection of the plaint could not be sustained. It is as against the said order, the present revision came to be filed under Article 227 of the Constitution of India. The matter stands listed today for admission.

5. The grounds on which the revision petitioner sought an order rejecting the plaint are:

- 1) that the filing of the suit itself is an abuse of process of Court;
- 2) that the suit is barred by limitation; and
- 3) that the suit cannot be maintained based on the agreement, which was not intended to be an agreement for sale, but only as a collateral security for repayment of the loan availed by the revision petitioner.

6. The petition came to be filed mentioning Order VII Rule 11 (b) and 11(d) CPC as the grounds on which the prayer for rejection of the plaint was made. Sub-clause (b) deals with the rejection of plaint where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so. Sub-clause (d) deals with the rejection of the plaint on the ground that the suit based on the statement found in the plaint appears to be barred by law. The plaint averments will not make it appear that the suit is barred by limitation or any other law. The only contention raised by the petitioner to bring the case within the ambit of Order VII Rule 11 (d) CPC is that the suit is barred by limitation. Necessary averments have been made in the plaint to show how the suit is not barred by limitation and it has been filed in time. If at all the petitioner does have any objection to such pleadings, he has to raise it as a plea of defence on the basis of which an issue will be framed and the same will be tried and decided either along with the other issues or as a preliminary issue, if the petitioner makes out a case for trying the said issue as a preliminary issue.

7. Similar is the contention raised relying on Sub-Clause (b) of the above said rule. The valuation made in the plaint has not been questioned by the trial Court and no direction or order was passed by the trial Court to

correct the valuation within the specified. On the other hand, it is a contentious issue as to whether the valuation has been properly made or not? When such contentious issue is involved, which has got to be decided based on the evidence to be adduced by the parties, the petitioner should have waited for a decision to be arrived at after seeking trial of the said issue as a preliminary issue and in case, he succeeded in it, he could have filed a petition thereafter under Order VII Rule 11 (b) CPC for the rejection of the plaint, provided the direction of the Court was not complied within the time granted by the Court. On the other hand, the petitioner seems to have made an attempt to raise all the contentious issues in the petition under Order VII Rule 11 CPC and prayed for the rejection of the plaint.

8. The learned trial Judge, on proper consideration of the pleadings made by both parties and on proper understanding and application of the provisions of law, chose to dismiss the petition by the impugned order. This Court does not find want of jurisdiction or failure to exercise jurisdiction on the part of the trial Court in passing the impugned order. The impugned also cannot be stated to be patently erroneous warranting an interference by this Court by invoking its power of superintendence under Article 227 of the Constitution of India. Hence, the revision deserves to be dismissed at the threshold.

Accordingly, the Civil Revision Petition is dismissed. However, it is made clear that the petitioner shall be at liberty to raise all the grounds raised in the petition under Order VII Rule 11 CPC as pleas of defence in the written statement and contest the suit. No costs. Consequently, the connected miscellaneous petition is closed.

05.02.2016

Index: Yes/No
Internet: yes/No
gpa

To

V Additional District and Sessions Judge
Coimbatore

P.R.SHIVAKUMAR.J.,

gpa

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