

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.09.2016**

CORAM:

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

C.R.P.(P.D.) No.2560 of 2016 and

CMP.No.13094 of 2016

Vanmathi

...Petitioner

versus

1.Mrs.Valli

2.G.Radhakrishnan

3.K.Ramakrishnan

4.M.Sathyamurthy

5.N.Murugesan

6.M.Kavitha

7.G.Janaki

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the return order dated 29.06.2016 passed in O.S.No.416 of 2009 before the learned Sub Judge, Tambaram.

For Petitioner : Mr.Antony Jesus

For RR5 to 7 :Mr.N.Nithianandan

ORDER

This Civil Revision Petition is directed against the order dated 29.06.2016 in O.S.No.416 of 2009 on the file of learned Subordinate Judge, Tambaram.

2. The petitioner filed a suit in O.S.No.416 of 2009 for specific performance before the learned Subordinate Judge, Tambaram. This

suit was contested by the respondents by filing written statement stating that the petitioner under valued the suit property by showing less amount.

3.Subsequently, the parties adduced evidence. During the course of trial, Ex.A10 & Ex.A12 were marked before the trial Court. Besides this, Ex.B3 & B4 were also marked indicating the present value of the property. The learned trial Judge based on the documents marked as Ex.B3 & B4 and Ex.A10 & A12 returned the plaint with a finding that the petitioner has to pay the court fee taking into account the market value of the property. Feeling aggrieved, the petitioner has come up with this Civil Revision Petition.

4.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 5 to 7.

5.The petitioner paid court fee on the amount as shown in the document dated 22.05.2001 in accordance with Section 42 (A) of the Tamil Nadu Court Fees and Suits Valuation Act 1958. There is no question of directing the petitioner to pay the market value of the property, after the commencement of trial on the ground that the

correct value was not mentioned in the document. The only issue that arises for consideration before the trial court is as to whether the petitioner is entitled to a discretionary remedy of specific performance. The rise in the land value cannot be a reason to direct the plaintiff to pay the additional court fee notwithstanding the valuation indicated in the agreement or document evidencing the understanding to sell the property. I am therefore of the view that the learned trial Judge was not correct in returning the plaint to the petitioner.

6. In the result, the order dated 29.06.2016 is set aside. The petitioner is given time till 07.11.2016 to represent the plaint before the trial Court. The learned trial Judge is directed to continue the trial from the stage at which it was discontinued.

7. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected MP is closed.

28.09.2016

Index: Yes/No
dn

Note:

Registry is directed to return the plaint in original to the petitioner forthwith.

K.K.SASIDHARAN, J.

(dn)

To

The learned Sub Judge,
Tambaram.

C.R.P.(P.D.) No.2560 of 2016

28.09.2016