

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.10.2016

Delivered on: 21.10.2016

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.R.P.(PD)No.2057 of 2013 &
M.P.No.1 of 2013

Mr.A.Ameen Basha

.... Petitioner

vs

1. Mrs.Selvi
2. Mrs.Varalakshmi
3. Mr.Ramesh
4. Mrs.M.Shanthi

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order, dated 14.3.2013 made in I.A.No.687 of 2012 in O.S.No.689 of 2011 on the file of the V Additional District and Sessions Judge (FTC III), Coimbatore.

For petitioner : Mr.B.R.Shankaralingam

For respondents : Mr.N.Manokaran

ORDER

This Civil Revision Petition is filed against the order dated 14.3.2013 passed by the learned the V Additional District and Sessions Judge (FTC III), Coimbatore in I.A.No.687 of 2012 in O.S.No.689 of 2011, dismissing the application filed by the petitioner/first defendant.

2. The above said I.A.687 of 2012 was filed under Order VII Rule 1 r/w Order XIV rule 2(2) CPC, seeking order for rejection of the plaint.

3. Heard the learned counsel appearing for both sides and perused the entire record.

4. The respondents herein are the plaintiffs. They filed a suit in O.S.No.689 of 2011 before the V Additional District and Sessions Judge (FTC III), Coimbatore, for the relief of cancellation of the registered sale deed dated 3.10.2006 which was in favour of the petitioner/first defendant and for consequential reliefs. During the pendency of the suit, the petitioner/first defendant has moved the present I.A., seeking for rejection of the plaint on the following grounds, viz.,

i) that there was a suppression of the fact with regard to the earlier proceedings in a suit in O.S.No.912 of 1977 which is the subject matter of the present suit and therefore, deliberate suppression on the part of the respondents/plaintiffs, dis-entitle them to pursue the present suit proceedings;

ii) that the respondents/plaintiffs had played fraud upon the Court by selling the property by receiving a handsome consideration and the petitioner/first defendant was a bona fide purchaser for the value and therefore, the respondents/plaintiffs cannot seek for cancellation of the sale deed in favour of the petitioner/first defendant; and

iii) that the suit was bad for non-joinder of necessary parties since one Arangasamy Chettiar and Abdul Subhan who are the original parties in the earlier suit in O.S.No.912 of 1977 and the said Arangasamy Chettiar, being the plaintiff, filed the said suit against Abdul Subhan and Krishnamoorthy, for specific performance.

5. In reply to the above contentions raised by the petitioner/first defendant, it was contended on behalf of the respondents/plaintiffs that the suit is perfectly maintainable in

law and it was only the petitioner/first defendant who played fraud on the respondents/plaintiffs over non-payment of sale consideration. Further, the issue of non-joinder of necessary parties cannot be a point for consideration in an application filed under Order VII Rule 1 CPC. In any event, the issues which raised by the petitioner/first defendant can be decided at the time of trial and therefore, there was no need for rejection of the plaint and hence, prayed for dismissal of the interlocutory application.

6. The trial Judge, after adverting to the submissions made by the rival parties, has passed the order dated 14.3.2013, dismissing the I.A.

7. The trial Judge accepted the contentions raised on behalf of the respondents/plaintiffs that the issues raised in the subject I.A., can always be decided during the trial and there was absolutely no need for rejection of the plaint on the basis of the contentions put forth by the petitioner/first defendant. The learned Judge has given considered reasons in response to all the points and issues raised by the petitioner/first defendant and rejected the same.

8. The learned counsel appearing for both sides, reiterated their submissions before this Court, which made before the trial Court. In addition, the learned counsel for the respondents/plaintiffs cited a decision reported in (2015) 5 SCC 223 (***Rathnavathi and another versus Kavita Ganashamdas***) on the issue of applicability of Order 2 Rule 2 CPC, which in my view, supports the case of the respondents/plaintiffs.

9. Having carefully perused the order impugned in this revision petition, this Court is of the view that the reasoning of the learned trial Judge while dismissing the subject I.A., does not suffer from any infirmity both on facts and in law and hence, does not call for any interference of this Court.

In the light of the above, the Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected MP is closed.

Suk

21-10-2016

V. PARTHIBAN,J.,

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Pre delivery order in
CRP(PD)No.2057 of 2013

21-10-2016