

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.11.2016**

CORAM:

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

C.R.P.(P.D.) No.3715 of 2016 and
C.M.P.No.18849 of 2016

D.V.M.Premkumar

...Petitioner

versus

B.S.Real Estate Ventures (P) Ltd.,
Having its Registered Office at
No.207, Ashoka Bhoopal Chambers
146/A, S.P.Road,
Secunderabad 500 005.
Rep. by its Director, B.S.Sahney

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 23.09.2016 in I.A.No.41 of 2014 in O.S.No.39 of 2013 on the file of District Judge, Nilgiris.

For Petitioner : Ms.AL.Ganthimathi

ORDER

The petitioner filed an application in I.A.No.41 of 2014 in O.S.No.39 of 2013 before the District Court, Nilgiris, invoking Order VII Rule 11(d) of the Code of Civil Procedure, to reject the plaint. The application was dismissed by the Trial Court. The order is under challenge in this Civil Revision Petition.

2. The learned counsel for the petitioner contended that the petitioner executed a loan agreement with the respondent and the same was converted as a Sale Agreement and filed the suit in question. According to the learned counsel, since there was no Sale Agreement between the parties, the suit for specific performance is not maintainable.

3. The plaint in O.S.No.39 of 2013 was filed by the respondent on the strength of the document dated 05.06.2008, which is in the nature of a sale agreement. The petitioner has taken up a contention that he executed only a loan agreement and it was converted as a Sale Agreement by the respondent fraudulently. The said question cannot be decided in a petition under Order VII Rule 11 of CPC. The learned Trial Judge, was therefore, perfectly correct in dismissing the application.

4. The learned counsel for the petitioner contended that even while deciding the application in I.A.No.41 of 2014, the learned Judge virtually granted a finding with respect to the nature of the document dated 05.06.2008. According to the learned counsel, the Trial Court made an observation that the document dated 05.06.2008 is nothing but a sale agreement.

5. The observation made by the learned Trial Judge was only for the purpose of deciding the application in I.A.No.41 of 2014. There is no question of considering the merits of the suit with a pre-determined mind on account of the observation made in the order dated 23 September 2016.

6. It is open to the petitioner to take up all the defences available to him before the Trial Court. The Trial Court is directed to decide the issues, including the nature of the document, on merits and as per law, without in any way being influenced by the observation contained in the order dated 23 September 2016.

7. The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

30.11.2016

Index:Yes/No

svki

K.K.SASIDHARAN,J.

(svki)

To

The District Court, Nilgiris

C.R.P.(P.D.) No.3715 of 2016

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