

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.932 of 2016

A.Raniammal
W/o.S.Arumuga Chettiar .. Petitioner

Vs

1.V.Banumathi
W/o. Venugopal

2.Venugopal
S/o.E.K.Muthukumarasamy .. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the order dated 05.03.2016 made in O.S.S.R.No.8526 of 206 by the learned (IV Assistant Judge) I/c. of I Assistant Judge, City Civil Court at Chennai and consequently directing the office to number the suit.

For Petitioner :Mr.Ralph V.Manohar

ORDER

The plaintiff has filed a suit in O.S.S.R.No.8526 of 2016 on the file of the IV Assistant Judge, I/c of I Assistant Court, City Civil Court, Chennai, praying to direct the defendants to execute and register the sale deed in respect of the property, of which, an sale agreement has already been executed between the plaintiff and the defendants.

2. The Court below has returned the plaint stating that in a suit for specific performance, the Court cannot entertain the suit, unless the suit is filed within the jurisdiction of the Court, where the immovable property is situated. In respect of the same, the lower Court has referred to the decision reported in **CDJ 2012 MHC 4151.**

3. The learned counsel for the revision petitioner pointed out the distinction in respect of the suit seeking specific performance of the terms of contract, touching the immovable property and the specific performance of the contract without touching the immovable property.

3.1. It is pointed out that, the relief sought for by the plaintiff/revision petitioner does not include a claim for possession of the property, but merely, an enforcement of the terms of contract entered into between the plaintiff and the defendants through sale agreement dated 18.02.1987.

4. In paragraph No.11 of the plaint, it has been clearly stated that by virtue of agreement of sale dated 18.02.1987, the plaintiff is already in absolute possession of the property.

Therefore, the question of seeking possession from the defendants does not arise and cannot arise in this case.

5. The learned counsel for the revision petitioner after pointing out the dictum laid down in the case reported in “CDJ 2012 MHC 4151”, relied upon the following decision reported in 2009 (4) CTC 181 [Dr.Hendry Dasarathan and 2 Others Vs. R.Prabhakaran], in which it has been held as follows :

“17. In a case where there is specific clause in the agreement for sale of immovable property that the possession of the immovable property would be handed over to the purchaser immediately after the execution of the sale deed, there is an implication that delivery of possession forms part of the decree for specific performance of contract. Where there was no such clause found in the contract for sale of immovable property, the plaintiff, who seeks for specific performance of agreement for sale, will have to necessarily seek a relief for delivery of possession. Of course, as contemplated under the proviso to sub-section (2) of section 22 of the Specific Relief Act, 1963, the plaintiff can, at any stage of the suit, seek for such a relief and the court shall allow him to amend the plaint facilitating him to include such a relief in the prayer portion of the suit. So long as the prayer was not in the contemplation of the scheme of the pleadings, the suit filed simplicitor for specific performance of agreement for sale will have to be

necessarily construed only as a suit not for land, but, for enforcement of the terms of the contract. If the plaintiff elects to invoke the proviso to sub-section (2) of section 22 of the Specific Relief Act, 1963 at an advanced stage of the proceedings of the suit, the defendant is entitled to seek for revocation of the leave at such stage of the proceedings."

6. From the perusal of the plaint, it is evident that what is sought for is the enforcement of terms and conditions of the sale agreement alone. Therefore, it is a case where there is no requirement that the suit should have been filed within the jurisdiction, where the immovable property is situated.

7. Therefore, the Court below is directed to take the case on file and decide the same in accordance with law.

8. With the above directions, this Civil Revision Petition stands disposed of. No costs.

22.03.2016

ds

To:
The IV Assistant Court (I/c. of I Assistant Court)
City Civil Court
Chennai.

S.VIMALA,J.

ds

CRP (NPD) No.932 of 2016

22.03.2016