

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.94 of 2016

&

C.M.P.No.510 of 2016

1.Mrs.S.E.Zarina Begum
2.S.Khalid Ali
3.S.Mohammed Basheer
4.Thameem Ansari
5.Mrs.Dilsathi Begam
6.Mrs.Zabira Begam

... Petitioners

vs.

P.M.S.Latiff

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the III Assistant Judge, City Civil Court, Chennai dated 18.09.2015 made in I.A.No.13735 of 2013 in O.S.No.1781 of 2013.

For Petitioners : Mr.R.Venkatavarathan

For Respondent : Mr.Perumbulavil Radhakrishnan
for Mr.S.Srinivas

ORDER

This revision under Article 227 of the Constitution of India has been preferred by the defendants in O.S.No.1781/2013 on the file of the III Assistant Judge, City Civil Court, Chennai. The respondent in the revision is the plaintiff in the above said suit. The suit was filed for the relief of permanent

injunction restraining the petitioners herein/defendants from in any way interfering with respondent's/plaintiff's alleged peaceful possession and enjoyment of the suit property including electricity and water supply except adopting due process of law.

2. The petitioners herein/defendants, on appearance filed an application in I.A.No.1375/2013 under Order VII Rule 11 CPC for rejection of the plaint on the ground that the plaint averments do not make out a cause of action for filing the suit for the above said reliefs. The application was resisted by the respondent herein.

3. The learned trial Judge, after hearing both sides, by order dated 18.09.2015 dismissed the said application filed by the petitioners herein/defendants. The legality of the said order of the trial court dated 18.09.2015 is questioned by the petitioners herein/defendants by invoking the power of superintendence of this court under Article 227 of the Constitution of India.

4. Notice before admission was given. The respondent entered appearance in the revision through counsel. Since this court is of the view that the revision can be disposed of at the time of admission itself, arguments advanced by Mr.R.Venkata Varathan, learned counsel for the petitioners and by Mr.Perumpulavil Radhakrishnan, learned counsel appearing for Mr.S.Srinivasu, counsel on record for the respondent are heard. The certified copy of the impugned order, grounds of revision, copies of other material

papers produced in the form of typed set of papers are also perused.

5. It is the contention of the learned counsel for the petitioners that the respondent filed an application without disclosing on what right he claims to be in possession of the suit property and the plaint averments do not disclose the cause of action for the filing of the suit for the relief of permanent injunction. It is the further submission of the learned counsel for the petitioners that, besides the absence of pleadings disclosing the cause of action, the plaint averments show that the suit itself has been filed as a vexatious one and also as an abuse of process of court.

6. Per contra, it is the contention of the learned counsel for the respondent that the respondent was inducted as a tenant in respect of a portion of the old building, which was in existence at the time of purchase made by the first petitioner; that there after the entire building was demolished by the first petitioner with a view to put up a new construction; that the respondent provided funds for the new construction and that meanwhile the first petitioner left India for Dubai leaving the job of completing the construction to the respondent herein. It is the further submission of the learned counsel for the respondent that the respondent, besides making payments to the first petitioner, incurred expenditures for purchasing the building materials and put up the construction; that in view of the same, the first petitioner agreed to sell the property to the respondent herein; that thereafter, the respondent herein continued to be in possession of the suit property, as an agreement holder, who got the possession in part performance

of the agreement for sale and that under the said circumstances, when his possession was sought to be disturbed, the suit came to be filed for injunction not to disturb his possession otherwise than by adopting due process of law.

7. Though the learned counsel for the respondent would have contended that he was originally inducted as a tenant in respect of a portion of the old structure, which stood at the time of purchase made by the first petitioner herein, it is not his clear case that he has filed the suit as a tenant in possession of the suit property, whose possession is statutorily protected. Though the second limb of the argument is to the effect that he is a purchaser in possession under an agreement for sale, the pleadings found in the plaint do not contain particulars regarding the date on which and the manner in which the agreement came to be concluded and entered into. Not even the amount agreed to as the sale consideration by the parties has been stated in the plaint averments. Apart from failure to state the date of agreement, the amount of sale consideration and the balance amount of sale consideration to be paid by him, he has also not chosen to make any averment to the effect that he has been ready and willing to perform his part of the alleged agreement for sale or has already performed his part of the obligations under the agreement and nothing remains to be done on his part.

8. That apart, it is admitted by the learned counsel for the petitioners that there is no agreement in writing. In case of absence of an agreement in writing, claim of possession by way of part performance cannot be made in accordance with Section 53A of the Transfer of Property Act, 1882. The

opening sentence of Section 53A itself refers to the condition for such claim of part performance that there should be a contract for transfer of consideration of any immovable property by writing signed by the party or on his behalf and the terms of such contract and the agreement in writing should contain the terms necessary to constitute the transfer and it should be capable of being ascertained with reasonable certainty. For better appreciation, section 53A is reproduced hereunder.

"53A. Part performance

Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

PROVIDED that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

If the pleadings of the respondent herein/plaintiff found in the plaint is considered in the light of the above said provision, it can be said without any hesitation that the plea of part performance cannot be taken on the basis of oral agreement. Here the respondent herein/plaintiff has made an attempt to

plead part performance on the basis of oral agreement. Apart from such plea being impossible to be taken, there is also no clear averment in the plaint to the effect that the respondent herein/plaintiff claims the relief as an agreement holder, whose possession in part performance of the agreement should be protected under Section 53A of the Transfer of Property Act, 1882.

9. As indicated supra, a person who claims protection under Section 53A, should also plead that he has been ready and willing to perform his part of the contract or has performed the part of the obligations under the agreement for sale. No such pleading is found incorporated in the plaint. Though the respondent herein/plaintiff has chosen to make an averment in the plaint that the parent deeds were handed over to the respondent herein/plaintiff, it is not the case of the respondent herein/plaintiff that it was intended to be a security for repayment of the money due from the first petitioner so as to constitute an equitable mortgage. It is pertinent to note that though the respondent herein/plaintiff has stated that the first petitioner did not even repay the amount paid by the respondent herein/plaintiff and pay the amount spent by him towards the construction of the building, he has not chosen to claim that an equitable mortgage came to be created in his favour by deposit of title deeds.

10. A reading of the plaint will show that the plaint is full of mistakes right from the beginning till the end and the pleadings cannot be easily comprehended. A reading of the averments found in the plaint does not disclose in what capacity the plaintiff is in possession and in what capacity he

seeks the relief of injunction against the petitioners, while admitting the first petitioner to be the real owner of the suit property.

11. As rightly contended by the learned counsel for the petitioners, the pleadings incorporated in the plaint do not disclose a cause of action and on the other hand, it shows vexation and an attempt at abuse of process. Hence this court comes to the conclusion that the plaint is liable to be rejected under sub clause (a) of Rule 11 under Order VII of the Code of Civil Procedure. The learned trial Judge failed to consider the plaint averments properly and the same led to the passing of the impugned order dismissing the application filed under Order VII Rule 11 CPC for the rejection of the plaint. The said order cannot stand the scrutiny of this court and this court does have no hesitation in setting aside the order.

In the result, the civil revision petition succeeds and the civil revision petition is allowed. Order of the trial court dated 18.09.2015 made in I.A.No.1375/2013 is set aside. I.A.No.1375/2013 shall stand allowed. The plaint in O.S.No.1781/2013 shall stand rejected. There shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

10.03.2016

Index : Yes
Internet : Yes
asr

To

The III Assistant Judge, City Civil Court, Chennai

P.R.SHIVAKUMAR, J.

asr/-

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