



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2016

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD).No.355 of 2016

WEB COPY

1.S.Subbiah
2.Bhuvaneswari

..Petitioners/Petitioners/
Defendants

Vs.

Porkodi

..Respondent/Respondent/
Plaintiff

Civil Revision Petition is filed under Article 227 of the Constitution of India, setting aside the fair and decreetal order in I.A.No.863 of 2014 in O.S.No.112 of 2014 dated 10.12.2015 Sub-Court, Pudukottai.

For Petitioner :Mr.N.Balakrishnan

ORDER

The petitioners are the defendants in the suit. The respondent has filed a suit in O.S.No.112 of 2014 before the Sub-Court, Pudukottai for specific performance of agreement of sale dated 26.03.2012. The petitioners filed a written statement and contesting the suit. Whiles, the petitioners filed I.A.No.863 of 2014 to reject the plaint on the ground that the signature found in the document dated 26.02.2012 is not that of the first petitioner and the same is a forged one. The document alleged to be an agreement of sale by the respondent, is not an agreement of sale, but it is only a sale deed.

2.The respondent filed counter affidavit and denied the various allegations made by the petitioners. The respondent contended that the document is an agreement of sale or sale deed can be decided only at the time of trial. Similarly, whether the first petitioner has signed the agreement of sale or her signature is forged also can be decided only after the trial.

3.The learned Judge, after considering the facts and material on record, dismissed the I.A filed by the petitioners. Against the said dismissal order, the present civil revision petition is filed.

4.The learned counsel for the petitioners submitted that the learned Judge failed to see the document alleged to be an agreement of sale by the respondent is infact a sale deed and suit for specific performance based on the sale deed is not maintainable. There is no cause of action for filing the suit. He further submitted that the learned Judge ought to have seen that the signature in the document is not that of the first petitioner. The learned Judge ought to have compared the said signature with admitted signature of the first petitioner and prayed for allowing the civil revision petition.

5.The learned counsel for the petitioners placed reliance on the judgment of the Apex Court in *HYDERABAD ENGINEERING INDUSTRIES v. STATE OF ANDHRA PRADESH* reported in (2011) 4 Supreme Court Cases 705, wherein in paragraph No.30, it is held as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

30. From the above clauses in the agreement, what can be inferred is that the assessee has undertaken to supply their manufactured products to UIL or to its nominees at



the agreed price at any of the assessee's godowns at the option of UIL. A contract of sale of goods would be effective when a seller agrees to transfer the property in goods to the buyer for a price and that such a contract may be either absolute or conditional. If the transfer is in praesenti, it is called a "sale"; but if the transfer is to take place at a future time and subject to some conditions to be fulfilled subsequently, the contract is called "an agreement to sell". When the time in the agreement to sell lapses or the conditions therein subject to which the property in goods is to be transferred are fulfilled, the "agreement to sell" becomes a "sale".

6. From the records, it is seen that the respondent has filed a suit for specific performance on the ground that the first petitioner had executed an agreement of sale dated 26.03.2012. The petitioner contended that the first petitioner did not sign the said document and the said document is not an agreement of sale and it is only a sale deed. The learned Judge considered the contention of the petitioner and rejected the application filed by the petitioners, holding that this issue can be decided only after the trial. The reasons given by the learned Judge is valid and legal. It is well settled that an application for rejection of plaint has to be considered only based on the averments made in the plaint. Other documents and the contention of the defendants/petitioners cannot be considered for rejection of plaint.

7. In the circumstances, the judgment relied on by the petitioners is not applicable to the facts of the case. The learned Judge has correctly dealt with the matter and dismissed the application. Therefore, there is no illegality and irregularity in the said order, warranting interference by this Court.

8. The learned counsel for the petitioners submits that already the petitioners filed written statement on 11.10.2015 and prays for early disposal of the suit. Hence, the learned Subordinate Judge, Pudukkottai is directed to dispose of the suit in O.S.No.112 of 2014, as expeditiously as possible on or before 30th September 2016. With the above direction, the Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To
The Subordinate Judge, Pudukottai.

+1cc to M/s.N.Balakrishnan, Advocate in SR.9003

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