



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD).No.601 of 2016 and CMP(MD).No.2691 of 2016

Paulraj ... Revision Petitioner / Appellant

Vs.

Antony Deva Sahayam ... Respondent / Respondent

Prayer: The Civil Revision Petition is filed under Section 115 of the CPC against the fair and decreetal order dated dated 25.01.2016 passed in I.A.No.82 of 2015 in A.S.No.97 of 2014 on the file of Principal Subordinate Court, Nagercoil.

For Petitioner

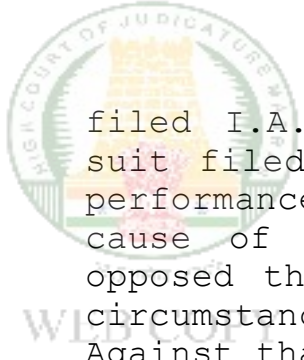
: Ms. K.P. Narayanakumar

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 25.01.2016 passed in I.A.No.82 of 2015 in A.S.No.97 of 2014 on the file of Principal Subordinate Court, Nagercoil.

2. The revision petitioner is the plaintiff in O.S.No.142 of 2011 and appellant in A.S.No.97 of 2014. The respondent is the defendant in both the suit.

3. According to the petitioner, the respondent agreed to sell the property for a total sale consideration of Rs.22,00,000/- and received a sum of Rs.4,90,000/- and Rs.10,000/- as advance, by way of cheque dated 10.06.2008 and 24.06.2008 respectively and executed the agreement of sale on 03.07.2008. Subsequently, on various dates he received balance sale consideration of Rs.17,00,000/-. Even though the petitioner was ready and willing to execute the sale deed, the respondent did not execute the sale deed, even after receiving balance sale consideration of Rs.17,00,000/-. The petitioner filed a suit for injunction. The respondent denied the execution of agreement of sale and receipt of subsequent payment as alleged by the petitioner. After trial, the suit was dismissed and thereafter, the petitioner filed A.S.No.97 of 2014. While the appeal is pending, the petitioner



filed I.A.No.82 of 2015 for permission to withdraw the earlier suit filed for injunction and to file a fresh suit for specific performance of agreement of sale dated 03.07.2008 on the same cause of action. The respondent filed counter affidavit and opposed the same. The learned Judge considering the facts and circumstances and materials on record dismissed the application. Against that order, the present revision is filed.

4. The learned counsel for the petitioner submitted that the learned Judge ought to have seen that the suit was dismissed for technical defect on the ground that the petitioner did not file suit for specific performance and filed suit only for permanent injunction. The learned Judge failed to see that the respondent admitted having received the advance amount and execution of sale agreement. The learned Judge failed to see that the petitioner wants to file a comprehensive suit for specific performance of agreement of sale.

5. I have heard the learned counsel appearing for the petitioners and perused the materials on record.

6. From the materials available on record it is seen that the suit was dismissed on the ground that the relief for specific performance was available to the petitioner, at that time he filed a suit for permanent injunction. The alleged agreement sale is dated 03.07.2008 and when the petitioner filed a petition for permission to withdraw the suit with liberty to file a fresh suit for specific performance is barred by limitation.

7. Order XXIII Rule 1 of CPC, reads as follows:-

1. Withdrawal of suit or abandonment of part of the claim :-

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim;

Provided that where the plaintiff is minor or other person to whom the provisions contained in Rules 1 to 14 or Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such person is represented by a pleader by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied:-

(a) that a suit must fail by reason of some formal defect, or



(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim,

It may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.

8. A reading of the Order XXIII Rule 1(3) reveals that the court can grant permission to the plaintiff to withdraw the suit with liberty to file fresh suit on the same cause of action only if there is any formal defect in the suit or if there is any sufficient reason for granting such relief. In the present case, the petitioner has filed the suit for seeking permanent injunction. The petitioner has not given any valid reason satisfying the order XXIII Rule 1(3) of CPC.

9. In such circumstances, the learned Judge considered all these materials on record in proper perspective and has given valid and cogent reasons for dismissal of the application filed by the petitioner. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

10. In the result, the Civil revision petition is dismissed confirming the impugned order dated 25.01.2016 passed in I.A.No.82 of 2015 in A.S.No.97 of 2014 on the file of Principal Subordinate Court, Nagercoil. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To
The Principal Subordinate Court, Nagercoil

+1cc to Mr.K.P. Narayanakumar, Advocate, Sr.No.16045

trp

JM/SK-SKN/07.04.2016/3P-3C