

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1246 of 2017

1.P.Ananthakrishnan
2.A.Chitra

.. Petitioners

Vs

S.Baskaraboopathi

.. Respondent

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the petition and order dated 15.02.2017 rejecting the plaint in Unnumbered SR.OSSR.No.724 of 2017 on the file of the Principal District Munsif at Alandur, to number it and dispose of the same.

For Petitioners : Mr.K.Senthil Kumar

ORDER

The Civil Revision Petition is filed against the order dated 15.02.2017, rejecting the plaint at the stage of maintainability itself, without numbering it.

2. The petitioners, as plaintiffs filed a suit for permanent injunction restraining the defendant, his men, agents, servants, representatives and anyone claiming through the defendant in any way interfering with the plaintiffs' peaceful enjoyment and possession of the suit schedule property.

3. According to the petitioners, they are the owners of the suit property. They availed a loan from the REPCO Bank towards purchase of the said property. Due to loss in the business, the plaintiffs were not able to repay the said loan and decided to sell the property and fixed the sale price at Rs.90,00,000/-. At that time, the defendant offered to purchase the property for a total sale consideration of Rs.90,00,000/-. It is stated that a Memorandum of Understanding dated 21.09.2015 was entered into between the parties. As per the terms and conditions of the Memorandum of Understanding, the defendant agreed to pay a sum of Rs.49,00,000/- on or before 31.03.2016, and balance sale consideration of Rs.41,00,000/- before 31.03.2018, and till such time the petitioners/plaintiffs shall remain to continue in the physical possession of the property and they can even let out the property to a third party. As agreed, the defendant paid a sum of Rs.49,00,000/- before the due date fixed in the Memorandum of Understanding. Thereafter, the sale deed was executed in favour of the defendant on 24.3.2016 vide Document No.2086/16. Sometime in the month of December 2016, the defendant approached the plaintiffs and asked him to vacate the premises and hand over the possession to him. Even in the month of January 2017, the defendant attempted to evict the plaintiff from the premises illegally with the help of henchmen. Followed by which, the defendant also lodged a false complaint against the plaintiffs. Thus, there arose a cause of action for

filing of the suit. The plaintiffs contended that the defendant without paying the balance sale consideration was trying to interfere with the possession of the plaintiffs and hence the plaintiffs have filed the suit for permanent injunction.

4. The learned Judge returned the plaint on number of occasions for various reasons. One such return is directing the petitioner to file a sale deed that was executed by the plaintiffs in favour of the defendant. It is stated by the counsel for the plaintiffs that a copy of the sale deed was filed along with the plaint and moreover the dispute was not with regard to the execution of sale deed or title of the property, but it is only with regard to the possession. Later, it was posted before the Court below on 10.2.2017 and thereafter on 15.2.2017. On a perusal, the learned Judge rejected the plaint vide order dated 15.02.2017 on the ground that the plaintiffs have admitted in the sale deed that they have received the entire sale consideration from the defendant and acknowledged that the defendant was released off from all liabilities and thereby, the defendant was entitled to enjoy the possession of the property.

5. Challenging the said order of rejection, the petitioners have filed the present Civil Revision Petition.

6. The learned counsel appearing for the petitioners/plaintiffs submitted that the suit was not for declaration of title , but it is only a

suit for injunction restraining the respondent/defendant from dispossessing the petitioners without due process of law. To claim the relief of injunction, the possession of property is the criteria, and the petitioners/plaintiffs have stated that they are in possession and that they have filed the documents to that effect. According to the petitioners, the respondent has not paid the entire sale consideration and he is trying to dispossess the petitioners from the suit property by illegal means.

7. The learned counsel for the petitioners further submitted that the plaint can be rejected only under Order VII Rule 1 CPC. The contention raised by the petitioners is that the learned Judge has not properly appreciated the documents filed and relied on by the petitioners/plaintiffs, and has not properly considered that the plaint presented was in compliance with Order VII Rule 1 of CPC.

8. The learned counsel for the petitioner relied on the judgment of High Court of Bombay, Nagpur Branch in **Smt.Ganga Bai Vs. Vijay Kumad and Others** reported in **[(1974 2 SCC 393)]** and stated that if the suit is frivolous, as per Section 35 of the CPC, the learned Judge can award costs to the plaintiff. By placing reliance on the judgment cited supra, it is contended by the learned counsel for the petitioners that the learned Judge without appreciating the fact that the plaint was filed under Order VII Rule 1 CPC, has rejected the same as unsustainable and not maintainable in law, which only proves that the

Court below has committed error in its order.

9. The petitioners/plaintiffs relied on the Memorandum of Understanding entered into between them and respondent on 21.09.2015. Subsequently, the petitioners have executed the sale deed on 24.03.2016 in favour of the respondent and the same was registered as document No.2086/16. The learned Judge considered the entire averments and took note of the fact that in the said sale deed in Page Nos.10 and 11, the petitioners have admitted that they have received the entire sale consideration and as mentioned therein and they have admitted that the respondent can possess and enjoy the property peacefully.

10. Appreciating this fact in proper prospective, as well as taking note of the fact that subsequent to memorandum of understanding entered into on 21.09.2015, the petitioners have executed the sale deed on 24.03.2016 in favour of the defendant and handed over the possession to the respondent and now filing a suit for permanent injunction against the defendants is unsustainable in law and not maintainable. The learned Judge has held that the provision of Order 7 Rule 1 is not applicable to the facts of the present case and has rightly rejected the plaint as not maintainable, by elaborating the facts and giving valid reasons.

11. This Court does not find any illegality or irregularity in the order dated 15.02.2017 passed by the learned Principal District Judge, Alandur, warranting interference by invoking the revisional jurisdiction under Article 227 of the Constitution of India.

12. In the result, the Civil Revision Petition is dismissed. No costs.

05.04.2017

ds

Speaking Order/Non-speaking Order
Index : Yes / No

To:

The District Munsif Court,
Alandur.

V.M.VELUMANI,J

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