

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.04.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD)No.1344 of 2017

and

C.M.P.No.6228 of 2017

1.V.Shanthi

2.M.Veeraraghavan

.. Petitioners

/versus/

M.A.Panchatcharam

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order in E.A.No.169 of 2016 in E.P.No.8 of 2014 in MCC.O.S.No.7843 of 2010, dated 24.01.2017 on the file of the Subordinate Judge, Poonamallee.

For Petitioners :Ms.A.Sumathy

ORDER

Civil Revision Petition filed against the fair and decretal order in E.A.No.169 of 2016 in E.P.No.8 of 2014 in MCC.O.S.No.7843 of 2010, dated 24.01.2017 on the file of the Subordinate Court, Poonamallee.

2. The respondent herein/plaintiff filed a suit in O.S.No.7843 of 2010 against the petitioners herein/defendants for recovery of money for a sum of

Rs.13,90,681/- and the said suit was dismissed by the learned Additional District Judge(Fast Track Court No.2), Chennai, on 30.09.2011. Against the said judgment and decree passed in the suit, the respondent herein preferred an appeal in A.S.No.175 of 2011 before this Court and in that appeal, the respondent has filed a memo of calculation on 01.08.2013 by restricting his claim only to Rs.1,66,850/- and the appeal was partly allowed directing the first petitioner herein to pay a sum of Rs.2,69,452/- to the respondent herein.

3. Thereafter, the respondent herein/deeree-holder has filed an execution petition in E.P.No.8 of 2014 in O.S.No.7843 of 2010 to recover the amount of Rs.2,75,830/- in which, the petitioners/judgment-debtors have taken out an application in E.A.No.169 of 2016 in E.P.No.8 of 2014 in O.S.No.7843 of 2010 under Section 47 of the Civil Procedure Code, praying to determine the petitioners' right and dismiss the execution petition in E.P.No.8 of 2014 wherein they have stated that the first petitioner has filed a suit in C.S.No.359 of 2014 before this Court for recovery of Rs.30,00,000/- from the respondent herein and the issue involved in the execution petition and the suit in C.S.No.359 of 2014 is one and the same.

4. The first contention of the petitioners is that, the first petitioner entered into a joint venture agreement with the respondent herein on 26.09.2007 for joint development of the first petitioner's land. As per the joint venture agreement, the first petitioner is entitled to 60% of constructed area

and the respondent is entitled for 40% of constructed area. But, the respondent had sold in excess to 40% share allotted to him under the joint venture agreement. The respondent did not pay any amount to the first petitioner for the excess sale of constructed portions and hence, the respondent is liable to pay a sum of Rs.18,79,206/- to the first petitioner. The second contention is that, the second petitioner is in no way connected with the agreement and therefore, he is not liable to pay the amount to the respondent. The third contention is that, the first petitioner has filed a suit in C.S.No.359 of 2014 before this Court and the same is pending. But, without considering and appreciating the case of the petitioners, the Executing Court has erroneously dismissed E.A.No.169 of 2016 in E.P.No.8 of 2014 in O.S.No.7843 of 2010, on 24.01.2017.

5. Heard the learned counsel appearing for the petitioners and perused the materials available on record.

6. It is the case of the petitioners that the first petitioner has entered into joint venture agreement with the respondent herein on 26.09.2007 for joint development of the first petitioner's land. As per the joint venture agreement, the first petitioner is entitled for 60% of the constructed area and the respondent is entitled for 40% of the constructed area. The respondent herein filed a suit in O.S.No.7843 of 2010 against the petitioners for recovery of money for a sum of Rs.13,90,681/- with interest at the rate of 18% from the date of plaint till the date of realisation. The said suit was dismissed on 30.09.2011.

Against the said judgment and decree of the suit, the respondent herein filed an appeal in A.S.No.175 of 2011 before this Court. In the aforesaid appeal, the respondent has filed a memo of calculation and the said memo was accepted and the appeal was partly allowed. In the suit as well as the appeal filed by the respondent herein, the second petitioner was wrongly implicated as party.

7. Now, the present application in E.A.No.169 of 2016 in E.P.No.8 of 2014 in O.S.No.7843 of 2010 is filed by the petitioners under Section 47 of the Civil Procedure code by raising the contentions that the suit filed by the respondent in O.S.No.7843 of 2010 is not maintainable and the decree passed is unenforceable for the reason that firstly, the respondent has admitted in the appeal that he has sold in excess of the construction of his portion to an extent of 606 sq.ft., which comes to Rs.18,79,206/- but, he has not paid said amount to the petitioners. Secondly, the second petitioner is not an owner of the property or a party to the joint venture agreement and hence, second petitioner is not liable to pay any amount to the respondent. Thirdly, the suit in C.S.No.359 of 2014 filed by the first petitioner is pending before this Court and the execution application in E.A.No. 169 of 2016 is filed by the petitioners to dismiss the execution petition in E.P.No.8 of 2014, the Court below has rejected the contention of the petitioners. The petitioners are parties to the suit as well as in the appeal. Therefore, the judgment and decree passed dated 13.08.2013 in A.S.No.175 of 2011 is final and the same is binding on the petitioners. So far as the third contention is concerned, the civil suit in C.S.No.359 of 2014 filed by the

petitioners is pending before this Court and the petitioners have not placed any documents to show that the relief as prayed for in the suit and the execution petition in E.P.No.8 of 2014 is one and the same. Hence, the third contention of the petitioners is liable to be rejected.

8. In view of the facts and circumstances of the case, there is no error or illegality in the order passed by the Courts below in E.A.No.169 of 2016 in E.P.No.8 of 2014 in O.S.No.7843 of 2010, dated 24.01.2017. Hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

11.04.2017

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speaking order/non-speaking order

To

The Sub Court,
Poonamallee.

D.KRISHNAKUMAR,J.

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