

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1524 of 2017
and CMP.No.7101 of 2017

V.Karikalan

.. Petitioner

Vs

1.B.Raghuraman
2.R.Sakthivel

.. Respondents

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the order dated 22.08.2016 made in I.A.No.17356 of 2015 in O.S.No.6452 of 2014 on the file of the XVI Assistant, City Civil Court, Chennai.

For Petitioner : Mr.M.Venkateswaran

ORDER

The petitioner has filed this petition praying to set aside the order dated 22.08.2016 made in I.A.No.17356 of 2015 in O.S.No.6452 of 2014 on the file of the XVI Assistant, City Civil Court, Chennai.

2. The petitioner is the first defendant. The first respondent is the plaintiff and the second respondent is the second defendant in the suit. The first respondent, as plaintiff filed a suit in

O.S.No.6452 of 2014 on the file of the XVI Assistant City Civil Court, Chennai, (i) for declaration to declare the Cancellation of General Power of Attorney deed dated 18.02.2014 bearing Document No.413 of 2014 executed by the 1st defendant in the office of the Sub Registrar, Ashok Nagar, Chennai, as null and void and (ii) for permanent injunction restraining the defendants or their men, agents, nominees, legal representatives or any one claiming through them from dispossessing the plaintiff to and from the suit schedule property. Thereafter, the petitioner/1st defendant filed an application in I.A.No.17356 of 2015 under Order VII Rule 11(a) of CPC, for rejection of the plaint on the ground that the plaint does not disclose cause of action and the first respondent/plaintiff has not filed any documents along with the plaint to substantiate his claim.

3. The first respondent/plaintiff has contended that on the date of execution of Power of Attorney, an agreement of sale was entered into between them, and the first respondent/plaintiff has paid Rs.1,00,000/- as advance, and also paid the loan amount outstanding on behalf of the petitioner/1st defendant to the Bank, in which the petitioner/1st defendant had taken loan mortgaging the suit property; and also settled the lessee under the petitioner/1st defendant, so as to vacate the premises, which is in occupation by the lessee. According to the plaintiff, the Power of Attorney is

irrevocable.

4. Considering the averments made in the affidavit and counter affidavit, the learned Judge referring to provisions under Order VII Rule 11 of CPC and relying on the judgment of the Apex Court in **Bhau Ram Vs. Janak Singh and others** reported in **CDJ2012 SC 480**, dismissed the application in I.A.No.17356 of 2015 holding that only the averments made in the plaint can be considered while deciding the application to reject the plaint. Challenging the order passed by the learned Judge in I.A.No.17356 of 2015, this Civil Revision Petition is filed.

5. Heard the learned counsel appearing for the petitioner and perused the material placed before this Court.

6. A reading of the plaint, shows that the first respondent/plaintiff has stated that as per the Power of Attorney executed by the petitioner/1st defendant, the first respondent has acted upon and paid the outstanding amount to the Bank, settled the lessee under the petitioner and also paid an advance amount based on the agreement of sale. Whether these contentions are true can be decided only after conclusion of the trial and by appreciating the evidence let in by the parties. The contention of

the petitioner/1st defendant is that the first respondent/plaintiff has not produced any documents along with the plaint to substantiate his claim and therefore, the plaint must be rejected. Since the contention raised by petitioner/1st defendant has no merits and as it cannot be a reason to reject the plaint, the learned Judge has dismissed the application in I.A.No17356 of 2015 vide order dated 22.08.2016. The reasoning given by the learned XVI Assistant Judge, City Civil Court, Chennai, is valid and she has properly exercised her power conferred on her. There is no irregularity or illegality in the order dated 22.08.2016 passed in I.A.No.17356 of 2015, warranting interference by this Court.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.04.2017

ds

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

To:

The XVI Assistant Judge,
City Civil Court,
Chennai.

V.M.VELUMANI,J

ds

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