

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.1671 of 2017
& C.M.P.No.7844 of 2017

1. R.Mathivanan
2. M.Amutha

.. Petitioners

Vs.

1. B.Jahir Ahmed
2. M.Ramasamy

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.04.2017 made in I.A.No.147 of 2017 in O.S.No.147 of 2014 on the file of the Sub-Court, Uthangarai (earlier O.S.No.228 of 2010, on the file of the Sub-Court, Krishnagiri).

For Petitioners : Mr.P.Mani

ORDER

The civil revision petition has been filed against the fair and decreetal order dated 05.04.2017 made in I.A.No.147 of 2017 in O.S.No.147 of 2014 on the file of the Sub-Court, Uthangarai (earlier O.S.No.228 of 2010, on the file of the Sub-Court, Krishnagiri).

2. The petitioners are the defendants 2 and 3, first respondent is the plaintiff and second respondent is the first defendant in O.S.No.147 of 2014. First respondent filed the suit against the petitioners and second respondent for specific performance, to declare the gift deed dated 06.04.2010 executed by the first petitioner in favour of the second petitioner as null and void and for permanent injunction. Second respondent filed written statement on 07.04.2011 and first petitioner filed written statement on 20.04.2011 and are contesting the suit. According to the first respondent, the first petitioner and second respondent agreed to sell the suit property and received various amounts from the first respondent. Subsequently, they did not comply with the terms of agreement and did not execute the sale deed. In the circumstance, first respondent filed the suit for specific performance. Second respondent denied having received any amount from the first respondent. First respondent filed I.A.No.147 of 2017 for amendment to include alternate prayer to return the amount paid by him. According to the first respondent, he paid various amounts to the first petitioner and second respondent as advance and submitted that now there is restriction in registering the property and in the circumstance, alternate prayer is necessary.

3. The second respondent and first petitioner filed counter affidavits opposing the said application and submitted that the first respondent filed the present application after 6 ½ years of agreement of sale, which is not maintainable and it is barred by limitation. Trial commenced. First and second respondents let in evidence and closed their side. The suit has been posted for evidence on behalf of the first petitioner. At that stage, the first respondent filed the present application, which is after commencement of trial and hence, it is not maintainable.

4. The learned Judge considering the averments made in the affidavit, counter affidavits and materials available on record, allowed the application in the interest of justice and held that whether the first respondent is entitled to refund of the amount as claimed by him or not can be decided only at the time of delivering judgment by appreciating the evidence and by this alternate prayer, new case is not introduced. Both the petitioners and second respondent will be given an opportunity to file additional written statement and to cross examine P.W.1/first respondent.

5. Against the order dated 05.04.2017 made in I.A.No.147 of 2017, the present revision petition is filed by the petitioners/defendants 2 and 3.

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

7. First respondent filed the suit for specific performance. He has stated that the first petitioner and second respondent received various amounts from him, but failed to execute the sale deed. The petitioners and second respondent denied various averments made by the first respondent. The suit is in the stage of examination of first petitioner/second defendant, at that time, the application for amendment has been filed by the first respondent. First respondent is seeking alternate relief of refund of money paid by him to the first petitioner and second respondent. Alternate relief can be granted, if the Court comes to the conclusion that the first respondent is not entitled to discretionary relief of specific performance of agreement of sale. The first respondent has not introduced any new case or new cause of action by amendment.

8. In the circumstance, the learned trial Judge has dismissed the application by giving cogent and valid reasons. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 05.04.2017.

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

13.06.2017

Index : Yes/No

Kj

To

The Sub-Court, Uthangarai.

V.M.VELUMANI, J.

Kj

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